IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
	)	
v.	)	
	)	
SOUTHERN COAL CORPORATION; A&G COAL CORPORATION; JUSTICE COAL OF ALABAMA, LLC; BLACK RIVER COAL, LLC; CHESTNUT LAND HOLDINGS, LLC DOUBLE BONUS COAL COMPANY; DYNAMIC ENERGY, INC; FOUR STAR RESOURCES, LLC; FRONTIER COAL COMPANY, INC; INFINITY ENERGY, INC; JUSTICE ENERGY COMPANY, INC; JUSTICE HIGWALL MINING, INC; KENTUCKY FUEL CORP.; KEYSTONE SERVICES INDUSTRIES, INC.; M&P SERVICES, INC.; NINE MILE MINING COMPANY, INC.; NUFAC MINING COMPANY, INC.; PAY CAR MINING, INC.; PREMIUM COAL COMPANY, INC.; S AND H MINING, INC.; SEQUOIA ENERGY, LLC; TAMS MANAGEMENT, INC.; VIRGINIA FUEL CORP.,	)	**Case No. 7:19-cv-354** **Senior Judge Glen E. Conrad**
	)	
Defendants.	)	

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION

I. Introduction

Defendants Double Bonus Coal Company, Dynamic Energy, Inc., Frontier Coal Company, Inc., Justice Energy Company, Justice Highwall Mining, Inc., Keystone Services Industries, Inc.,

M&P Services, Inc., Nufac Mining Company, Inc., and Pay Car Mining Company, Inc., (collectively, "Defendants") move to dismiss the Plaintiff's Complaint pursuant to Federal Rule of Civil Procedure 12(b)(2) because this Court lacks personal jurisdiction over the Defendants. Specifically, (1) the Defendants are not "at home" in this forum; and (2) there is no affiliation with this forum and the underlying controversy. This Court has neither general nor specific personal jurisdiction over the Defendants.

The Court does not have general jurisdiction over the Defendants because the Defendants are not incorporated under the laws of Virginia and none of the Defendants maintain their principal place of business in Virginia. Additionally, the Defendants do not have "continuous and systematic" contacts with Virginia which would essentially render them "at home" in Virginia. Therefore, a Federal District Court sitting inside Virginia cannot exercise general jurisdiction over the Defendants.

Further, the Court cannot exercise specific jurisdiction over the Defendants because the Virginia long-arm statute does not reach the Defendants' alleged conduct. Even if it did, the Defendants do not have sufficient "minimum contacts" with Virginia which would subject them to personal jurisdiction. Moreover, the Plaintiff's claims are not related to Virginia in any way and Plaintiff has failed to allege any Constitutional basis justifying the exercise of specific jurisdiction over the Defendants. Therefore, exercising specific jurisdiction over the Defendants would offend traditional Constitutional notions of fair play and substantial justice for several reasons.

First, the Defendants did not purposefully avail themselves of the rights and privileges of conducting business in Virginia. During the times relevant to the issues raised in the Complaint, the Defendants never operated any coal mines or owned any real property inside Virginia.

Additionally, the assessment of civil penalties and the Defendants' alleged failure to pay the penalties for violations of the Federal Mine Safety and Health Act of 1977, as amended, ("Mine Act") did not cause any effect inside Virginia.

Second, the Plaintiff's claims for unpaid civil penalties are based solely upon alleged violations of federal law which occurred outside of Virginia. All the Defendants' business activity leading to the alleged unpaid civil penalties attached to Plaintiff's Complaint occurred outside of Virginia. Third, it was not foreseeable that these Defendants would be sued in federal court in Virginia considering the nature of their business activities outside of Virginia and considering the conditions which led to the civil penalties allegedly occurred outside Virginia. Finally, Virginia does not have any significant interest in providing Plaintiff with a forum based upon the allegations in the Complaint. Plaintiff failed to allege any connection whatsoever to Virginia stemming from the Defendants' alleged failure to comply with federal law.

II. Jurisdictional Facts

The Complaint in this action, brought by the United States of America ("Plaintiff"), against twenty-three (23) Defendant coal mining entities alleges failures on behalf of each entity to pay outstanding civil penalties assessed for violations of the Federal Mine Safety and Health Act of 1977 ("Mine Act"), as amended. The Complaint alleges a total of $4,776,370.40, inclusive of penalties and interest, in unpaid civil penalties.

The Defendants, for which personal jurisdiction in this Court does not exist, are all incorporated in West Virginia, with the exception of NuFac Mining, Inc., which is incorporated in Delaware. The Defendants maintain their principal place of business at 216 Lake Drive, Daniels, West Virginia. To the extent any of the Defendants operated mines from May 3, 2014 through May 3, 2019, they did so in West Virginia. It is the assessments stemming from citations and

orders issued by MSHA at these mines which are the subject of the Complaint. Consequently, none of the allegedly violative conditions which led to the citations, orders, and ultimately the assessments, existed in Virginia. These Defendants do not own property in Virginia, have no designated agent in Virginia and have not purposefully availed themselves of the rights and privileges of conducting business in Virginia.

The basis for jurisdiction alleged in the Complaint is Section 1110(j) of the Mine Act, 30 U.S.C. § 820(j) and the FDCPA, 28 U.S.C. 3001(a)[1]. 30 U.S.C. § 820(j) provides, in pertinent part, as follows:

> Civil penalties owed under this chapter shall be paid to the Secretary for deposit into the Treasury of the United States and shall accrue to the United States and may be recovered in a civil action in the name of the United States brought in the United States district court for the district where the violation occurred or where the operator has its principal office.

The Complaint's allegations outline the principal place of business for each of the Defendants at issue in West Virginia or Delaware.

III. Legal Standard

A. Personal Jurisdiction

The Court is required to have personal jurisdiction over the Defendants. *Foster v. Arletty 3 Sarl,* 278 F.3d. 409, 413 (4th Cir. 2002). ("The requirement that a court have personal jurisdiction is grounded in the Due Process Clause."); *see also Mylan Labs, Inc. v. Akzo, N.V.,* 2 F.3d 56, 59 (4th Cir. 1993). Thus, "for a district court to validly assert personal jurisdiction over a [foreign corporation], two conditions must be satisfied. First, the exercise of jurisdiction must be authorized by the long-arm statute of the forum state, and, second, the exercise of personal jurisdiction must also comport with Fourteenth Amendment due process requirements." *Christian Sci. Bd. of Dirs.*

[1] These allegations appear to relate solely to subject matter jurisdiction- not personal jurisdiction.

of First Church of Christ, Sci. v. Nolan, 259 F.3d 209, 215 (4th Cir. 2001) (*citing Stover v. O'Connell Assocs., Inc.*, 84 F.3d 132, 134 (4th Cir. 1996)); *see also Carefirst of Md., Inc. v. Carefirst Pregnancy Ctrs., Inc.*, 334 F.3d 390, 397 (4th Cir. 2003).

Virginia's long-arm statute provides ten (10) bases for exercising personal jurisdiction over a non-resident defendant. Va. Code Ann. § 8.01-328.1. "When jurisdiction is based solely upon [Virginia's long-arm statute], only a cause of action arising from acts enumerated [therein] may be asserted." Va. Code Ann § 8.01-328.1(C). "Because Virginia's long-arm statute is intended to extend personal jurisdiction to the extent permissible under the Due Process Clause, the statutory inquiry merges with the constitutional inquiry." *Young v. New Haven Advocate*, 315 F.3d 256, 261 (4th Cir. 2002) (*citing Stover*, 84 F.3d at 135–36); *see also English & Smith v. Metzger*, 901 F.2d 36, 38 (4th Cir. 1990); *Peninsula Cruise, Inc. v. New River Yacht Sales, Inc.*, 257 Va. 315, 512 S.E.2d 560, 562 (1999).

B. Rule 12(b)(2) Motion

A party may move to dismiss an action for lack of personal jurisdiction. Fed. R. Civ. P. 12(b)(2). "Under Rule 12(b)(2), a defendant must affirmatively raise a personal jurisdiction challenge, but the plaintiff bears the burden of demonstrating personal jurisdiction at every stage following such a challenge." *Grayson v. Anderson*, 816 F.3d 262, 267, (4th Cir. 2016) (*citing Combs v. Bakker*, 886 F.2d 673, 676 (4th Cir. 1989)). A district court has "broad discretion" when determining the procedure it will follow in resolving a defendant's Rule 12(b)(2) motion. *Id.* at 268.

"When a court's personal jurisdiction is properly challenged by a Rule 12(b)(2) motion, the jurisdictional question thus raised is one for the judge, with the burden on the plaintiff ultimately to prove the existence of a ground for jurisdiction by a preponderance of the evidence." *Bakker*,

886 F.2d at 676; *New Wellington Fin. Corp. v. Flagship Resort Dev. Corp.*, 416 F.3d 290, 294 (4th Cir. 2005) (a plaintiff "bears the burden of proving to the district court judge the existence of [personal] jurisdiction over the defendant by a preponderance of the evidence.") If the court requires the plaintiff to "establish facts supporting personal jurisdiction by a preponderance of the evidence prior to trial" the court must conduct an evidentiary hearing. *Id. (quoting New Wellington Fin. Corp. v. Flagship Resort Dev. Corp.*, 416 F.3d 290, 294 n5 (4th Cir. 2005)).

However, if the court chooses to decide the Rule 12(b)(2) motion based solely upon review of the parties' "motion papers, affidavits attached to the motion, supporting legal memoranda, and the allegations in the complaint, a plaintiff need only make a *prima facie* showing of personal jurisdiction to survive the jurisdictional challenge." *Id.* The Fourth Circuit has advised "because defendants file Rule 12(b)(2) motions precisely because they believe that they lack any meaningful contacts with the forum State where the plaintiff has filed suit, the better course is for the district court to follow a procedure that allows it to dispose of the motion as a preliminary matter." *Anderson,* 816 F.3d at 268; *see also Tatoian v. Andrews*, 100 F.Supp. 3d 549, 552 (W.D. Va. 2015).

IV. Argument

Federal district courts can exercise personal jurisdiction over a defendant in two ways: general jurisdiction and specific jurisdiction. *CFA Inst. v. Inst. of Chartered Fin. Analysts of India,* 551 F.3d 285, 292 n. 15 (4th Cir. 2009). "General personal jurisdiction ... requires 'continuous and systematic' contact with the forum state, such that a defendant may be sued in that state for any reason, regardless of where the relevant conduct occurred." *Id.* Specific jurisdiction, on the other hand, "is confined to adjudication of issues deriving from, or connected with, the very controversy that establishes jurisdiction." *Goodyear Dunlop Tires Operations, S.A. v. Brown,* 131 S.Ct. 2846,

2852 (2011). Here, the Court does not have personal jurisdiction over the Defendants under either theory.

A. The Court does not have general jurisdiction over the Defendants because the Defendants are not "at home" in Virginia.

For general jurisdiction, the Supreme Court of the United States has explained that a foreign corporation must have "affiliations with the State so 'continuous and systematic' as to render [it] essentially at home in the forum State." *See BSNF Ry. Co. v. Tyrrell*, 137 S.Ct. 1549, 1558 (2017); *Daimler AG v. Bauman*, 134 S.Ct. 746, 754 (2014); *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S.Ct. 2846, 2851 (2011); *see also Helicopteros Nacionales de Colombia, S.A. v. Hall*, 104 S.Ct. 1868, 1880 (1984); *ESAB Group, Inc. v. Centricut, Inc.*, 126 F.3d 617, 623 (4th Cir. 1997) ("[T]he threshold level of minimum contacts to confer general jurisdiction is significantly higher than for specific jurisdiction.").

Typically, a corporation is deemed to be "at home" only in the state where it is incorporated and the state where it maintains its principal place of business. These two "paradigm bases for general jurisdiction" have the "virtue of being unique" because each ordinarily indicates only one place which is typically easily ascertainable. *Daimler*, 134 S.Ct at 760, *citing Cf. Hertz Corp. v. Friend*, 130 S.Ct. 1181 (2010). This easily identifiable location "afford plaintiffs recourse to at least one clear and certain forum in which a corporate defendant may be sued on any and all claims." *Id.*

In an 'exceptional case,' a corporate defendant's operations in another forum 'may be so substantial and of such a nature as to render the corporation at home in that State.'" *BNSF Ry. Co.*, 137 S.Ct. at 1558 (*quoting Daimler*, 134 S.Ct. at 761 n. 19) (noting that an event that forces a corporation to relocate its operations to the forum opens that corporation up to general jurisdiction in the forum (*citing Perkins v. Benguet Consol. Mining Co.*, 72 S.Ct. 413 (1952)).

The place of incorporation is the state where the corporation's "Articles of Incorporation" are filed with the Secretary of State, while the principal place of business is the "nerve center" of the corporation. *See Hertz Corp.*, 130 S.Ct. at 1181. In *Hertz Corp.*, a federal diversity case, the Supreme Court of the United States formulated a test to determine where a corporation maintains its principal place of business for diversity purposes. *Id.* at 1184. The Court instructed that location where officers "direct, control, and coordinate" business activities is the "nerve center" of a corporation and that it is a single place located within a single state. *Id.* Although the *Hertz Corp.* "nerve center" test was formulated for purposes of determining a corporation's citizenship for diversity purposes, the Court has indicated that the nerve center test also applies for purposes of determining where a corporation is "at home" for general jurisdiction. *See Daimler*, 134 S.Ct. at 760 (*citing Hertz Corp,* 130 S.Ct. at 1181). Lower federal courts have begun to use the "nerve center" test to answer questions of general jurisdiction. *See e.g. Nespresso USA, Inc. v. Ethical Coffee Company SA*, 263 F.Supp. 3d 498, 503 (D. Del. 2017).

Here, the Plaintiff has failed to allege a basis for the Court to exercise general jurisdiction over the Defendants. First, as alleged in the Complaint, none of the Defendants are incorporated under the laws of Virginia. Eight (8) of the Defendants, including, Double Bonus, Dynamic Energy, Frontier Coal, Justice Energy, Justice Highwall, Keystone Service, M & P Services, and Pay Car Mining are incorporated under the laws of West Virginia. Defendant Nufac Mining is incorporated under the laws of Delaware. Thus, the state of incorporation for each Defendant clearly does not provide the Court with a valid basis to exercise general jurisdiction over them.

Second, none of the Defendants maintain their principal place of business in Virginia. As alleged in the Complaint, eight (8) of the Defendants maintain their principal place of business at 216 Lake Drive, Daniels, West Virginia. The Plaintiff identified the principal place of business for

Defendant Nufac Mining as 1209 Orange Street, Wilmington, Delaware, however, the "nerve center" for Nufac Mining, is also located at 216 Lake Drive, Daniels, West Virginia. This is the location where the business activities of all the Defendants are "directed, controlled, and coordinated" by the officers.

Tom Lusk is the Chief Operating Officer of Bluestone Resources, Inc. Lusk Aff. at ¶ 1. Double Bonus Coal Company, Dynamic Energy, Inc., Frontier Coal Company, Inc., Justice Energy Co., Justice Highwall Mining, Inc., Keystone Service Industries, Inc. M&P Services, Inc., NuFac Mining Company, Inc., and Pay Car Mining, Inc. are all wholly-owned subsidiaries of Bluestone Resources, Inc. *Id.* Mr. Lusk is knowledgeable regarding the operational, managerial and mining related activities of each of these entities. *Id.* at ¶ 2. None of these entities are incorporated in Virginia and none maintain their principal place of business in Virginia. *Id*. at ¶ 3. The principal place of business for the entities is in Daniels, West Virginia. *Id*.

Additionally, none of the Defendants operate any coal mines in Virginia and have not operated any mines in Virginia during the time period at issue in the Complaint, which is May 3, 2014 to May 3, 2019. Lusk Aff. at ¶ 4. Additionally, none of these entities own any real property in Virginia and have not designated an agent for the service of process in Virginia. *Id*. None of the alleged mining conditions which led to the citations and assessments against these entities existed in Virginia. *Id*. at ¶ 5. In other words, all mining related activity giving rise to the allegations of unpaid civil penalties for violations of federal law in Plaintiff's Complaint against these entities occurred outside of the of Virginia. *Id*.

As the Chief Operating Officer of Bluestone Resources, Inc., Mr. Lusk is intimately familiar with the general business activities of the Defendants. *Id* at ¶ 6. He maintains his office in Daniels, West Virginia and he does not have any office in Virginia. *Id.* To the extent the entities

operate any coal mines or other facilities, day to day operational decisions are made by officials at the sites, which are located outside of Virginia. *Id.* at 7. For instance, all hiring and firing, engineering, staffing, and similar decisions are made outside of Virginia. *Id.* Additionally, the accounting functions for these entities are performed in the Daniels, West Virginia office. *Id.* at ¶ 8. In fact, David Harrah is the Chief Financial Officer and he maintains his office in Daniels, West Virginia. *Id.* Patrick Graham is the corporate officer responsible for safety at the corporate level for the entities identified in paragraph 1 of the Complaint. *Id*. at ¶ 9. In this capacity, Mr. Graham receives communications from MSHA, including notices of proposed assessments for citations and orders issued by MSHA to the Defendants. *Id.* Mr. Graham receives these communications at his Daniels, West Virginia office. *Id.* Mr. Graham also communicates with MSHA regarding safety and health issues for these entities from his Daniels, West Virginia office.

Finally, this is not an "exceptional case" where the Defendants have "continuous and systematic" affiliations with Virginia that are "so substantial it renders the Defendants at home." The Defendants have no offices, officers, agents, employees or property in Virginia and do not operate a single mine in Virginia. Accordingly, there is simply no way to characterize the Defendants as "essentially at home" in Virginia. Therefore, the Defendants are not subject to general jurisdiction of this Court.

B. The Court does not have specific jurisdiction over the Defendants because the Virginia long-arm statute does not reach Defendants' conduct.

The resolution of a specific personal jurisdiction challenge involves a two-step inquiry. *Universal Leather, LLC v. Koro AR, S.A.*, 773 F.3d 553, 558 (4th Cir. 2014). The first step is to determine whether Virginia's long-arm statute, Va. Code § 8.01–328.1, by its terms, reaches defendant's conduct." *Zaletel v. Prisma Labs, Inc.*, 226 F.Supp. 3d 599, 605 (E.D. Va. 2016) (*citing Universal Leather,* 773 F.3d at 558.) "When personal jurisdiction 'is based solely upon [the long-

arm statute], only a cause of action arising from acts enumerated in [this statute] may be asserted' against the defendant." *Thousand Oaks Barrel Co., LLC v. Deep S. Barrels LLC,* 241 F. Supp. 3d 708, 714 (E.D. Va. 2017) (*quoting* Va. Code Ann. § 8.01–328.1(C)).

If the long-arm statute does not reach defendant's conduct, the inquiry ends; there is no personal jurisdiction over the defendant. *Universal Leather,* 773 F.3d at 558. But, if Plaintiff has established that the Virginia long-arm statute reaches the Defendants' conduct, then the Court must analyze whether exercising jurisdiction over the Defendants comports with due process. *Id.*

In pertinent part, the Virginia Long-Arm Statute provides that a Virginia court may "exercise personal jurisdiction over a [defendant], who acts directly or by an agent, as to a cause of action arising from the [defendant's] . . . Transacting any business in this Commonwealth; . . . [.]" Va. Code Ann. § 8.01 328.1(A)(1). Additionally, the long-arm statute provides jurisdiction over any defendant "[h]aving incurred a liability for taxes, fines, penalties, interest, or other charges to any political subdivision of the Commonwealth." Va. Code Ann. § 8.01 328.1(A)(10).

The Complaint is void of any allegations concerning Virginia's long-arm statute. This omission is telling. Here, the Defendants' alleged conduct does not fall within the reach of either of the only two possibly applicable provisions of the Virginia long-arm statute. The Defendants do not transact business in Virginia and the subject of this litigation are allegedly unpaid federal civil penalties which were incurred outside of Virginia. Lusk Aff. at ¶ 4-5. Therefore, the Virginia long-arm statute does not reach the Defendants' alleged conduct and the Court's jurisdictional "inquiry should end there." However, should the Court find that the Virginia long-arm statute is applicable to the alleged conduct, the Court should still decline to exercise specific jurisdiction over the Defendants because doing so would fail to comport with the requirements of due process.

C. The Court cannot exercise specific jurisdiction over the Defendants because doing so would be Constitutionally unreasonable.

For the Court to exercise specific jurisdiction, a foreign corporation "must have purposefully established minimum contacts in the forum State such that [it] should reasonably anticipate being haled into court there," and "a court must weigh the totality of the facts before it." *Perdue Foods LLC v. BRF S.A.*, 814 F.3d 185, 189 (4th Cir. 2016). The defendant's contacts "must have been so substantial that they amount to a surrogate for presence and thus render the exercise of sovereignty just." *Consulting Engineers Corp. v. Geometric Ltd.*, 561 F.3d 273, 277–78 (4th Cir. 2009).

The Fourth Circuit employs a three-prong test to determine whether the exercise of specific jurisdiction comports with the requirements of due process: "'(1) the extent to which the defendant purposefully availed itself of the privilege of conducting activities in the forum state; (2) whether the plaintiff's claims [arose] out of those activities (relatedness); and (3) whether the exercise of personal jurisdiction is constitutionally reasonable.'" *Universal Leather, LLC v. Koro AR, S.A.*, 773 F.3d 553, 559 (4th Cir. 2014) (*quoting Tire Eng'g & Distrib., LLC v. Shandong Linglong Rubber Co.*, 682 F.3d 292, 302 (4th Cir. 2012)).

1. Purposeful Availment

The Fourth Circuit has created a nonexclusive eight factor test to determine whether a defendant satisfies the purposeful availment prong of the specific jurisdiction test. *Perdue*, 814 F.3d at 189; *Consulting Engineers*, 561 F.3d at 278. These nonexclusive factors include: (1) whether the defendant has offices or agents in the forum State; (2) whether the defendant owns property in the forum State; (3) whether the defendant reached into the forum state to solicit or initiate business; (4) whether the defendant deliberately engaged in significant or long-term business activities in the forum State; (5) whether the parties agreed that the law of the forum State

would apply; (6) whether the defendant made in-person contact in the forum State; (7) the nature, quality, and extent of communications about the business transaction; (8) whether performance of the contract was to be in the forum State.

Here, the Defendants have no offices, officers, agents, employees or property in Virginia. Lusk Aff. at ¶ 4. The Defendants have never operated a mine in Virginia nor solicited any mining related business in Virginia. Lusk Aff. at ¶ 4-5. Also, there is no contractual agreement between Plaintiff and the Defendants at issue in this litigation. It is clear that the Defendants did not conduct any business activity in Virginia, direct any activity specifically at Virginia, or cause any effect inside Virginia. In light of these facts it can hardy be argued, then, that the Defendants have purposefully availed themselves to Virginia. Accordingly, the Court should find that the Defendants do not satisfy the purposeful availment prong of the specific jurisdiction analysis.

2. Relatedness

In addition to purposeful avaliment, there must be an "affiliation between the forum and the underlying controversy." *Goodyear*, 564 U.S. at 919 (internal brackets omitted). This inquiry "focuses on the relationship among the defendant, the forum, and the litigation," and requires that "the defendant's suit-related conduct create a substantial connection with the forum State." *Walden v. Fiore,* 134 S.Ct. 1115, 1121, (2014) (internal citation and quotation marks omitted). "When there is no such connection, specific jurisdiction is lacking regardless of the extent of a defendant's unconnected activities in the State." *Bristol-Meyers,* 137 S.Ct. at 1781

Here, it is exceedingly clear that the allegations in the Complaint do not create an "affiliation between Virginia and the underlying controversy" much less a "substantial connection." The Complaint alleges unpaid civil penalties for violations of federal law, all of which occurred in West Virginia. Lusk Aff. at ¶ 4. There is simply no connection whatsoever

between the allegations in the Complaint and Virginia. Accordingly, because the is no relation between the underlying controversy and Virginia "specific jurisdiction is lacking" and the Court should dismiss the Complaint as to these Defendants. However, should the Court find that a "substantial connection" to Virginia exists, it would still be Constitutionally unreasonable to exercise personal jurisdiction over the Defendants.

3. Reasonableness

As to the third prong, the exercise of personal jurisdiction is constitutionally reasonable if the defendant's activities or contacts with the forum are such that he would "reasonably anticipate being haled into court" in the forum state. *World-Wide Volkswagen Corp.,* 100 S.Ct. at 562. This prong "permits a court to consider additional factors to ensure the appropriateness of the forum once it has determined that a defendant has purposefully availed itself of the privilege of doing business there." *Consulting Engineers Corp.,* 561 F.3d at 279." Such factors include: (1) the burden on the defendant of litigating in the forum; (2) the interest of the forum state in adjudicating the dispute; (3) the plaintiff's interest in obtaining convenient and effective relief; (4) the shared interest of the states in obtaining efficient resolution of disputes; and (5) the interests of the states in furthering substantive social policies." *Id.* (citations omitted).

Here, it is not reasonable for the Defendants to anticipate being haled into federal court in Virginia over allegedly unpaid civil penalties which were incurred in West Virginia. The corporate office is West Virginia, the corporate officers and employees are in West Virginia, and many potential witnesses for trial are in West Virginia. Similarly, Virginia does not have any significant interest in providing Plaintiff with a forum for this litigation. The Complaint does not allege any harm to Virginia citizens caused by the alleged conduct of the Defendants nor does it allege any other adverse consequences directed at Virginia or its citizens as a result of the alleged conduct.

Thus, the case that a West Virginia court has a far superior interest in this litigation can easily be made. Finally, Plaintiff does not have any particular interest in litigating in Virginia as it can easily seek convenient and effective relief in another forum. Therefore, the factors of this case do not render it reasonable to hale the Defendants into court in Virginia.

IV. Conclusion

Based on the foregoing, the Court should dismiss the Complaint against the Defendants for lack of personal jurisdiction because the Plaintiff has failed to alleged a Constitutionally reasonable basis for the Court to exercise personal jurisdiction over the Defendants.

Respectfully submitted,

DOUBLE BONUS COAL COMPANY, et al.

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CERTIFICATE OF SERVICE

I hereby certify that on this 9th of July 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, and the foregoing was electronically transmitted through the CM/ECF system to the following CM/ECF participants:

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