

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

UNITED STATES OF AMERICA,)
)
Plaintiff,) Case No. 7:19-cv-00354
)
)
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)
HIGHWALL 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.,)
)
Defendants.

**UNITED STATES' RESPONSE IN
OPPOSITION TO DEFENDANTS' MOTION TO DISMISS**

The United States of America brought this action against 23 mine operating companies—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 Highwall 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., Premium Coal Company, Inc., S and H Mining, Inc., Sequoia Energy, LLC, TAMS Management, Inc., and Virginia Fuel Corp. (collectively, “Defendants”)—to collect unpaid civil monetary penalties assessed under the Mine Safety and Health Act of 1977, as amended, 30 U.S.C. § 901, *et seq.* (“Mine Act”), and the Federal Debt Collection Procedures Act (“FDCPA”), 28 U.S.C. § 3001, *et seq.*

In response to the Complaint, nine of the defendant companies filed a Motion to Dismiss for Lack of Personal Jurisdiction. ECF No. 4. The Court should deny the Motion to Dismiss because the FDCPA creates nationwide jurisdiction to enforce debts owed to the United States. Moreover, the Court should deny the Motion for the independent reason that it has both general and specific personal jurisdiction over the companies.

INTRODUCTION

On May 7, 2019, the United States filed this action against 23 mine operators for their failure to pay penalties for violations of the Mine Act at 51 mines across five different states. Fourteen of the defendants answered the Complaint. The following nine defendants moved to dismiss for lack of personal jurisdiction: Double Bonus Coal Company, Dynamic Energy, Inc., Frontier Coal Company, 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, “Movants”). *See* ECF No. 4. Each Movant argues—some in flat contradiction to their own court filings in other cases in this district—that the Court lacks general personal jurisdiction because the company is not incorporated in Virginia and allegedly does not maintain its principal place of business in Virginia. *See* Mem. in Supp. at 1–3, ECF No. 5. Each

Movant also argues the Court lacks specific personal jurisdiction because the company has not allegedly availed itself of Virginia and because the mines operated by the company are outside Virginia. *Id.* at 9–15. The Movants filed a sworn affidavit by their parent company’s (Bluestone Resources, Inc.) Chief Operating Officer (“COO”) in support of these arguments. Lusk Aff. ¶¶ 1, 3, ECF No. 5-1. COO Lusk swears that each Movant is a subsidiary of Bluestone and purportedly has its principal place of business in Daniels, West Virginia.

1. I am the Chief Operating Officer of Bluestone Resources, Inc. Double Bonus Coal Company, Dynamic Energy, Inc., Frontier Coal Company, Inc., Justice Energy Company, Inc., 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.
2. In my capacity as the Chief Operating Officer of Bluestone Resources, Inc., I am knowledgeable regarding the operational, managerial and mining related activities of each of the entities identified in paragraph 1 above.
3. The entities identified in paragraph 1 above are not incorporated in the Commonwealth of Virginia and do not maintain their principal place of business in Virginia. The principal place of business for the entities identified in paragraph 1 above is in Daniels, West Virginia.

Id. He also swears that the accounting functions for the Movants are performed in Daniels, West Virginia. *Id.*

8. The accounting functions for the entities identified in paragraph 1 above are performed in our Daniels, West Virginia office. In fact, David Harrah is the Chief Financial Officer and he maintains his office in Daniels, West Virginia.

Id.

Movants' expedient assertions are belied by their sworn statements in other cases, as detailed below.

First, four of the Movant companies stated to this Court in May 2019 that they have their principal places of business in Roanoke, Virginia, not in Daniels, West Virginia. On May 17, 2019, four of the nine Movants—Dynamic Energy, Frontier Coal, Justice Energy, and Pay Car Mining—explicitly invoked this Court's jurisdiction in a complaint for declaratory judgment against the United States Office of Surface Mining Reclamation Enforcement, Department of Interior ("OSMRE"). *See* Complaint, *James C. Justice III v. OSMRE*, No. 7:19cv381 (W.D. Va. May 17, 2019), attached as Exhibit A (hereinafter "OSMRE complaint"). Legal counsel for the mine operating companies in the case against OSMRE is the same legal counsel for the companies in the present case. Indeed, the OSMRE complaint was signed by that same attorney who signed the present Motion to Dismiss. As shown below, in the OSMRE complaint, the Movants state that Dynamic Energy, Frontier Coal, Justice Energy, and Pay Car Mining each have their principal places of business in Roanoke, Virginia. *Id.* ¶¶ 5, 6, 7, 10.

5. Plaintiff Dynamic Energy, Inc. (“Dynamic”) is a West Virginia corporation with its principal place of business in Roanoke, Virginia and doing business or having done business in West Virginia that was the subject of various assessments by the Defendant.

6. Plaintiff Frontier Coal Company (“Frontier”) is a Delaware corporation with its principal place of business in Roanoke, Virginia and doing business or having done business in West Virginia that was the subject of various assessments by the Defendant.

7. Plaintiff Justice Energy Company, Inc. (“Justice Energy”) is a West Virginia corporation with its principal place of business in Roanoke, Virginia and doing business or having done business in West Virginia that was the subject of various assessments by the Defendant.

10. Plaintiff Pay Car Mining, Inc. (“Pay Car”) is a West Virginia corporation with its principal place of business in Roanoke, Virginia and doing business or having done business in West Virginia that was the subject of various assessments by the Defendant.

Ex. A at 2–3.

Second, two of those same companies, along with two other Movants, availed themselves of this Court’s jurisdiction just a few years ago. On September 30, 2016, Dynamic Energy,

Justice Highwall, Nufac Mining, and Pay Car Mining filed a consent decree in this Court regarding Clean Water Act violations explicitly accepting this Court's jurisdiction because many of the defendants "are located, reside, and/or are doing business" here. Consent Decree ¶¶ 1, 3, *United States v. Southern Coal Corp.*, No. 7:16-cv-00462-GEC (W.D. Va. Sept. 30, 2016), attached as Exhibit B.

Lastly, these Court filings showing proper jurisdiction in this district are further supported by the sworn testimony of Justice Energy's and Bluestone's officers. In a deposition on March 14, 2019, James Justice III testified under oath that Stephen Ball was the "best to ask" and "would have the most knowledge" about the structure of Bluestone and how the subsidiaries are interrelated. Justice Dep. 15:2–4, attached as Exhibit C. On that same day, Ball, who is the Vice President and General Counsel of Defendant Justice Energy Company, testified that the business address of Justice Energy was 302 South Jefferson Street, Roanoke, Virginia, and that Bluestone Resources is also operated out of 302 South Jefferson Street, Roanoke, Virginia. *See* Ball Dep. 22:5–23:23, attached as Exhibit D. Contrary to the Lusk affidavit submitted by Movants in this case, Ball testified under oath that "to the extent, Justice Energy has any accounting or anything like that, that's all done out of the 302 South Jefferson location. And Blue Stone Resources as the ultimate parent company provides those services to their subsidiaries." *Id.* 22:11–22:16.

Moreover, Ball's deposition highlights the intimate nature of the parent-subsidary relationship between Bluestone and Movants. In addition to accounting services, Bluestone supplies the administrative and financial services for Movants, maintains a group insurance policy for its subsidiaries, files a consolidated tax return for all its subsidiaries, and supplies the funds to pay the limited employees of Justice Energy. *Id.* 22:5–25:15. Movants' stunning

assertion now that they have no ties to the Western District of Virginia is negated by the ample evidence to the contrary.

STANDARD OF REVIEW

Although personal jurisdiction is an affirmative defense, “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)). This burden, however, “varies according to the posture of a case and the evidence that has been presented to the court.” *Id.* at 268. “[T]he court must take the allegations and available evidence relating to personal jurisdiction in the light most favorable to the plaintiff,” and a plaintiff need only make a *prima facie* showing of personal jurisdiction for the litigation to proceed. *Id.*; see also *Sneha Media & Entm’t, LLC v. Assoc. Broad. Co. P Ltd.*, 911 F.3d 192, 196 (4th Cir. 2018) (“To be sure, when the parties have not yet had a fair opportunity to develop and present the relevant jurisdictional evidence, we have treated the disposition of Rule 12(b)(2) motions to dismiss for a lack of personal jurisdiction in conceptually the same manner as we treat the disposition of motions to dismiss under Rule 12(b)(6)”); *Gilmore v. Jones*, 370 F. Supp. 3d 630, 650 (W.D. Va. 2019) (Moon, J.) (“In conducting its analysis, the court ‘must construe all relevant pleading allegations in the light most favorable to the plaintiff, assume credibility, and draw the most favorable inferences for the existence of jurisdiction.’” (quoting *Universal Leather, LLC v. Koro AR, S.A.*, 773 F.3d 553, 558 (4th Cir. 2014))).

ARGUMENT

I. **The Federal Debt Collection Procedures Act creates nationwide jurisdiction for actions to collect debts owed to the United States.**

The purpose of the FDCPA was “to create a comprehensive statutory framework for the collection of debts owed to the United States government,” in order “to improve the efficiency

and speed in collecting those debts.” *Nat’l Labor Relations Bd. v. E.D.P. Med. Comput. Sys., Inc.*, 6 F.3d 951, 954 (2d Cir. 1993) (quoting H.R. Rep. No. 736 (1990), *reprinted in*, 1990 U.S.C.C.A.N. 6472, 6630, 6631). The FDCPA “provides *exclusive* civil procedures for the United States to recover a judgment on a debt.” 28 U.S.C. § 3001(a) (emphasis added); *Export-Import Bank of U.S. v. Asia Pulp & Paper Co., Ltd.*, No. 03-8554 (DCP), 2008 WL 465169, at *1 (S.D.N.Y. Feb. 6, 2008). To allow the government to enforce its collection rights, the FDCPA explicitly provides for “nationwide enforcement” of federal debts by providing that “any . . . complaint, filed under this chapter may be served in any state and . . . may be enforced by the court.” 28 U.S.C. § 3004(b).

The numerous district courts that have considered the issue of personal jurisdiction under the FDCPA have uniformly held that the FDCPA creates national jurisdiction such that the government “need only show that Defendant has sufficient minimum contacts with the United States so as not to violate the traditional notions of fair play and substantial justice.” *United States v. Coker*, No. 2:09-02012, 2010 WL 4286380, at *2 (E.D. Cal. Oct. 22, 2010); *see also United States v. Hurry*, No. 2:15CV106–WHA, 2015 WL 1897182, at *1–2 (M.D. Ala. Apr. 27, 2015) (finding that “the FDCPA provides for nationwide service of process” and therefore, personal jurisdiction exists “over any defendant that has minimum contacts with the United States” (citation omitted)); *United States v. Preston*, 961 F. Supp. 2d 133, 136 (D.D.C. 2013) (noting nationwide jurisdiction in finding nationwide venue); *United States v. Rogan*, No. 02 C 3310, 2008 WL 4853478, at *2 (N.D. Ill. Nov. 3, 2008) (considering the defendant’s minimum contacts with the United States to find nationwide jurisdiction under FDCPA); *Reese Bros., Inc. v. U.S. Postal Serv.*, 477 F. Supp. 2d 31, 39 (D.D.C. 2007) (same); *United States v. Sutton*, No.

3:04-cv-00596(EBB), 2005 WL 281162, at *1 (D. Conn. Jan. 10, 2005) (same); *United States v. Famous Artists Corp.*, No. 95-5240, 1996 WL 114932, at *4 (E.D. Pa. Mar. 14, 1996) (same).

In other words, nationwide jurisdiction is proper when “the defendant has acted within any district of the United States or sufficiently caused foreseeable consequences in this country.” *Action Embroidery Corp. v. Atl. Embroidery, Inc.*, 368 F.3d 1174, 2280 (9th Cir. 2004) (quoting *Sec. Inv. Prot. Corp. v. Vigman*, 764 F.2d 1309, 1316 (9th Cir. 1985)); *Bally Gaming, Inc. v. Kappos*, 789 F. Supp. 2d 41, 45 (D.D.C. 2011) (“Prior opinions of the D.C. Circuit make clear that, when this Court derives its personal jurisdiction over a defendant from a federal statute’s nationwide-service-of-process provision, the Due Process Clause of the Fifth Amendment does not require that the defendant also have minimum contacts with this district.”); *see also* Fed. R. Civ. P. 4(k)(1)(C) (“Serving a summons or filing a waiver of service establishes personal jurisdiction over a defendant . . . when authorized by a federal statute.”); *Coker*, 2010 WL 4286380, at *2 (discussing *Action Embroidery Corp.*). Because the FDCPA allows for nationwide service of process and in turn, nationwide personal jurisdiction, the United States is the relevant forum for the personal jurisdiction analysis, not the individual district court. Here, there is no dispute the Movants have substantial contacts with the United States; indeed, they are incorporated in the United States, operate mines in the United States, and are extensively regulated by numerous federal agencies. Accordingly, the Court should deny the Motion to Dismiss for lack of personal jurisdiction.

II. Aside from the FDCPA’s nationwide jurisdictional reach, the Court has personal jurisdiction over Movants.

Even if the FDCPA did not provide the Court personal jurisdiction over Movants, the Court has both general and specific personal jurisdiction, either of which is alone sufficient.

When a federal statute does not otherwise establish personal jurisdiction, courts employ a two-part inquiry: (1) whether the forum state’s long-arm statute provides jurisdiction, and (2) whether exercising jurisdiction would violate defendant’s due process. *Wolf v. Richmond Cty. Hosp. Auth.*, 745 F.2d 904, 909 (4th Cir. 1984). “Because Virginia’s long-arm statute extends personal jurisdiction to the extent permitted by the Due Process Clause, ‘the statutory inquiry necessarily merges with the constitutional inquiry, and the two inquiries essentially become one.’” *Young v. New Haven Advocate*, 315 F.3d 256, 261 (4th Cir. 2002) (citation omitted) (quoting *Stover v. O’Connell Assocs., Inc.*, 84 F.3d 132, 135–36 (4th Cir. 1996)).

Whether personal jurisdiction comports with due process is governed by the minimum contacts test. The canonical opinion remains *International Shoe v. Washington*, 326 U.S. 310 (1945), in which the Supreme Court held that courts may exercise personal jurisdiction over a defendant if the defendant has “certain minimum contacts with [the state] such that the maintenance of the suit does not offend ‘traditional notions of fair play and substantial justice.’” *Int’l Shoe*, 326 U.S. at 316 (citation omitted). The minimum contacts test is satisfied and a Court will have general jurisdiction over the defendant when a defendant company is incorporated in the state or maintains its principal place of business in the state, or if it has such ongoing systematic dealings within the state as to render it essentially at home in the forum state. *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011); *Daimler AG v. Bauman*, 571 U.S. 117, 138 (2014). If the Court does not have general jurisdiction over a defendant company, the minimum contacts test may still be satisfied and give rise to specific jurisdiction over the defendant “based on conduct connected to the suit.” *ALS Scan, Inc. v. Dig. Serv. Consultants, Inc.*, 293 F.3d 707, 711 (4th Cir. 2002). Here, the Court has both general and specific personal jurisdiction over Movants.

A. Movants have sufficient minimum contacts for general jurisdiction in Virginia because they operate their businesses out of Roanoke, Virginia.

For corporate defendants, general jurisdiction exists in the place of incorporation or its principal place of business. *Goodyear Dunlop Tires Operations, S.A.*, 564 U.S. at 735. If the corporation does not “reside” in the forum state, general personal jurisdiction exists when the “corporation’s ‘affiliations with the State are so “continuous and systematic” as to render [it] essentially at home in the forum [s]tate.’” *Daimler AG*, 571 U.S. at 138 (citing *Goodyear*, 564 U.S. at 919). Movants assert through the Lusk Affidavit that they have no ties to Virginia, but this is directly contrary to Movants’ sworn testimony and recently filed statements with this Court.

First, four of the Movants, Dynamic Energy, Frontier Coal, Justice Energy, and Pay Car Mining, stated in a recent filing with this Court that their principal places of business are in Roanoke, Virginia. *See* Compl. ¶¶ 5, 6, 7, 10, *Justice v. Office of Surface Mining Reclamation & Enforcement*, No. 7:19-cv-00381 (W.D. Va. May 17, 2019). The government filed the Complaint in this case against the four Movants on May 7, 2019. Only ten days later, on May 17, 2019, in an unrelated matter, the same four Movants filed a complaint in this district. In that complaint, the four Movants stated that their principal places of business are in Roanoke, Virginia. Then on July 9, 2019, the same four Movants, represented by the same counsel, filed a Motion to Dismiss the government’s Complaint in this case, claiming that the four companies do *not* have their principal places of business in Roanoke, Virginia. These statements are flatly contradictory.

The government endeavored to confirm which of Movants’ characterizations of their principal places of business was accurate. In so doing, the government learned that in other recent litigation, the Vice President and General Counsel of Justice Energy Company, Inc.—one

of the four Movants—testified under oath that Justice Energy’s address is indeed 302 South Jefferson Street, Roanoke, Virginia. *See* Ex. D, Ball Dep. 22:5–21 (“[I]n terms of the business address for Justice Energy is 302 South Jefferson Street in Roanoke, Virginia”). The representations made by Dynamic Energy, Frontier Coal, Justice Energy, and Pay Car Mining in support of their Motion to Dismiss that they do not have their principal places of business or operate in this district are frivolous. Moreover, these representations violate Federal Rule of Civil Procedure 11 in light of the fact that these same companies stated that they *do* have their principal places of business in Roanoke only ten days after receiving the present Complaint, while represented by the same counsel. In short, the Court need go no further than Movants’ own statements to determine it has personal jurisdiction here.¹

Second, all nine Movants have the same parent company, Bluestone, and that company also is based in Roanoke, Virginia. *See* Lusk Aff. ¶ 1, ECF No. 5-1. James Justice III testified that Stephen Ball was the “best to ask” and “would have the most knowledge” about the structure of Bluestone and its subsidiaries. Ex. C., Justice Dep. 15:2–4. Stephen Ball, the Vice President and General Counsel of Justice Energy Company testified, under oath, that the business operations for Bluestone are performed from 302 South Jefferson Street, Roanoke, Virginia. *See* Ex. D, Ball Dep. 22:5–21 (“Who else is located at that particular address? A. That’s the address where Blue Stone Resources is operated out of. And so to the extent, Justice Energy has any accounting or anything like that, that’s all done out of the 302 South Jefferson location. And Blue Stone Resources as the ultimate parent company provides those services to their subsidiaries.”). Justice Energy Company does not have its own employees who supply or

¹ The government respectfully reserves the right to seek sanctions against Movants under Federal Rule of Civil Procedure 11(c)(2) for violations of Rule 11(b) arising from their apparent misrepresentations regarding the principal places of business and locations of operations of four of the named defendants, if the Court does not otherwise order a motion to show cause.

perform financial services for the company, and thus, it relies on its parent company to provide all of those services. *Id.* 22:22–24:23. Bluestone also “files a consolidated tax return for itself and all of its subsidiaries.” *Id.* 24:5–18. And Bluestone puts funds into the Justice Energy account to make payroll. *Id.* 25:8–12.

Third, in sworn testimony, James Justice III stated that he “ha[s] the ultimate decision making authority” for “major financial decision[s]” of Justice Energy Company and all of the other mine-operator subsidiaries of Bluestone and Southern Coal, which he and his father own, which includes Movants. Ex. C, Justice Dep. 13:2–14:1. James Justice III is also the Controller of each Movant company, as defined in the Mine Act and disclosed to the Mine Safety and Health Administration (“MSHA”). Most importantly for this inquiry, Justice operates his business out of the offices at 302 South Jefferson Street, Roanoke, Virginia. *See* Complaint ¶ 1, *James C. Justice III v. Office of Surface Mining Reclamation & Enft*, No. 7:19cv381 (W.D. Va. May 17, 2019).

It is clear that all nine Movants reside in Virginia and/or have continuous and systematic ties to Virginia, and therefore, the Court has general personal jurisdiction over them. *See Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437, 448 (1952) (finding general personal jurisdiction existed because the defendant company’s president maintained an office within the state where he maintained the company’s files and oversaw the company’s activities).

B. The Court separately has specific jurisdiction over Movants because they have purposefully availed themselves of Virginia by conducting their business from Roanoke, Virginia.

The Court also has specific jurisdiction over Movants. Specific jurisdiction exists when (1) the defendant “purposefully availed itself of the privileges of conducting activities in the forum state,” (2) “the plaintiff’s claim arises out of the defendant’s forum-related activities,” and

(3) exercise of personal jurisdiction would be constitutionally reasonable. *Young v. New Haven Advocate*, 315 F.3d 256, 261 (4th Cir. 2002) (citations omitted).

First, to determine whether a defendant has “purposefully availed itself” of the forum, courts look at whether “the defendant’s conduct and connection with the forum [s]tate are such that he should reasonably anticipate being haled into court there.” *Fed. Ins. Co. v. Lake Shore Inc.*, 886 F.2d 654, 658 (4th Cir. 1989). Because the parent company of Movants operates all of the financial aspects of Movants from Roanoke, Virginia, it is entirely reasonable that Movants could expect to be sued in Virginia for failure to pay a debt, particularly in light of the fact that four of Movants initiated suit against the government on May 17, 2019, in this Court, regarding a separate debt owed to the United States, asserting that Roanoke is their principal place of business. Movants claim otherwise in their Motion, but at this stage and in light of the contradictory statements filed by Movants within weeks of each other, the Court should weigh the evidence in favor of finding jurisdiction. *Grayson v. Anderson*, 816 F.3d 262, 268 (4th Cir. 2016).

Second, Movants assert that the acts or omissions giving rise to the cause of action are their mining activities in West Virginia. *See* Mem. in Supp. at 13–14, ECF No. 5. That argument, however, misses the point. This case is a debt collection action pursuant to the FDCPA. The underlying Mine Act violations and the appropriateness of the civil penalties assessed by MSHA are not at issue because the time in which to challenge those assessments has long since passed. *See* 30 U.S.C. § 815(a) (“If . . . the operator fails to notify the Secretary that he intends to contest the citation or the proposed assessment of penalty . . . the citation and the proposed assessment of penalty shall be deemed a final order of the Commission and not subject to review by any court or agency.”).

The only issues in this case are (1) the existence of a debt as defined by the FDCPA, (2) whether Defendants owe the debt, and (3) whether the debt is owed to the United States. The relevant act or omission giving rise to this cause of action is Movants' willful failure to pay the assessed civil penalties, and the accounting operations for Movants are conducted from 302 South Jefferson Street, Roanoke, Virginia. *See Ex. D, Ball Dep. 22–23.* The relevant conduct or omission giving rise to this action thus occurred in the Western District of Virginia, and the second prong for specific personal jurisdiction is met.

Third, exercise of jurisdiction in Virginia is constitutionally reasonable. In determining whether personal jurisdiction is constitutionally reasonable, courts consider five factors: (1) the burden on Defendant of litigating in the forum; (2) the forum state's interest in adjudicating the dispute; (3) Plaintiff's interest in obtaining convenient and effective relief; (4) "the interstate judicial system's interest in obtaining the most efficient resolution of controversies; and (5) the shared interest of the several states in furthering fundamental substantive social policies." *Asahi Metal Indus. Co. v. Superior Court of Cal.*, 480 U.S. 102, 113 (1987) (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292 (1980)). Here, the United States as the plaintiff has an interest in obtaining convenient and effective relief in one case against all the defendants instead of litigating the same issues in two different courts. The United States would have to put on the same witnesses twice in two different states, and those witnesses are local to neither Virginia nor West Virginia. To force the United States to expend resources to litigate this case in two separate courts when it has already spent tremendous resources to collect these unpaid civil penalties is against the interests of justice. *See United States v. Sutton*, No. 3:04-CV-00596(EBB), 2005 WL 281162, at *3 (D. Conn. Jan. 10, 2005) ("To expect an Assistant U.S. Attorney from the District of New Hampshire to become as intimately familiar with these

cases as the two Assistants from Connecticut already are is to request unreasonable, unnecessary duplication of effort, time, and expense to the Government.”). Moreover, it is not unreasonably burdensome on Movants to litigate here. Movants have hired counsel in Virginia, and their operations are all overseen by James Justice III, who lives and conducts his business in Roanoke, Virginia. Ex. C, Justice Dep. 13:20–14:1. In sum, it is constitutionally reasonable for this Court to exercise personal jurisdiction over Movants, and the Court should deny their Motion to Dismiss.

CONCLUSION

Based on the foregoing, the United States respectfully requests that the Court deny Defendants’ Motion to Dismiss for Lack of Personal Jurisdiction. In the alternative, the United States requests that the Court stay Defendants’ Motion and allow the United States to conduct jurisdictional discovery. If the Court finds that it lacks personal jurisdiction over Defendants, the United States respectfully requests that the Court transfer the case against Movants to the U.S. District Court for the Southern District of West Virginia.

Respectfully submitted,

THOMAS T. CULLEN
United States Attorney

Date: July 23, 2019

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CERTIFICATE OF SERVICE

I hereby certify that on July 23, 2019, I caused a true copy of the foregoing United States' Response in Opposition to Defendants' Motion to Dismiss to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the parties.

/s/ Krista Consiglio Frith
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EXHIBIT A

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

**JAMES C. JUSTICE III;
A & G COAL CORP.;
CHESTNUT LAND HOLDINGS, LLC;
BLUESTONE COAL CORPORATION;
DYNAMIC ENERGY, INC.;
FRONTIER COAL COMPANY;
JUSTICE ENERGY COMPANY, INC.;
KENTUCKY FUEL CORPORATION;
NATIONAL COAL, LLC;
PAY CAR MINING, INC.;
PREMIUM COAL COMPANY,
INCORPORATED;
S AND H MINING, INC.;
and
TAMS MANAGEMENT, INC.,**

Plaintiffs,

v.

**OFFICE OF SURFACE MINING
RECLAMATION AND ENFORCEMENT,
UNITED STATES DEPARTMENT OF
THE INTERIOR,**

Defendant.

Case No. 7:19cv381

**COMPLAINT FOR
DECLARATORY JUDGMENT**

Plaintiffs, A & G Coal Corp., Bluestone Coal Corporation, Chestnut Land Holdings, LLC, Dynamic Energy, Inc., Frontier Coal Company, Justice Energy Company, Inc., Kentucky Fuel Corporation, National Coal, LLC, Pay Car Mining, Inc., Premium Coal Company, Incorporated, S and H Mining, Inc., Tams Management, Inc. and James C. Justice III, by counsel, and for their Complaint for Declaratory Judgment, respectfully state as follows:

I. THE PARTIES, JURISDICTION AND VENUE

A. The Parties

1. Plaintiff James C. Justice III (“Jay Justice”) is an individual residing in Roanoke, Roanoke County, Virginia. Jay Justice is the “Controller” of the “Justice Mining Entities” (as that phrase is defined below) for purposes of enforcement of surface mining reclamation and enforcement laws and regulations by the Defendant.

2. Plaintiff A & G Coal Corp. (“A & G”) is a Virginia corporation with its principal place of business in Roanoke, Virginia and doing business or having done business in Wise and Dickenson Counties, Virginia that was the subject of various assessments by the Defendant.

3. Plaintiff Chestnut Land Holdings, LLC (“Chestnut”) is a Delaware limited liability company with its principal place of business in Roanoke, Virginia and doing business or having done business in Tazewell County in Virginia that was the subject of various assessments by the Defendant.

4. Plaintiff Bluestone Coal Corporation (“Bluestone”) is a West Virginia corporation with its principal place of business in Roanoke, Virginia and doing business or having done business in West Virginia that was the subject of various assessments by the Defendant.

5. Plaintiff Dynamic Energy, Inc. (“Dynamic”) is a West Virginia corporation with its principal place of business in Roanoke, Virginia and doing business or having done business in West Virginia that was the subject of various assessments by the Defendant.

6. Plaintiff Frontier Coal Company (“Frontier”) is a Delaware corporation with its principal place of business in Roanoke, Virginia and doing business or having done business in West Virginia that was the subject of various assessments by the Defendant.

7. Plaintiff Justice Energy Company, Inc. (“Justice Energy”) is a West Virginia corporation with its principal place of business in Roanoke, Virginia and doing business or having done business in West Virginia that was the subject of various assessments by the Defendant.

8. Plaintiff Kentucky Fuel Corporation (“Kentucky Fuel”) is a Delaware corporation with its principal place of business in Roanoke, Virginia and doing business or having done business in Kentucky that was the subject of various assessments by the Defendant.

9. Plaintiff National Coal, LLC (“National Coal”) is a Tennessee limited liability company with its principal place of business in Roanoke, Virginia and doing business or having done business in Tennessee that was the subject of various assessments by the Defendant.

10. Plaintiff Pay Car Mining, Inc. (“Pay Car”) is a West Virginia corporation with its principal place of business in Roanoke, Virginia and doing business or having done business in West Virginia that was the subject of various assessments by the Defendant.

11. Plaintiff Premium Coal Company, Incorporated (“Premium”) is a Tennessee corporation with its principal place of business in Roanoke, Virginia and doing business or having done business in Tennessee that was the subject of various assessments by the Defendant.

12. Plaintiff S and H Mining, Inc. (“S & H”) is a Tennessee corporation with its principal place of business in Roanoke, Virginia and doing business or having done business in Tennessee that was the subject of various assessments by the Defendant.

13. Plaintiff Tams Management, Inc. (“Tams”) is a West Virginia corporation with its principal place of business in Roanoke, Virginia and doing business or having done business in West Virginia that was the subject of various assessments by the Defendant. (The Plaintiffs in

this action other than James C. Justice III are sometimes referred to as the “Justice Mining Entities.”)

14. Defendant, Office of Surface Mining Reclamation And Enforcement (“OSMRE”), is an administrative agency within the United States Department Of The Interior tasked with enforcement of surface mining reclamation and enforcement laws and regulations.

B. Jurisdiction And Venue

15. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §1346 in that this is a civil action against the United States.

16. This Court has personal jurisdiction over OSMRE because the Defendant is an agency of the United States.

17. Venue is appropriate in this Court pursuant to 28 U.S.C. §1391(e)(1) because the Defendant is an agency of the United States and a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, in this District—in particular the mining or related activities of several of the Justice Mining Entities of the companies which are located in this District including, but not limited to, A & G and Chestnut, and Jay Justice individually, in this District were subject to enforcement decisions that are part of the parties’ overall settlement agreement this action seeks to enforce.

II. FACTUAL ALLEGATIONS

18. In the months and years leading up to April 2019, the OSMRE assessed various fines, special reclamation fees, penalties, and issued other notices and orders against the Justice Mining Entities.

19. For what is believed to be the first time ever, the OSMRE also wrongfully assessed a series of individual assessments against Jay Justice personally, allegedly relating to activities of the Justice Mining Entities.

20. By April 2019, OSMRE had asserted fines, penalties and assessments against each of the Justice Mining Entities and against Jay Justice personally. (See Exhibit A, partially redacted chart of underlying fines, penalties and assessments, attached and incorporated here by reference.)

21. In an effort to resolve the charges listed in Exhibit A in a manner that would ensure that the needed mine reclamation work was performed, while keeping the Justice Mining Entities solvent and actively in business, and while also generating and/or preserving hundreds of jobs associated with the reclamation work and the other ongoing business of the Justice Mining Entities, representatives of the parties agreed to hold a meeting in early April, 2019.

22. On April 8, 2019, Jay Justice and Tom Lusk, COO of the Justice Mining Entities, met with Michael Castle, the Field Office Director of the Knoxville and Lexington Field Offices of OSMRE, and Mark Snyder, also with OSMRE, in Knoxville. The discussions during that meeting were recounted in later correspondence from counsel for the Justice Mining Entities (attached as Exhibit B and incorporated by reference), as follows:

Jay Justice and Tom Lusk met with Mike Castle and Mark Snyder without counsel. They discussed the penalties against the companies and the individual penalties against [Jay] Justice. They also discussed the abatement of cited conditions and reclamation work. Mr. Castle emphatically emphasized that he is focused on completing the field work. Mr. Castle then explained that, because there is no ongoing operation and the companies are not obtaining any financial benefit through non-compliance, he believes he has the authority to compromise the penalty assessments. [Jay] Justice then proposed that the companies work to complete the reclamation work in lieu of the penalty assessments and that the penalty assessments be reduced by the cost of the reclamation

work. If the total penalties are not reduced below \$250,000.00 [two hundred fifty thousand dollars] by the cost of the reclamation work, [Jay] Justice proposed that the companies pay \$250,000.00 [two hundred fifty thousand dollars] over twelve months to satisfy the remaining penalty assessments. This meeting concluded with [Jay] Justice agreeing to pay the AML and special reclamation fees over twelve months.

(Exhibit B, p. 1.)

Mr. Castle and Jay Justice both agreed to the foregoing terms.

23. After lunch on the same day, the four initial conferees were joined by their respective attorneys. The following discussions were held in the presence of attorneys:

Mr. Castle indicated that the OSM wanted the penalties to be reduced by the cost of the reclamation on a dollar for dollar basis. You [John Austin, Field Solicitor in the Knoxville Field Office of the Department of the Interior] mentioned during this meeting that you [Mr. Austin] would like to have some form of collateral, or some type of guarantee, that the companies would satisfy their obligations under any agreement. We [the Justice Mining Entities] agreed to provide you with the financial documents upon your request.

(Exhibit B, p. 2.)

24. Jay Justice and Mr. Lusk met again with Mr. Castle and Mr. Snyder after the meeting with their respective attorneys, and discussed as follows:

[Jay] Justice and Mr. Castle discussed whether collateral would ultimately be necessary. Mr. Castle indicated that he would discuss this issue with [Mr. Austin] and that he did not believe collateral would be required to resolve the matter. During this meeting, it was agreed that Mr. Lusk would work with Mr. Snyder to prioritize the work in the field. [Jay] Justice agreed that he would place equipment in the field by May 1, 2019 to complete the work and he met this deadline. He also agreed to complete the work by October 31, 2019 weather permitting.

(Exhibit B, p. 2.)

Mr. Castle and Jay Justice again both agreed to the foregoing terms.

25. OSMRE consistently and clearly held out Mr. Castle as the agency's agent and representative for purposes of negotiating a settlement of the parties' disputes regarding payment of the assessments and fines levied against the Justice Mining Entities. Mr. Castle, in turn, consistently and clearly maintained that he, not the attorneys for OSMRE or the Department of the Interior, was empowered to negotiate agreements such as the one referenced above and in the attached correspondence.

26. Mr. Castle's predecessor, Earl Bandy (retired) was also always held out by OSMRE to be the authoritative and binding voice of OSMRE as it related to that agency's oversight of the Justice Mining Entities. Mr. Castle's position has always been held out as one having actual authority when it comes to the Justice Mining Entities' dealings with OSMRE.

27. Mr. Castle also expressed to Jay Justice that Mr. Castle's supervisor, Thomas Shope, Regional Manager of the Appalachian Region of OSMRE, approved the parties' agreement. The Appalachian Region of OSMRE encompasses all the states where the Plaintiffs had operations that are the subject of the parties' agreement.

28. Mr. Austin merely suggested alternative or supplemental terms to the parties. Mr. Austin's suggestions or requests were not held out by OSMRE or Mr. Castle to be essential to the parties' final agreement. Mr. Castle instead told Jay Justice not to worry about Mr. Austin's requests for information or collateral.

29. Jay Justice and the Justice Mining Entities left the three meetings held on April 8, 2019 believing an agreement had been reached as to all material terms. Mr. Lusk thereafter spent time in the field on April 15 – 18, 2019 with Mr. Snyder and agreed on the reclamation work that would be completed and a timeframe.

30. Counsel for the Justice Mining Entities wrote Mr. Austin on April 26, 2019 and invited him to request any additional financial information necessary to effectuate the parties' agreement. Following that correspondence, Mr. Austin went two weeks without requesting any financial information or requesting collateral in any form or amount.

31. In the meantime, and in reliance upon the terms of the parties' agreement reached April 8, 2019 (the "Settlement Agreement"), the Justice Mining Entities had already begun to incur significant expense in mobilizing equipment and commencing the reclamation work OSMRE had requested. Before the end of April 2019, the Plaintiff's had already commenced their performance under the Settlement Agreement, and have continued performing in accordance with that Agreement to this day.

32. Between April 8, 2019 and early May, 2019, Mr. Castle and Mr. Shope, among others with OSMRE, were copied on emails and correspondence between counsel for the parties discussing the implantation of the parties' Settlement Agreement, and at no time did any officers or representatives of OSMRE express any reservations about the finality and enforceability of the Settlement Agreement.

33. In the week of May 6, 2019, the government's attitude toward the Justice Mining Entities noticeably soured. The Mine Health and Safety Administration ("MSHA"), even though it was party to a tolling agreement with the Justice Mining Entities, brought suit against some of those entities in apparent violation of the tolling agreement, early in the week of May 6, 2019.

34. This event led to Mr. Austin contacting counsel for the Justice Mining Entities to relay his assumption that the filing of the MSHA suit meant that the Justice Mining Entities would be unable to perform their duties under the Settlement Agreement. When told that his assumption was totally unfounded and that the Justice Mining Entities still intended to abide by

the Settlement Agreement, Mr. Austin suddenly renewed his requests for collateral and financial information.

35. On or about May 12, 2019, less than one business day after the foregoing request, the Justice Mining Entities agreed to provide the requested collateral and financial information, even though they did not believe it was a prerequisite to OSMRE's performance under the terms of the Settlement Agreement.

36. On May 15, 2019, Mr. Austin wrote counsel for the Justice Mining Entities and denied the existence of any agreement to abate or otherwise reduce the fines and assessments reference in Exhibit A—a complete and unforeseeable reversal of the OSMRE's position. Instead, Mr. Austin claimed, for the very first time in the parties' discussions, that Mr. Castle had never had authority to bind OMSRE to the terms of the Settlement Agreement. (See Exhibit C, attached and incorporated here by reference.) Instead of abiding by the Settlement Agreement, Mr. Austin announced he was proceeding to instruct the Department of Justice to sue to collect the fines and assessments referenced in Exhibit A.

37. By virtue of the May 13, 2019 letter from Mr. Austin, OSMRE has entirely reneged on the Settlement Agreement. This, despite the fact that OSMRE held out Mr. Castle as having apparent and actual authority, despite the fact that the Justice Mining Entities relied to their detriment on the position adopted by Mr. Castle that there was a binding Settlement Agreement, and despite the Justice Mining Entities' partial and continuing performance of their duties and responsibilities pursuant to the Settlement Agreement, which without a doubt had to be politically driven.

38. As the Plaintiffs previously made OMSRE and its attorneys aware, preceding litigiously instead of in accordance with the Settlement Agreement harms the operations of a

dozen or so mining companies, and risks the jobs of hundreds of workers on the pending reclamation projects.

39. The abrupt turnaround by the government in its attitude toward this matter is inexplicable and raises the question whether untoward political or other pressure from sources presently unknown has been brought to bear on OMSRE, perhaps from other federal agencies or political adversaries of the Justice family. The repudiation of the Settlement Agreement may have resulted from inappropriate inter-agency influence between MSHA and OSMRE. Discovery will be necessary to establish why OMSRE so rapidly changed its position.

40. In any event, OMSRE's conduct in renegeing on the Settlement Agreement creates a legitimate dispute and justiciable controversy that requires the intervention of the Court to resolve.

COUNT I
(Declaratory Judgment)

41. Plaintiffs repeat and reallege each and every allegation set forth in the preceding Paragraphs of this Complaint as if fully set forth herein.

42. A real and justiciable controversy exists between the Plaintiffs and the Defendant regarding whether those parties entered into an enforceable Settlement Agreement.

43. Because OSMRE has stated that it intends to disregard the parties' Settlement Agreement and initiate litigation against the Plaintiffs on the underlying assessments, fees and penalties that are the subject of the Settlement Agreement, there also exists an immediacy to the need for an adjudication and declaratory judgment regarding the enforceability of the Settlement Agreement.

44. If OSMRE is permitted to litigate and otherwise pursue the underlying assessments, fees and penalties without there first being an adjudication and declaratory

judgment regarding the enforceability of the Settlement Agreement, the Plaintiffs will suffer economic and other real damages. Any suit filed by the government in contravention of the Settlement Agreement would create a false impression and arguably be defamatory in that it would cause harm to the business and personal reputations of the Plaintiffs.

45. The Plaintiffs are therefore entitled to a declaratory judgment pursuant to 28 U.S.C. 2201 that the Settlement Agreement is valid and enforceable against OSMRE and that OSMRE should take no further steps regarding the underlying assessments, fees and penalties.

WHEREFORE, the Plaintiffs respectfully request Judgment on their Complaint herein as follows:

- A. A Judgment on Count I for a declaratory judgment as outlined herein;
- B. Trial by jury on all counts so triable; and
- C. Such further relief as Plaintiffs appear entitled, in addition to the costs and disbursements of this action.

Respectfully submitted,

/s/ Aaron B. Houchens

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And

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COUNSEL FOR PLAINTIFFS

ctepld0571

EXHIBIT A

Justice Companies

Outstanding Debt Cases as of 3/15/2019

SubSystem ID	Permit Number	State	Entity Number	YR	QRT	Company Name	First Bill Date
O-2018400997	1101953	VA	119030	2018	4	A & G COAL CORP	2/28/2019
C-C18130157001	1102042	VA	119030			A & G COAL CORP	6/30/2018
O-2018300059	S-4013-01	WV	095019	2018	3	BLUESTONE COAL CORP	2/28/2019
O-2018400058	S-4013-01	WV	095019	2018	4	BLUESTONE COAL CORP	2/15/2019
O-2017400463	S-4013-01	WV	095019	2017	4	BLUESTONE COAL CORP	2/28/2018
O-2018100061	S-4013-01	WV	095019	2018	1	BLUESTONE COAL CORP	5/15/2018
O-2018200060	S-4013-01	WV	095019	2018	2	BLUESTONE COAL CORP	8/15/2018
O-2017200370	1102079	VA	251818	2017	2	CHESTNUT LAND HOLDINGS LLC	8/15/2017
O-2017300361	1102079	VA	251818	2017	3	CHESTNUT LAND HOLDINGS LLC	11/15/2017
O-2017400343	1102079	VA	251818	2017	4	CHESTNUT LAND HOLDINGS LLC	2/15/2018
O-2018100339	1102079	VA	251818	2018	1	CHESTNUT LAND HOLDINGS LLC	5/15/2018
A-20170241098		VA	251818	2018	1	CHESTNUT LAND HOLDINGS LLC	4/30/2018
O-2016400251	S-4020-96	WV	155098	2016	4	DYNAMIC ENERGY INC	2/15/2017
O-2017200233	S-4020-96	WV	155098	2017	2	DYNAMIC ENERGY INC	8/15/2017
O-2017300226	S-4020-96	WV	155098	2017	3	DYNAMIC ENERGY INC	11/15/2017
A-20160241095		WV	155098	2016	4	DYNAMIC ENERGY INC	3/31/2017
O-2018300265	U-4001-07	WV	246980	2018	3	FRONTIER COAL CO	2/28/2019
O-2018400259	U-4001-07	WV	246980	2018	4	FRONTIER COAL CO	2/15/2019
O-2017200297	U-4001-07	WV	246980	2017	2	FRONTIER COAL CO	8/15/2017
O-2017400276	U-4001-07	WV	246980	2017	4	FRONTIER COAL CO	2/15/2018
O-2018100271	U-4001-07	WV	246980	2018	1	FRONTIER COAL CO	5/15/2018
O-2018200270	U-4001-07	WV	246980	2018	2	FRONTIER COAL CO	8/15/2018
C-I18090000009	3241	TN	150367			JAMES JUSTICE III	2/15/2019
C-I18090000013	3143	TN	150367			JAMES JUSTICE III	3/15/2019
C-I18090000014	3143	TN	150367			JAMES JUSTICE III	3/15/2019
C-I18090000017	TN-023	TN	150367			JAMES JUSTICE III	3/15/2019
C-I18090000006	2872	TN	150367			JAMES JUSTICE III	10/31/2018
C-I18090000007	3233	TN	150367			JAMES JUSTICE III	10/31/2018
C-I18090000008	3233	TN	150367			JAMES JUSTICE III	10/31/2018
C-I18090000010	3250	TN	150367			JAMES JUSTICE III	1/15/2019
C-I18090000011	3250	TN	150367			JAMES JUSTICE III	1/15/2019
C-I18090000012	3250	TN	150367			JAMES JUSTICE III	1/15/2019
C-I18090000018	3237	TN	150367			JAMES JUSTICE III	
O-2018300206	S-72-82	WV	155032	2018	3	JUSTICE ENERGY CO INC	2/28/2019
O-2018400202	S-72-82	WV	155032	2018	4	JUSTICE ENERGY CO INC	2/15/2019
O-2018200997	S-72-82	WV	155032	2018	2	JUSTICE ENERGY CO INC	8/15/2018
A-20160241098		WV	155032	2017	1	JUSTICE ENERGY CO INC	4/15/2017
O-2018300228	898-0882	KY	156503	2018	3	KENTUCKY FUEL CORP	2/15/2019
O-2018300228	898-0883	KY	156503	2018	3	KENTUCKY FUEL CORP	2/15/2019
O-2018400223	898-0883	KY	156503	2018	4	KENTUCKY FUEL CORP	2/28/2019
O-2018400223	860-0505	KY	156503	2018	4	KENTUCKY FUEL CORP	2/28/2019
O-2018400223	898-0882	KY	156503	2018	4	KENTUCKY FUEL CORP	2/28/2019
O-2017300248	898-0775	KY	156503	2017	3	KENTUCKY FUEL CORP	11/15/2017

O-2017400239	898-0775	KY	156503	2017	4	KENTUCKY FUEL CORP	2/15/2018
O-2018100234	898-0775	KY	156503	2018	1	KENTUCKY FUEL CORP	5/15/2018
O-2018200233	898-0775	KY	156503	2018	2	KENTUCKY FUEL CORP	8/15/2018
A-20170241076		KY	156503	2018	1	KENTUCKY FUEL CORP	5/15/2018
A-20170245076		WV	156503	2018	1	KENTUCKY FUEL CORP	5/15/2018
C-C18090171003	TN-023	TN	251162			NATIONAL COAL LLC	9/30/2018
C-C18090171004	3250	TN	251162			NATIONAL COAL LLC	9/30/2018
C-C18090281003	TN-020	TN	251162			NATIONAL COAL LLC	8/31/2018
C-C18090461002	3255	TN	251162			NATIONAL COAL LLC	9/30/2018
C-C18090461003	3256	TN	251162			NATIONAL COAL LLC	10/15/2018
C-C18090535001	3249	TN	251162			NATIONAL COAL LLC	7/15/2018
C-C18090535002	3249	TN	251162			NATIONAL COAL LLC	9/30/2018
C-C18090535003	3249	TN	251162			NATIONAL COAL LLC	11/15/2018
C-C18090560002	TN-021	TN	251162			NATIONAL COAL LLC	6/30/2018
C-C18090560004	TN-021	TN	251162			NATIONAL COAL LLC	10/15/2018
C-N17090461002	3255	TN	251162			NATIONAL COAL LLC	11/30/2017
C-N18090171003	TN-023	TN	251162			NATIONAL COAL LLC	8/31/2018
C-N18090171004	3250	TN	251162			NATIONAL COAL LLC	8/31/2018
C-N18090281003	TN-020	TN	251162			NATIONAL COAL LLC	6/30/2018
C-N18090461005	3256	TN	251162			NATIONAL COAL LLC	8/31/2018
C-N18090535001	3249	TN	251162			NATIONAL COAL LLC	7/15/2018
C-N18090535006	3249	TN	251162			NATIONAL COAL LLC	10/15/2018
C-N18090560002	TN-021	TN	251162			NATIONAL COAL LLC	6/15/2018
C-N18090560004	TN-021	TN	251162			NATIONAL COAL LLC	7/15/2018
C-N18090560007	TN-021	TN	251162			NATIONAL COAL LLC	11/15/2018
C-N18090535008	3249	TN	251162			NATIONAL COAL LLC	
O-2018300243	U-4010-98	WV	158356	2018	3	PAY CAR MINING INC	2/28/2019
O-2018400238	U-4010-98	WV	158356	2018	4	PAY CAR MINING INC	2/15/2019
O-2017300263	U-4010-98	WV	158356	2017	3	PAY CAR MINING INC	11/15/2017
O-2017400254	U-4010-98	WV	158356	2017	4	PAY CAR MINING INC	2/15/2018
O-2018100249	U-4010-98	WV	158356	2018	1	PAY CAR MINING INC	5/15/2018
O-2018200248	U-4010-98	WV	158356	2018	2	PAY CAR MINING INC	8/15/2018
C-N18090546004	3237	TN	036315			PREMIUM COAL CO INC	2/15/2019
C-N18090560008	3236	TN	036315			PREMIUM COAL CO INC	2/15/2019
C-C17090534001	3183	TN	036315			PREMIUM COAL CO INC	9/30/2018
C-C17090546001	3237	TN	036315			PREMIUM COAL CO INC	4/15/2018
C-C18090171001	3233	TN	036315			PREMIUM COAL CO INC	6/30/2018
C-C18090171002	3241	TN	036315			PREMIUM COAL CO INC	7/15/2018
C-C18090281001	3143	TN	036315			PREMIUM COAL CO INC	8/31/2018
C-C18090281002	2872	TN	036315			PREMIUM COAL CO INC	8/31/2018
C-C18090534001	3183	TN	036315			PREMIUM COAL CO INC	9/30/2018
C-C18090534003	3183	TN	036315			PREMIUM COAL CO INC	11/30/2018



C-C18090546001	3237	TN	036315			PREMIUM COAL CO INC	9/30/2018	
C-C18090560001	3236	TN	036315			PREMIUM COAL CO INC	6/30/2018	
C-C18090560003	3240	TN	036315			PREMIUM COAL CO INC	9/30/2018	
C-N17090534001	2873	TN	036315			PREMIUM COAL CO INC	11/15/2017	
C-N17090534005	3183	TN	036315			PREMIUM COAL CO INC	9/30/2018	
C-N17090546004	3237	TN	036315			PREMIUM COAL CO INC	4/15/2018	
C-N18090171001	3233	TN	036315			PREMIUM COAL CO INC	6/30/2018	
C-N18090171002	3241	TN	036315			PREMIUM COAL CO INC	6/30/2018	
C-N18090281001	3143	TN	036315			PREMIUM COAL CO INC	8/15/2018	
C-N18090281002	2872	TN	036315			PREMIUM COAL CO INC	6/30/2018	
C-N18090534004	3183	TN	036315			PREMIUM COAL CO INC	7/15/2018	
C-N18090534005	3183	TN	036315			PREMIUM COAL CO INC	8/15/2018	
C-N18090534008	3138	TN	036315			PREMIUM COAL CO INC	10/31/2018	
C-N18090546002	3237	TN	036315			PREMIUM COAL CO INC	6/30/2018	
C-N18090546003	3237	TN	036315			PREMIUM COAL CO INC	8/15/2018	
C-N18090560001	3236	TN	036315			PREMIUM COAL CO INC	6/15/2018	
C-N18090560003	3236	TN	036315			PREMIUM COAL CO INC	7/15/2018	
C-N18090560005	3240	TN	036315			PREMIUM COAL CO INC	7/15/2018	
C-N19090546001	3237	TN	036315			PREMIUM COAL CO INC		
C-C18090534002	3046	TN	039561			S & H MINING INC	11/30/2018	
C-N17090534004	2283066	TN	039561			S & H MINING INC	2/28/2018	
C-N18090534007	3046	TN	039561			S & H MINING INC	10/31/2018	
O-2017200338	S-5013-00	WV	250162	2017	2	TAMS MANAGEMENT INC	8/15/2017	
O-2017200338	S-3009-98	WV	250162	2017	2	TAMS MANAGEMENT INC	8/15/2017	
O-2017200338	S-3018-09	WV	250162	2017	2	TAMS MANAGEMENT INC	8/15/2017	
O-2017300331	S-3009-98	WV	250162	2017	3	TAMS MANAGEMENT INC	11/15/2017	
O-2017300331	S-4013-01	WV	250162	2017	3	TAMS MANAGEMENT INC	11/15/2017	
O-2017400316	S-3009-98	WV	250162	2017	4	TAMS MANAGEMENT INC	2/15/2018	
A-20170241077		WV	250162	2018	2	TAMS MANAGEMENT INC	7/31/2018	



EXHIBIT B

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May 13, 2019

John Austin, Esquire
United States Department of the Interior –
Office of the Solicitor
800 S. Gay Street, Suite 800
Knoxville, TN 37929

Re: Justice Companies
Outstanding OSM Assessments

Dear Mr. Austin:

I am writing to follow up on our conversation from Friday May 10, 2019 and to confirm our agreement to all material terms of a settlement of outstanding OSM liabilities as set forth in my letter of April 26, 2019. This agreement follows meetings which occurred on April 8, 2019 in Knoxville. Prior to our meeting, Jay Justice and Tom Lusk met with Mike Castle and Mark Snyder without counsel. They discussed the penalties against the companies and the individual penalties against Mr. Justice. They also discussed the abatement of cited conditions and reclamation work. Mr. Castle emphatically emphasized that he is focused on completing the field work. Mr. Castle then explained that, because there is no ongoing operation and the companies are not obtaining any financial benefit through non-compliance, he believes he has the authority to compromise the penalty assessments. Mr. Justice then proposed that the companies work to complete the reclamation work in lieu of the penalty assessments and that the penalty assessments be reduced by the cost of the reclamation work. If the total penalties are not reduced below \$250,000.00 by the cost of the reclamation work, Mr. Justice proposed that the companies pay \$250,000.00 over twelve months to satisfy the remaining penalty assessments. This meeting concluded with Mr. Justice agreeing to pay the AML and special reclamation fees over twelve months. Mr. Castle then indicated he would discuss this proposal with you and Mr. Henson and we would reconvene after lunch.

After lunch, we met with our respective clients present and I conveyed to you the offer that was memorialized in writing on April 26, 2019. During this meeting, Mr. Castle indicated that the OSM wanted the penalties to be reduced by the cost of the reclamation on a dollar for dollar basis. You mentioned during this meeting that you would like to have some form of collateral, or some type of guarantee, that the companies would satisfy their obligations under any agreement. We agreed to provide you with the financial documents upon your request.

After our meeting concluded, Mr. Justice and Mr. Lusk met again with Mr. Castle and Mr. Snyder. I understand that Mr. Justice and Mr. Castle discussed whether collateral would ultimately be necessary. Mr. Castle indicated that he would discuss this issue with you and that he did not believe collateral would be required to resolve the matter. During this meeting, it was agreed that Mr. Lusk would work with Mr. Snyder to prioritize the work in the field. Mr. Justice agreed that he would place equipment in the field by May 1, 2019 to complete the work and he met this deadline. He also agreed to complete the work by October 31, 2019 weather permitting. At this point, my clients believed an agreement had been reached as to all material terms. Mr. Lusk thereafter spent time in the field on April 15-18, 2019 with Mr. Snyder and they agreed on the work that would be completed and a timeframe. My letter of April 26, 2019 followed and concluded by inviting you to request any additional information necessary.

Following my April 26, 2019, correspondence, you never requested any specific financial information and never requested collateral in any specific form or any specific amount. We next discussed this matter on May 10, 2019, at which time I asked what was necessary to finalize the agreement. In response, you said that the companies must provide financial statements and collateral to secure payment of the penalty assessments (or reclamation with costs up to the amount of the penalty assessments). The timing of this request is surprising considering my April 26, 2019 correspondence offered to provide additional information upon request. We did not hear anything from you in this regard until May 10, 2019. Now it is our understanding that the Department of Justice is involved and is preparing litigation against the companies and individuals. The timing of the involvement of the Department of Justice in this matter is likely no coincidence considering the action filed last week to collect allegedly delinquent mine safety and health assessments. This is particularly surprising considering that my clients left Knoxville on April 8 with an agreement as to all material terms and Mr. Castle and Mr. Snyder were satisfied with both the terms and the plans for the work in the field after Mr. Snyder's meeting with Mr. Lusk.

After you stated on May 10, 2019 that financial statements and collateral would be required, we worked through the weekend to meet these requests and now specifically agree to provide financial statements and collateral to secure the payment of the cost of reclamation up to the amount of the penalty assessments. The companies have recently obtained a verbal commitment from a lender that will allow the companies to provide a letter of credit in the amount of the outstanding penalties. This letter of credit will be used to secure payment of the penalty assessments (or reclamation with costs up to the amount of the penalty assessments) and will secure the payment of the \$250,000.00 penalty if the penalty assessments are not reduced to less than \$250,000.00 by the reclamation cost. We can immediately move forward with the letter of credit as soon as we have an executed agreement we can share with our lender. Additionally, I will need you to provide me all of the counterpart information from OSM so that it can be listed on the letter of credit. If still necessary, we will provide you with the most recent financial statements for the companies which the OSM contends owe penalty assessments.

The Justice family appreciates Mr. Castle's willingness to meet and work through these issues and his professionalism throughout this process. We believe this agreement will accomplish the primary goal of ensuring that the conditions on the ground comply with the law. As previously

Mr. John Austin
May 13, 2019
Page | 3

mentioned, this agreement will allow the companies to complete the reclamation while at the same time continuing to operate and saving approximately 450 jobs.

I understand from discussions with your office last week that the filing of one or more complaints is imminent. This is of grave concern and bewilderment to my clients. We believe it is unnecessary, as we have now met every term you requested to settle this matter. If this file has been forwarded to the Department of Justice, I request that this correspondence be immediately provided to the individuals working on this matter and that they be notified we have agreed to all of the OSM's settlement demands. Additionally, please immediately provide me with their names and contact information.

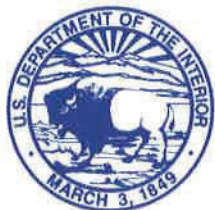
Sincerely,

/s/ Michael W. Carey

Michael W. Carey

cc: Mike Castle
John Henson, Esquire
Tom Lusk
James C. Justice, III

EXHIBIT C



United States Department of the Interior

OFFICE OF THE SOLICITOR

Knoxville Field Office
800 S. Gay Street, Suite 800
Knoxville, Tennessee 37929



E-mail: john.austin@sol.doi.gov

Telephone: (865) 545-4955

May 15, 2019

Michael W. Carey
Carey, Scott, Douglas & Kessler, PLLC
P. O. BOX 913
Charleston, WV 25323

sent via email only

Dear Mr. Carey:

This is in response to your letter dated May 13, 2019, and the emails that you sent as a further explanation of that letter. I acknowledged receipt of your letter by email to Chris Pence on 05-13-19 at 4:26 p.m.

I need to reiterate what you and your clients have been told: Neither OSMRE nor any of its employees nor the attorneys representing the Secretary of the Interior have the authority to settle a debt owed to the United States that exceeds \$100,000.00 without the approval of the U.S. Department of Justice (DOJ). *See* 31 U.S.C. § 9711 and 31 C.F.R. § 902.1. Therefore, notwithstanding your clients' assertion about a deal they believe they made with OSMRE, there is not nor has there been an authorized agreement with the United States to settle the monetary debts of your clients for \$250,000.00, or for any other amount.

Yesterday afternoon, a letter authorizing DOJ to file suit against the Justice Companies *et al.* on behalf of the Department of the Interior was signed and sent (the end of a process that has taken months to accomplish – the MSHA lawsuit plays no part in DOI's referral to DOJ). If your clients want to settle these cases before suit is filed, please make an offer that we can discuss with DOJ. If you decide to make an offer, we recommend that you provide collateral to guarantee the full performance of any proposed settlement.

In addition, as we explained in our face-to-face meeting in April, in order to settle these claims, we will require financial statements and any other information you can provide that will demonstrate a settlement is in the best interests of the citizens of the United States. We will also need documentation of your belief that a settlement will preserve 450 jobs.

We have suggested on more than one occasion that a showing of good faith will benefit your clients if they intend to pursue settlement. For instance, they can show good faith by continuing to abate the environmental violations that exist in Tennessee and by making good on the settlement agreement negotiated on their behalf in 2017 by Zachary Wright (copy attached).

We look forward to working out a settlement with you, your clients, and DOJ. We are standing by to answer any questions you might have.

Sincerely,

A handwritten signature in blue ink, appearing to read "John Austin", written over a horizontal line.

JOHN AUSTIN, Field Solicitor

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

James C. Justice III, A & G Coal Corp., Chestnut Land Holdings, LLC; Bluestone Coal Corp., Dynamic Energy, Inc., see attached sheet

(b) County of Residence of First Listed Plaintiff Roanoke City (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Aaron B. Houchens, Aaron B. Houchens, P.C., 111 East Main Street, P.O. Box 1250, Salem, Virginia 24163, (540) 389-4498, see attached sheet

DEFENDANTS

Office of Surface Mining, Reclamation and Enforcement, United States Department of the Interior

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
3 Federal Question (U.S. Government Not a Party)
2 U.S. Government Defendant
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. Section 1346, 2201

Brief description of cause: Declaratory Judgment to enforce Settlement Agreement

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE N/A DOCKET NUMBER

DATE 05/17/2019 SIGNATURE OF ATTORNEY OF RECORD /s/ Aaron B. Houchens, Esq.

FOR OFFICE USE ONLY

Continuation of Civil Cover Sheet, 1. (a) Plaintiffs

James C. Justice III, A&G Coal Corporation., Chestnut Land Holdings LLC,
 Bluestone Coal Corp., Dynamic Energy, Inc., Frontier Coal Company., Justice Energy Co., Inc.,
 Kentucky Fuel Corporation, National Coal, LLC, Pay Car Mining, Inc., Premium Coal
 Company., Inc., S & H Mining, Inc., and TAMS Management, Inc.

Continuation of Civil Cover Sheet, 1. (c) Attorneys

AARON B. HOUCHENS
 AARON B. HOUCHENS, P.C.
 111 East Main Street
 P.O. Box 1250
 Salem, Virginia 24153
 Telephone: (540) 389-4498
 Facsimile: (540) 339-3903
 Email: aaron@houchenslaw.com

and

RICHARD A. GETTY (*Pro Hac Vice* Admission pending)
 C. THOMAS EZZELL (*Pro Hac Vice* Admission pending)
 MARCEL RADOMILE (*Pro Hac Vice* Admission pending)
 THE GETTY LAW GROUP, PLLC
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 250 West Main Street
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 Telephone: (859) 259-1900
 Email: rgetty@gettylawgroup.com
 Email: tezzell@gettylawgroup.com
 Email: mradomile@gettylawgroup.com

EXHIBIT B

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA**

(ROANOKE DIVISION)

THE UNITED STATES OF AMERICA; THE)
STATE OF ALABAMA, EX REL. LUTHER)
STRANGE, in his official capacity as the Attorney)
General of Alabama; ALABAMA DEPARTMENT)
OF ENVIRONMENTAL MANAGEMENT; THE)
COMMONWEALTH OF KENTUCKY, ENERGY)
AND ENVIRONMENT CABINET; THE STATE OF)
TENNESSEE, EX REL. HERBERT H. SLATERY)
III, in his official capacity as the Attorney General)
and Reporter of Tennessee; and THE)
COMMONWEALTH OF VIRGINIA,)

Plaintiffs,)

v.)

SOUTHERN COAL CORPORATION; JUSTICE)
COAL OF ALABAMA, LLC; A & G COAL)
CORPORATION; FOUR STAR RESOURCES LLC;)
INFINITY ENERGY, INC.; KENTUCKY FUEL)
CORPORATION; SEQUOIA ENERGY, LLC;)
VIRGINIA FUEL CORPORATION; NATIONAL)
COAL, LLC; PREMIUM COAL COMPANY,)
INCORPORATED; S AND H MINING INC.;)
AIRWAY RESOURCES, L.L.C.; BADEN)
RECLAMATION COMPANY; BLACK RIVER)
COAL, LLC; CHESTNUT LAND HOLDINGS,)
LLC; MEG-LYNN LAND COMPANY, INC.; NINE)
MILE MINING, INC.; CANE PATCH MINING CO.,)
INC.; BLUESTONE RESOURCES, INC.;)
DYNAMIC ENERGY, INC.; GREENTHORN, LLC;)
JUSTICE HIGHWALL MINING, INC.; NATIONAL)
RESOURCES, INC.; NUFAC MINING COMPANY,)
INC.; PAY CAR MINING, INC.; SECOND)
STERLING CORP.; AND NEWGATE)
DEVELOPMENT OF BECKLEY LLC)

Defendants.)

Civil Action No. 7:16-cv-00462-GEC

CONSENT DECREE

TABLE OF CONTENTS

I. BACKGROUND1

II. JURISDICTION AND VENUE.....3

III. APPLICABILITY.....5

IV. DEFINITIONS8

V. CIVIL PENALTY16

VI. GENERAL COMPLIANCE REQUIREMENTS18

VII. INJUNCTIVE RELIEF.....25

VIII. FINANCIAL ASSURANCE40

IX. REPORTING AND CERTIFICATION REQUIREMENTS42

X. STIPULATED PENALTIES46

XI. FORCE MAJEURE.....51

XII. DISPUTE RESOLUTION54

XIII. INFORMATION COLLECTION AND RETENTION57

XIV. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS59

XV. COSTS61

XVI. NOTICES61

XVII. RETENTION OF JURISDICTION.....66

XVIII. MODIFICATION66

XIX. TERMINATION67

XX. PUBLIC PARTICIPATION68

XXI. SIGNATORIES/SERVICE.....68

XXII. INTEGRATION.....69

XXIII. FINAL JUDGMENT69

XXIV. APPENDICES69

I. BACKGROUND

A. Concurrent with the Date of Lodging of this Consent Decree, Plaintiffs, the United States of America, on behalf of the United States Environmental Protection Agency (“EPA”); the State of Alabama, *ex rel.* Luther Strange, in his official capacity as the Attorney General of Alabama and the Alabama Department of Environmental Management (“ADEM”); the Commonwealth of Kentucky, Kentucky Energy and Environment Cabinet; the State of Tennessee, *ex rel.* Herbert H. Slatery III, Attorney General and Reporter of Tennessee, at the request and on behalf of the Tennessee Department of Environment and Conservation; and the Commonwealth of Virginia, by and through the Department of Mines, Minerals and Energy (collectively, “States”) have filed a Complaint in this action against Southern Coal Corporation; Justice Coal of Alabama, LLC; A & G Coal Corporation; Four Star Resources LLC; Infinity Energy, Inc.; Kentucky Fuel Corporation; Sequoia Energy, LLC; Virginia Fuel Corporation; National Coal, LLC; Premium Coal Company, Incorporated; S and H Mining Inc.; Airway Resources, L.L.C.; Baden Reclamation Company; Black River Coal, LLC; Chestnut Land Holdings, LLC; Meg-Lynn Land Company, Inc.; Nine Mile Mining, Inc.; Cane Patch Mining Co., Inc.; Bluestone Resources, Inc.; Dynamic Energy, Inc.; Greenthorn, LLC; Justice Highwall Mining, Inc.; National Resources, Inc.; Nufac Mining Company, Inc.; Pay Car Mining, Inc.; Second Sterling Corp.; and Newgate Development of Beckley LLC (collectively, “Defendants”) pursuant to the following statutes: (1) Sections 309(b) and (d) of the Federal Water Pollution Control Act (“Clean Water Act” or “CWA”), 33 U.S.C. §§ 1319(b), (d); and the relevant state statutes: the Alabama Water Pollution Control Act (“AWPCA”), Code of Alabama, 1975 Ala. Code § 22-22-9(m), and the Alabama Environmental Management Act, Code of Alabama, 1975,

Ala. Code § 22-22A-5(18); Kentucky Revised Statutes (“KRS”) §§ 224.99-010, 224.99-020 ; the Tennessee Water Quality Control Act (“TWQCA”), Tenn. Code Ann. §§ 69-3-101 to -148; and the Virginia State Water Control Law (“SWCL”), Va. Code §§ 62.1-44.2 to -44.34:28. The Complaint alleges that the Defendants have violated the conditions and limitations of National Pollutant Discharge Elimination System (“NPDES”) permits issued to them by the relevant State of Alabama, Commonwealth of Kentucky, State of Tennessee, Commonwealth of Virginia, and State of West Virginia pursuant to the EPA-approved permit program under Section 402 of the CWA, 33 U.S.C. § 1342(a), and the relevant AWPCA, Ala. Code § 22-22-9; KRS § 224.16-050; TWQCA, Tenn. Code Ann. § 69-3-105(h); Va. Code § 45.1-254 and/or W. Va. Code § 22-11-4(a)(16). The Complaint also alleges that Defendants, National Coal, LLC, and/or Premium Coal Company, Incorporated, discharged pollutants to waters of Tennessee and waters of the United States from point sources without NPDES permits in violations of Section 301(a) of the CWA, 33 U.S.C. § 1311(a) and TWQCA, Tenn. Code Ann § 69-3-108.

B. The Complaint further alleges that Defendants National Coal, LLC and Premium Coal Company, Incorporated failed to comply with EPA’s requests for information in violation of Section 308(a) of the CWA, 33 U.S.C. § 1318(a).

C. The United States has reviewed Financial Information submitted by Defendants to determine Defendants’ financial ability to pay a civil penalty in this action and to finance the requirements of this Consent Decree. The United States has determined that Defendants have limited financial ability to pay.

D. Section VIII of this Decree requires Defendants to provide financial assurance for the Work if Defendants default on their obligation to perform such Work. Defendants are

providing financial assurance by means of an Irrevocable Letter of Credit and a Standby Trust. The Applicant for the Letter of Credit is the Environmental Fund, LLC, which is also the Grantor for the Standby Trust. The Environmental Fund, LLC is not named in the Complaint, but rather is joined to this Decree as described in Section II (Jurisdiction and Venue). The Trustee of the Standby Trust and the bank that issues the Letter of Credit are also joined to this Decree as described in Section II (Jurisdiction and Venue).

E. Defendants do not admit any liability to the United States, the States, any governmental body, or any other organization or person arising out of the transactions or occurrences alleged in the Complaint nor do Defendants admit any fact or legal conclusion alleged in the Complaint.

F. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation among the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

II. JURISDICTION AND VENUE

1. This Court has jurisdiction over the Parties and over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, 1355, and 1367, and Section 309(b) of the CWA, 33 U.S.C. § 1319(b). This Court has jurisdiction over Environmental Fund, LLC as Grantor, United Bank, Inc. as Trustee of the Standby Trust, and Carter Bank and Trust as the issuing bank for the Letter of Credit, pursuant to the All Writs Act, 28 U.S.C. § 165, and Fed. R. Civ. P. 19(a).

2. The United States has authority to bring this action on behalf of the Administrator

of EPA under Section 506 of the CWA, 33 U.S.C. § 1366. The Attorney General of the State of Alabama and ADEM are authorized to enforce the provisions of the AWPCA by the Alabama Environmental Management Act, Ala. Code § 22-22A-5(12), (18). The Commonwealth of Kentucky's Office of General Counsel of the Energy and Environment Cabinet has the authority to bring this action pursuant to KRS Section 224.99-020. The Tennessee Attorney General has the authority to bring this suit on behalf of the State of Tennessee in accordance with Tenn. Code Ann. § 8-6-109 and the common law of Tennessee. The VA DMME is authorized under Va. Code §§ 62.1-44.15(8c) and 45.1-254 to file suit against violators.

3. Venue lies in the Western District of Virginia pursuant to 28 U.S.C. §§ 1391(b) and (c) and 1395(a), as well as Section 309(b) of the CWA, 33 U.S.C. § 1319(b), because it is the judicial district in which many of the Defendants are located, reside, and/or are doing business, conducting surface coal mining operations, and/or in which many of the surface coal mining operations are located and the significant number of the violations alleged in the Complaint occurred.

4. For purposes of this Decree, or any action to enforce this Decree, Defendants consent to the Court's jurisdiction over this Decree and any such action and over Defendants, and consent to venue in this judicial district. Environmental Fund, LLC, United Bank, Inc., and Carter Bank & Trust do not object to the Court's exercise of subject matter or personal jurisdiction or to venue for purposes of enforcing the applicable Consent Decree obligations of Grantor, Trustee, and the issuing bank for the LOC, respectively.

5. For purposes of this Decree, Defendants agree that the Complaint states claims upon which relief may be granted pursuant to Sections 309(b) and (d) of the CWA, 33 U.S.C. §§

1319(b) and (d); and the relevant provisions of AWPCA at Ala. Code § 22-22-9; the Alabama Environmental Management Act at Ala. Code § 22-22A-5(18); KRS § 224.99-020; TWQCA, Tenn. Code Ann. §§ 69-3-115 and 69-3-117; and Va. Code §§ 62.1-44.21, 44.23, and 44.32.

III. APPLICABILITY

6. The obligations of this Consent Decree apply to and are binding upon the United States and the States, and upon Defendants, the Grantor, the Trustee, the issuing bank for the Letter of Credit, and any successors, assigns, or other entities, or persons otherwise bound by law.

7. The provisions of this Consent Decree apply to Facilities and Future Facilities located in Alabama, Kentucky, Tennessee, Virginia, and West Virginia.

8. Defendants hereby agree that they are bound to perform duties scheduled to occur by this Consent Decree before the Effective Date. In the event the United States withdraws from or withholds consent to this Consent Decree in accordance with Paragraph 140, or the Court declines to enter this Consent Decree, then the preceding requirement to perform duties scheduled to occur before the Effective Date shall terminate.

9. No transfer of ownership or operation of any Facility shall relieve Defendants of their obligations to ensure that the terms of the Decree are implemented at that Facility, except as provided in Paragraphs 10-11 below. At least 60 Days prior to any proposed transfer of ownership or operation of a Facility, Defendants shall provide to the United States: (a) written notice of the prospective transfer; (b) the certification required by Paragraph 10.c; (c) a copy of all Database entries for the past 6 months of audits and inspections conducted at the Facility under Paragraphs 42 (Environmental Audits), 43 (Treatment System Audits), and 45 (Outlet

EXHIBIT C

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

AT BECKLEY

* * * * *

JAMES RIVER EQUIPMENT *

VIRGINIA, LLC, *

Plaintiff *

vs. *

JUSTICE ENERGY *

COMPANY, INC., *

Defendant *

* * * * *

Case No.

5:13-cv-28160

DEPOSITION OF
JAMES JUSTICE, III

March 14, 2019

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authorization by the certifying agency.

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DEPOSITION
OF
JAMES JUSTICE, III, taken on behalf of the Defendant
herein, pursuant to the Rules of Civil Procedure, taken
before me, the undersigned, Bradley Scott, a Court
Reporter and Notary Public in and for the State of West
Virginia, at the law offices of Carey, Scott, Douglas &
Kessler, PLLC, 707 Virginia Street, East 901 Chase Tower,
Charleston, West Virginia on Thursday, March 14, 2019
beginning at 12:10 p.m.

A P P E A R A N C E S

1
2
3 FRED B. WESTFALL, JR., ESQUIRE
4 Assistant United States Attorney
5 300 Virginia Street East
6 Room 4000
7 Charleston, WV 25301

8 COUNSEL FOR UNITED STATES
9

10 MICHAEL W. CAREY, ESQUIRE
11 Carey, Scott, Douglas & Kessler, PLLC
12 901 Chase Tower
13 707 Virginia Street East
14 Charleston, WV 25301

15 COUNSEL FOR DEFENDANT
16

17 JOHN F. HUSSELL, IV, ESQUIRE
18 Wooton, Davis, Hussell & Ellis
19 300 Summers Street
20 Suite 1230
21 Charleston, WV 25301

22 COUNSEL FOR DEFENDANT
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24

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WITNESS: JAMES JUSTICE, III

EXAMINATION

By Attorney Westfall

7 - 15

CERTIFICATE

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EXHIBIT PAGE

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NONE OFFERED

OBJECTION PAGE

ATTORNEY

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NONE MADE

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S T I P U L A T I O N

(It is hereby stipulated and agreed by and between counsel
for the respective parties that reading, signing, sealing,
certification and filing are not waived.)

P R O C E E D I N G S

JAMES JUSTICE, III,
CALLED AS A WITNESS IN THE FOLLOWING PROCEEDING, AND
HAVING FIRST BEEN DULY SWORN, TESTIFIED AND SAID AS
FOLLOWS:

EXAMINATION

BY ATTORNEY WESTFALL:

Q. What's your name please?
A. James C. Justice, III.
Q. Mr. Justice, my name is Fred Westfall. I'm
with the U.S. Attorney's Office. I'm asking today, I'm
going to be asking you questions in connection with a
civil penalty part of the case dealing with the James
River Equipment Company case that was pending.
And if at any time you do not hear or

1 understand a question I've asked if you'll let me know,
2 I'll be happy to repeat or rephrase the question for you.

3 Have you ever been deposed before?

4 A. I have.

5 Q. Basic ground rules are you need to give verbal
6 responses to the questions. Because the court reporter
7 can't record gestures or nods of the head. And at any
8 time you need to take a break, if you'll let me know we
9 can take a break. It's not a problem.

10 This will be fairly short so I don't think
11 we'll have --- probably won't take more than just a few
12 more minutes so.

13 Mr. Ball previously testified about the
14 financial aspects of Justice Energy in some detail prior
15 to you arriving here for your deposition today. Can you
16 tell what involvement you normally have in Justice Energy
17 as far as the day-to-day operations of the company?

18 A. I would characterize my day to day at a pretty
19 high level. You know, we have accounting people or legal
20 people in place. Operations people in place. Have some
21 involvement with it just being very high level.

22 Q. Okay.

23 And so when you're talking about high, we're
24 not talking about quantum or quantity. We're talking

1 about supervisor. You're going to be far up the
2 supervisory chain over the Justice Energy?

3 A. Yes, sir.

4 Q. You're probably not going out to the mine site
5 every day to take a look at what's going on.

6 Is that correct?

7 A. I go some but not every day.

8 Q. I want to go back through the business
9 structure for just a minute. Just to ask you some
10 questions along that line. It's my understanding, from
11 Mr. Ball's testimony, you and your father own a group of
12 companies that deal with mining and mining operations and
13 I guess probably you have some other non-mining operation
14 companies as well. So let me just kind of go back
15 through this.

16 Blue Stone Resources, Incorporated. Do you
17 know which companies are under Blue Stone Resources,
18 Incorporated?

19 A. It would probably be better if Steve would go
20 through the list but generally I know most of them.

21 Q. Let me ask the question this way, do you sit on
22 the boards of directors of any of these others --- of
23 these various companies Blue Stone Resources, Blue Stone
24 Mineral, JCJ Coal Room, Justice Energy Company,

1 Incorporated. Do you serve on any of the Boards of these
2 companies?

3 A. I do.

4 Q. Okay.

5 And in terms as I understand it from what Mr.
6 Ball testified earlier, you guys normally do not have
7 real board meetings but you do everything by agreement.
8 You have agreement documents you sign in lieu of board
9 meetings.

10 Is that correct?

11 A. Yes, your --- that's correct. And at the end
12 of 2018, we actually did have a board meeting for another
13 matter. But generally, we do agreements in lieu of the
14 meeting.

15 Q. And in terms of the shareholders of --- well
16 let me go back and rephrase this. These various coal
17 companies whether it's Blue Stone Mineral, Blue Stone
18 Resources, Blue Stone Coal, and Blue Stone Industries,
19 the ultimate control over these companies rest with you
20 and your father.

21 Is that correct?

22 A. Well, we're the shareholders.

23 Q. Okay.

24 And what about your sister? What involvement

1 is the --- Jillean, what involvement does she have with
2 the companies?

3 A. She's not a shareholder of those companies you
4 referenced but she is a director. Jill and myself are
5 the only directors at this time.

6 Q. Now, I understand from Mr. Ball that there is a
7 collective bargaining agreement in place between the UMWA
8 and Justice Energy Company, Incorporated, dealing with
9 the miners that are currently onsite. Did you have any
10 involvement in the negotiations of the collective
11 bargaining agreement?

12 A. Not really. We're a very small player in the
13 union. Collective bargaining agreement is nationwide and
14 so for good or for bad, we just kind of have to tag along
15 to whatever, you know, the bigger companies agree to.

16 Q. Did you have to sign the collective bargaining
17 agreement?

18 A. Not to my knowledge. No.

19 ATTORNEY CAREY: Let me clarify. When you
20 said him signing personally or any of the companies?

21 ATTORNEY WESTFALL: Well, I understand if
22 there's no --- let me go back and maybe I should ask the
23 question this way.

24 BY ATTORNEY WESTFALL:

1 Q. Are there any other --- other than what Justice
2 Energy Company, Incorporated, are there any collective
3 bargaining agreements involving the UMWA and any other,
4 we'll call them Justice Companies?

5 A. There are. Some of the other Blue Stone
6 subsidiaries --- and I don't really want to tell you the
7 exact ones because I mean, we got a few. Blue Stone Coal
8 was one, Keystone Services is one, Justice Energy is one.
9 They're all covered under a master collective bargaining
10 agreement.

11 Q. Did you have to --- did you and your --- in
12 your corporate capacity or as a shareholder in any
13 capacity have to sign any of these collective bargaining
14 agreements or any of the documents when it relates to the
15 master collective bargaining agreement on behalf of any
16 of these companies?

17 A. I wouldn't have signed as a --- or wouldn't be
18 asked to sign as a shareholder or any personal liability
19 but I really can't tell you if I signed it in a corporate
20 capacity. I may have, I may not have, I just don't know.

21 Q. Okay.

22 The decision making on --- for the over
23 operation of Justice Energy Company, who has that
24 ultimate decision making authority?

1 A. Could you be a little more specific?

2 Q. Sure. Sure.

3 If a decision had to be made about the future
4 direction of the company or a major financial decision
5 had to be made about Justice Energy Company,
6 Incorporated, who would have the ultimate decision making
7 authority over such decisions?

8 A. I guess I would have the ultimate decision
9 making authority and I would certainly consult with the
10 other people on our team, accountants, attorneys, our
11 operations people.

12 Q. Would that be the same for any of the Blue
13 Stone companies as well?

14 A. Generally speaking yes, but you know we have,
15 you know, there's kind of different players in the game.
16 You know, maybe, maybe at Blue Stone Coal they're
17 different operations folks or different accounting
18 people. But you know, I would certainly consult with
19 those on each specific operation.

20 Q. But if there was a major financial decision or
21 some sort of a major direction for the company that is
22 particular --- the ultimate decision making authority
23 would rest with you.

24 Is that correct?

1 A. I think so, yes.

2 Q. I'd like for you to take a look, just briefly.
3 We have some exhibits from Mr. Ball's deposition in front
4 of me, Exhibits 1 through 7. And I'm just going to ask
5 you a general question after you've had a chance to take
6 a look at those. I mean most of them are just financial
7 documents and so on. But the question I'm going to ask
8 you, I'll just go ahead and ask you. Did you have any
9 involvement with the preparation of any of these
10 exhibits? Exhibits 1 through 7?

11 A. I did not, no.

12 Q. Okay.

13 Now I'm going try and I might be a little
14 inarticulate but I'm going to try see through this the
15 best way I can. As I understand, we kind of went through
16 some of the corporate structure and the business
17 structure involved with Justice Energy Company,
18 Incorporated. As I understand it, Justice Energy
19 Company, Incorporated, the parent company is JCJ Coal
20 Group, LLC.

21 Is that your understanding?

22 A. That's my understanding, yes, sir.

23 Q. And in that particular company, the JCJ Coal
24 Group is owned by Blue Stone Mineral, Incorporated.

1 Is that correct?

2 A. Yeah, I better not delve into this because I
3 don't know exactly. But, you know, Steve as far as the
4 structure would be the best to ask.

5 Q. So in terms of the corporate and business
6 structure of the various companies of which you and your
7 father are the shareholders or the ultimate shareholders
8 of, that Steve would be the person who would have the
9 most knowledge about how those companies are structured
10 and how they're interrelated?

11 A. Yes, sir.

12 Q. Okay. That's all that I have. Thank you very
13 much.

14 A. Thank you.

15 ATTORNEY CAREY: We don't have any
16 questions but we will read.

17 * * * * *

18 DEPOSITION CONCLUDED AT 12:20 P.M.

19 * * * * *

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24

1 STATE OF WEST VIRGINIA)

2 CERTIFICATE

3 I, Bradley Scott, a Notary Public in and for
4 the State of West Virginia, do hereby certify:

5 That the witness whose testimony appears in the
6 foregoing deposition, was duly sworn by me on said date,
7 and that the transcribed deposition of said witness is a
8 true record of the testimony given by said witness;

9 That the proceeding is herein recorded fully
10 and accurately;

11 That I am neither attorney nor counsel for, nor
12 related to any of the parties to the action in which
13 these depositions were taken, and further that I am not
14 a relative of any attorney or counsel employed by the
15 parties hereto, or financially interested in this
16 action.

17 I certify that the attached transcript meets the
18 requirements set forth within article twenty-seven,
19 chapter forty-seven of the West Virginia Code.



Bradley Scott
Court Reporter

24

EXHIBIT D

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BECKLEY

* * * * *

JAMES RIVER EQUIPMENT *
VIRGINIA, LLC, *
Plaintiff * Civil Action No.
vs. * 5:13-cv-28160
JUSTICE ENERGY *
COMPANY, INC., *
Defendant *

* * * * *

DEPOSITION OF
STEPHEN W. BALL
March 14, 2019

Any reproduction of this transcript is prohibited
without authorization by the certifying agency.

DEPOSITION

OF

STEPHEN W. BALL, taken on behalf of the Defendant herein, pursuant to the Rules of Civil Procedure, taken before me, the undersigned, Bradley Scott, a Court Reporter and Notary Public in and for the State of West Virginia, at the law offices of Carey, Scott, Douglas & Kessler, PLLC, 707 Virginia Street, East 901 Chase Tower, Charleston, West Virginia on Thursday, March 14, 2019 beginning at 10:07 a.m.

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I N D E X

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WITNESS: STEPHEN BALL

EXAMINATION

By Attorney Westfall 7 - 76

EXAMINATION

By Attorney Carey 76 - 77

DISCUSSION AMONG PARTIES 77 - 78

CERTIFICATE 79

EXHIBIT PAGE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
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24

		<u>PAGE</u>
<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>IDENTIFIED</u>
1	Financial Statement of Debtor	8
2	Balance Sheet 12/31/16	42
3	Balance Sheet 12/31/17	42
4	Property Return for Justice/ Bluestone	52
5	Equipment list as of 1/21/15	60
6	Depreciation lists 2014-2017	61
7	Revised property list March 2019	72

OBJECTION PAGE

ATTORNEY

PAGE

NONE MADE

1
2
3
4
5
6
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8
9
10
11
12
13
14
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S T I P U L A T I O N

(It is hereby stipulated and agreed by and between
counsel for the respective parties that reading,
signing, sealing, certification and filing are not
waived.)

P R O C E E D I N G S

STEPHEN BALL,
CALLED AS A WITNESS IN THE FOLLOWING PROCEEDING, AND
HAVING FIRST BEEN DULY SWORN, TESTIFIED AND SAID AS
FOLLOWS:

EXAMINATION

BY ATTORNEY WESTFALL:

Q. Would you state your name, please?

A. Stephen Ball.

Q. Mr. Ball, my name is Fred Westfall. And I
represent the United States in this case. Anytime if
you do not hear or understand a question that I ask of
you, let me know. I'll be happy to repeat or rephrase
the question for you.

1 1997 with a degree in finance.

2 Q. And where did you attend law school?

3 A. I graduated from West Virginia University
4 College of Law in 2001.

5 Q. Have you ever been engaged in the private
6 practice of law outside of a corporate setting?

7 A. No, sir.

8 Q. And when --- I take it you're licensed to
9 practice law.

10 Is that correct?

11 A. Yes.

12 Q. And when were you first licensed?

13 A. 2001.

14 Q. And have you always been engaged in the
15 corporate practice of law so to speak since your
16 graduation from law school?

17 A. Yes.

18 Q. And where were you employed after law
19 school?

20 A. My first job was with Blue Stone Industries,
21 Inc., which is also owned by the same owners of
22 Justice Energy. Started as assistant CFO and general
23 counsel.

24 Q. Do you have a --- are you a CPA by chance?

1 A. No, sir.

2 Q. Let's take a look at Exhibit 1. I want to
3 just ask some general questions first. In section one
4 on page one of Exhibit Number 1, it indicates that
5 Justice Energy Company Incorporated is a coal mining
6 business. Is Justice Energy still involved in coal
7 mining?

8 A. Yes.

9 Q. And can you tell me what mines that it
10 currently mine coal in?

11 A. It currently operates what is known as the
12 Red Fox Surface Mine. It's actually located in
13 McDowell County, West Virginia. But the closest town
14 is Bishop, Virginia. It's right on the state line.

15 Q. Does Justice Energy have any other coal
16 mines other than Red Fox?

17 A. No.

18 Q. Does Justice Energy actually own Red Fox?

19 A. No.

20 Q. Who owns Red Fox?

21 A. The Red Fox mine has a few different
22 components to it. Typically with a coal mine, you
23 have the mining permit. You have the coal reserves
24 and then you have equipment associated with that. The

1 mining permit is in the name of Blue Stone Coal
2 Corporation. The reserves are owned by separate
3 company that's unrelated, it's called Rowland Land
4 Company.

5 And it's leased to an affiliate of Justice
6 Energy called James C. Justice Companies, LLC. And
7 Justice Energy operates the coal mine. It does own
8 some of its own equipment but a lot of that equipment
9 is provided to it by affiliate entities.

10 Q. And who are those affiliate entities?

11 A. The primarily --- and in fact I think it's
12 the only other entity, Blue Stone Resources, Inc.
13 provides most of the equipment to Justice Energy
14 Company.

15 Q. Let me kind of --- we talked about a lot of
16 different companies and I want to try and understand
17 the relationships that exist with the companies. So
18 when we talk about Justice Energy, who owns Justice
19 Energy.

20 A. Its parent company is JCJ Coal Group, LLC.

21 Q. And who owns JCJ Coal Group, LLC?

22 A. Blue Stone Mineral, Inc.

23 Q. And who owns Blue Stone Mineral, Inc.

24 A. Blue Stone Resources, Inc.

1 Q. And who owns Blue Stone Resources, Inc.

2 A. James C. Justice, II and James C. Justice,
3 III.

4 Q. And they own them in their individual
5 capacities.

6 Is that correct?

7 A. Yes, sir.

8 Q. Now going backwards for just a moment to Red
9 Fox. I just want to make sure I understand. The mine
10 you said was actually owned by one entity or person.

11 A. The mining permit is in the name of Blue
12 Stone Coal Corporation.

13 Q. Who owns Blue Stone Coal, Corp.?

14 A. Blue Stone Industries, Inc.

15 Q. And who owns Blue Stone Industries, Inc.?

16 A. Blue Stone Mineral.

17 Q. Okay.

18 And you said the reserves are owned by ---?

19 A. James C. --- I'm sorry. James C. Justice
20 Companies, LLC. I'm sorry. They're leased. The
21 leasee is James C. Justice Companies, LLC. The actual
22 owner is, we refer to them as Rowland Land Company. I
23 think they formed a special purpose entity for
24 purposes of owning those reserves. That its title is

1 RLC, TN, LLC.

2 Q. And Rowland Land Company and R --- let me
3 just make sure I get the initial right, R --- I think
4 you said was RLC, TN?

5 A. Yes, sir.

6 Q. Are they related in any way to any of the
7 other companies either Blue Stone Mineral, Blue Stone
8 Resources, James C. Justice, JCJ Coal Group, anything
9 like that?

10 A. No, sir.

11 Q. Okay.

12 So we talked about the reserves in the
13 permit. Who actually owns the mine?

14 A. Just so we're on the same page ---?

15 Q. The real estate for the mine.

16 A. So the surface ---.

17 Q. I tell you ---.

18 A. I'm just --- I'm just trying to ---.

19 Q. Yeah, let me try to clarify this. Is Red
20 Fox a surface mine or a deep mine?

21 A. It is a surface mine.

22 Q. Okay. All right.

23 And so we talk about the reserves. Are
24 those the surface rights or are they separate from

1 being reserves?

2 A. Can I give you a background on how we view
3 it and --- 'cause I just don't want us to talk past
4 one another?

5 Q. That's perfectly fine.

6 A. Typically when we receive a lease to mine
7 coal with it comes the rights to use the surface to
8 remove that coal. And so I don't know specifically
9 who owns those surface. But it is my understanding
10 that RLC, TN owns the surface and then provides us the
11 right to use the surface through our coal lease.

12 Q. Okay.

13 And you said the equipment that's used to
14 mine the coal, some is actually owned by Justice
15 Energy and some is owned by other entities?

16 A. Yes.

17 Q. And who was the other entities that furnish
18 equipment to the Red Fox mine?

19 A. Blue Stone Resources, Inc.

20 Q. Anybody else?

21 A. That's it.

22 Q. Okay.

23 And at this time does Justice Energy have
24 either made leases, rights, or any other ownership of

1 any kind on any mines other than Red Fox?

2 A. No.

3 Q. Okay.

4 Let's take a look at section two on page
5 one, of Exhibit 1 for just a moment. According to
6 Exhibit Number 1, it looks like that, well we already
7 discussed that, but Justice Energy is a wholly owned
8 subsidiary of JCJ Coal Group, LLC.

9 Is that correct?

10 A. Yes, sir.

11 Q. And looking at 5b on Exhibit 1, it says that
12 James C. Justice, III is the President.

13 Is that correct?

14 A. Yes, sir.

15 Q. And under 5c, you're listed next. And what
16 is your position with Justice Energy?

17 A. Vice President and General Counsel.

18 Q. And the third person listed is James T.
19 Miller. And it looks like he's listed as the
20 Treasurer.

21 Is that correct? Secretary and Treasurer.

22 A. That's correct, yes.

23 Q. Are there any other officers, corporate
24 officers, for Justice Energy?

1 A. No.

2 Q. Let's talk a little bit about Mr. Justice,
3 III, and his role in the company. What is his role?
4 I mean, as President, what does he do?

5 A. He oversees the operations of the company.

6 Q. And is he also an officer of any of the
7 other companies in this chain that goes up through to
8 himself as being a part owner?

9 A. He is, yes.

10 Q. What other companies is he an officer of?

11 A. He generally serves as the President of all
12 of the companies so for Blue Stone Resources and Blue
13 Stone Mineral, Inc. Both corporations he serves as
14 the president. Even our LLC, we --- and our operating
15 agreements provide the ability to nominate officers.
16 So we also have traditional officer names in our LLCs.
17 So he's also the President of James C. Justice
18 Company, LLC and JCJ Coal Group, LLC.

19 Q. And I take --- I know we talked about the
20 owner being his father, James C. Justice, II. I'm
21 assuming he's been owner. He's not an officer at any
22 of these companies at the moment.

23 Is that correct?

24 A. That's correct.

1 Q. Let's talk about Mr. Miller for just a
2 moment. Is he an officer at any of the other
3 companies?

4 A. He is, yes.

5 Q. And what other companies?

6 A. Generally speaking, we have the same
7 officers in these companies. For Mr. Miller, it does
8 vary occasionally that he's either secretary or
9 treasurer. He's not always both. Without having that
10 in front of me, I don't want to misspeak but he
11 generally will be either secretary or treasurer or
12 both in all of the --- the same entities.

13 Q. Let's confine it for just a moment to
14 Justice Energy, what does Mr. Miller do as Secretary
15 and Treasurer of Justice Energy?

16 A. Mr. Miller is currently not engaged in any
17 day to day activities with Justice Energy. He's a
18 long time employee for the Justice family and all of
19 their other operations. And he traditionally, has
20 been listed as either secretary or treasurer. He's an
21 accountant by trade.

22 Today, most of his activities either relate
23 to the Greenbrier Hotel or there are a few coal
24 businesses in Kentucky and Virginia that he's

1 overseeing the accounting on. But he's not engaged in
2 anything with Justice Energy on a day to day basis.

3 Q. Okay.

4 And I don't mean to make light of this but
5 basically I take it that his role as secretary and
6 treasurer of Justice Energy is basically more or less
7 ceremonial.

8 A. That's correct.

9 Q. Let go to page 7c for just a moment. Excuse
10 me section 7c on page three of Exhibit Number 1 for
11 just a moment. You have it listed there as \$1.23
12 million. And I'm taking that's the civil penalty
13 involved in this case.

14 Is that correct?

15 A. Yes, sir.

16 Q. Are there any other judgements or liens
17 against Justice Energy other than the civil penalty?

18 A. There are --- there are no other judgements
19 that I'm aware of. As a subsidiary --- indirect
20 subsidiary, Blue Stone Resources, there are some liens
21 with Blue Stone Resources credit facilities that could
22 apply to Justice Energy.

23 Q. And when you say credit facilities, I take
24 it these are entities that make loans to Blue Stone

1 Resources.

2 A. Correct.

3 Q. And when you talk about the type of credit
4 for Blue Stone Resources, just generally, what kinds
5 of credit was extended that might potentially relate
6 to or pertain to Justice Energy?

7 A. So the equipment that Blue Stone Resources
8 owns that's used at the Justice Energy facility, all
9 of that equipment has been financed by various
10 equipment financing companies. And so they would have
11 --- and I think most of those are purchase mining type
12 liens. Some of the other ones are kind of traditional
13 term debt where there's just a security agreement.
14 And there's a pledge of collateral that has a blanket
15 that applies to equipment and fixtures.

16 That would be --- Blue Stone Resources has,
17 I think there's two term loans that have those type of
18 security agreements associated with them.

19 Q. Kind of a cross collateral type arrangement?

20 A. No ---.

21 Q. Maybe that's too simplistic, I'm sorry. I
22 don't mean to be ---.

23 A. No, no, no. It's not too simplistic. It's
24 just that, it's a real general --- it's a real broad

1 security agreement that did not attempt to
2 specifically list items of machinery or equipment or
3 fixtures. It's just one of those that says in all
4 fixtures and equipment and inventory associated
5 therewith.

6 And so, I mean, I think it can be opened to
7 interpretation, whether it's specific or not. But
8 there's definitely some Blue Stone Resources
9 collateral agreements out there that have that type of
10 language in it.

11 Q. Okay.

12 Let's take a look at page ten or excuse me,
13 page four of Exhibit Number 1, section five item
14 number ten. Under real estate it says none. And I
15 think we already gone through this but does Justice
16 Energy actually own any true real estate?

17 A. No.

18 Q. Does Justice Energy have its own office
19 located somewhere?

20 A. No. There's a little mine office that's at
21 the mine site. It's equivalent of a single wide
22 trailer. But typically we lease those from a leasing
23 company.

24 Q. So, just so I make sure, Justice Energy does

1 not have its own corporate headquarters anywhere.

2 Is that correct? Physically, physical
3 corporate headquarters.

4 A. No.

5 Q. Now, I notice, also is going back to page
6 one of Exhibit Number 1, that in terms of the business
7 address for Justice Energy is 302 South Jefferson
8 Street in Roanoke, Virginia. Who else is located at
9 that particular address?

10 A. That's the address where Blue Stone
11 Resources is operated out of. And so to the extent,
12 Justice Energy has any accounting or anything like
13 that, that's all done out of the 302 South Jefferson
14 location. And Blue Stone Resources as the ultimate
15 parent company provides those services to their
16 subsidiaries.

17 There are other --- other coal companies own
18 by the Justice family that operates out of there.
19 There's several of them. Southern Coal Corporation,
20 Kentucky Fuel Corporation, A&G Coal Corporation,
21 Virginia Fuel Corporation.

22 Q. So Blue Stone Resources supplies, for
23 example I'm going to assume. Well maybe I won't
24 assume. Does Blue Stone Resources supply like all of

1 the administrative payroll and financial services
2 needed by Justice Energy Company?

3 A. Yes, they do.

4 Q. And Justice Energy Company does not have any
5 of its own employees who supply or perform those
6 services.

7 A. It does not. That's correct.

8 Q. Does Justice Energy Company have any actual
9 employees?

10 A. Yes. It has some employees that work at the
11 mine site.

12 Q. And what types of employees at the mine site
13 does Justice Energy have?

14 A. It would be the equipment operators for the,
15 you know, the trucks, the bulldozers, the coal
16 loaders, mechanics associated with those machines. It
17 would be hourly labor type employees.

18 Q. In terms of the supervisory personnel at
19 just --- at the Red Fox, I guess it's the Red Fox mine
20 is what we talked about. Are there any supervisory
21 employees employed by Justice Energy Company?

22 A. The foremen are employed by Blue Stone
23 Industries, Inc.

24 Q. Okay.

1 Are there any professional like engineers or
2 any other professional people employed by Justice
3 Energy Company?

4 A. No.

5 Q. Who actually prepares --- well let me go
6 back and ask the question this way, are there any
7 state or federal tax returns prepared for Justice
8 Energy Company?

9 A. They are part of the consolidated tax
10 returns. So there are no standalone tax returns for
11 Justice Energy Company.

12 Q. And when you say consolidated, how are they
13 consolidated?

14 A. Blue Stone Resources, Inc. files a
15 consolidated tax return for itself and all of its
16 subsidiaries. And so they are included, they being
17 Justice Energy, is included in the Blue Stone
18 Resources tax return.

19 Q. And is Blue Stone Resources, is it --- is
20 its tax return part of any other consolidated returns?

21 A. No. It is a C corporation and it files ---
22 other than for its subsidiaries, it files as a
23 standalone.

24 Q. Let's go to page five, Exhibit Number 1,

1 section 6, item number 13 on bank accounts. I'm
2 looking at this Exhibit Number 1 at that particular
3 location. There's only one bank account listed. It's
4 with BB&T. Is this a payroll account?

5 A. I think that's its primary purposes. I
6 don't think that it's limited to only being a payroll
7 account but that is its primary purpose.

8 Q. And when the actual amount of funds put into
9 account to make payroll for the employees, who
10 furnishes those funds?

11 A. Typically those would come from Blue Stone
12 Resources, Inc.

13 Q. Does Justice Energy put any of its own
14 funds into the account?

15 A. No.

16 Q. Does Justice Energy have any --- does it
17 ever generates its own revenues?

18 A. The coal that Justice Energy mine is sold
19 through an affiliate, Blue Stone Coal Sells
20 Corporation. And Blue Stone Coal Sells Corporation,
21 when they receive the revenues from the coals sold,
22 that would be provided by Justice Energy either
23 directly or through Blue Stone Resources to help
24 Justice Energy fund their operations.

1 Currently, Justice Energy operates at a
2 deficit. It's losing money each month. So its
3 shortfall is made up by Blue Stone Resources.

4 So I guess in a way, it does put money in
5 its accounts by the coal that it sells. But
6 currently, it's operating as a deficit.

7 Q. What type of coals do you mine at the Red
8 Fox mine?

9 A. It's what's known as midvol or medium
10 volatile coking coal, metallurgical coal.

11 Q. That's still a pretty good market for
12 metallurgical coal compared to the others.

13 Is that correct?

14 A. Yes.

15 Q. I don't know much about the coal business
16 but I do know a little bit. Metallurgical coal seems
17 to be doing pretty well.

18 Let's take a look at page six of Exhibit
19 Number 1 for just a moment. I'd like to go over, on
20 the right hand column there where it says expense
21 items and ask some questions about that. Item number
22 30 shows a rent paid by Justice Energy of \$118,187.45.
23 What's the rent for?

24 A. It's for a rail siding where coal is loaded

1 on the Norfolk Southern Railway. There's an annual
2 rental that's due with that.

3 Q. And is that paid to Norfolk Southern?

4 A. Yes.

5 Q. And let's look at item number 37 insurance.
6 What --- for \$217,202.80. What's that insurance for?

7 A. The Blue Stone Resources group of companies
8 has a group insurance policy for general liability,
9 property, Workers' Comp. It's a group policy and that
10 total amount is allocated out to the various operating
11 subsidiaries.

12 Ideally, you know, should be proportionate
13 to the amount of coal they're producing is how we
14 typically try to do that. And so that is Justice
15 Energy's allocation of that insurance expense.

16 Q. And the miscellaneous expenses on item
17 number 38. Can you just kind of give me a general
18 idea of what that covers?

19 A. For it to fall in to a miscellaneous
20 category, and I can't remember this specifically off
21 the top of my head, but that generally is just
22 something that is small that doesn't fall into one of
23 these categories above. Or into the categories of our
24 --- one of the categories of our internal financial

1 statement.

2 But if it--- even if it doesn't fit in to
3 one of those categories, if it would exceed say
4 \$25,000 or \$50,000, we would create a name for that so
5 we would know what it is. This is for very small
6 nominal things.

7 Q. Okay.

8 Let's go to the last page of Exhibit Number
9 1. It's an attachment that deal with question 11 and
10 it talks about some equipment. And it deals with
11 equipment that was apparently financed through
12 Caterpillar Financial Services. And just so I make
13 sure I understand, is this when the company was
14 acquired from and I don't know how to pronounce that,
15 it looks like Mechel, M-E-C-H-E-L O-A-O. The company
16 held certain mining equipment that was collateral for
17 loans to Caterpillar Financial Services.

18 After Justice Energy was acquired from
19 Mechel, did it have the Caterpillar equipment or I
20 should say the equipment that was financed by
21 Caterpillar for any period of time?

22 A. I --- yes. Yes.

23 Q. Okay.

24 How long --- well let me ask the question

1 this way. When were the items surrendered to
2 Caterpillar Finance to satisfy the loan obligations?

3 A. I can't recall the exact date but it was
4 very soon after the reacquisition. And no one can
5 pronounce that name by the way so it gets pronounced
6 five different ways. So, I'll say it three different
7 ways while we're talking about.

8 Q. Okay.

9 A. At the time of the reacquisition, Mechel had
10 fallen behind with all of their creditors. And the
11 two big ones, financially speaking, were Caterpillar
12 Financial and Komatsu Financial. Two of which that
13 the Justice organization does a lot of business with
14 and other areas of business as well.

15 And so there was some interest in getting
16 those two accounts cleared up so we could move forward
17 from a business standpoint.

18 And the equipment, it was easier to
19 surrender the equipment than try to figure out a way
20 to pay off the loans. Because they were severely
21 under water and if it weren't for our overall
22 relationship with Caterpillar Financial and Komatsu,
23 probably would not have been able to get those deals
24 done. But they were somewhat --- they were somewhat

1 of an accommodation with us because of the ongoing
2 business.

3 Q. So when was Justice Energy acquired from
4 Mechel or however you pronounce the name of the
5 company?

6 A. Yeah. February of 2015.

7 Q. And looking at again on the last page of
8 Exhibit Number 1, at the end it says currently the
9 equipment used as the Company's Red Fox site is owned
10 by related parties that are rented to the company on
11 an intercompany basis. And I think we already talked
12 about the companies that are furnishing the equipment
13 to Red Fox.

14 Is that correct?

15 A. Yes.

16 Q. And does Justice Energy actually pay any
17 rental user fees or any other kind of --- or provide
18 any other compensation to the companies that are
19 basically renting the equipment to Justice Energy?

20 A. Not currently. In the ordinary course or in
21 a typical situation, we would do that. But because
22 the mine is not generating excess cash flow currently,
23 that's not being done.

24 Q. How long has Justice Energy been running at

1 a loss?

2 A. Justice Energy was idle at the time of the
3 reacquisition in 2015. We briefly operated it. There
4 were some --- there were some coal stockpiles there.
5 The coal, the quality was really bad because it had
6 set there for a very long time. But we --- we loaded
7 some of that coal out in 2016 but didn't really
8 operate the mine.

9 And then the mine was completely idle until
10 2018. And so it's only been operating in total for
11 about ten months now. And all of those months now
12 have been at a deficit. The production hasn't been
13 what we expected it to be.

14 Q. And for the ten months, are we talking about
15 ten months since what period of time?

16 A. So they --- the Justice Energy mine started
17 around --- I think we started hiring men back in late
18 February of 2018. And the mine --- normally takes six
19 to eight weeks to get a mine started up. So I think
20 that it started production probably late April 2018.

21 Q. So from January of 2016 up until February of
22 2018, was the mine, the Red Fox mine, operational?

23 A. No, other than selling some of those coal
24 stockpiles that I mentioned. And so there were some

1 people there doing that. It was not otherwise
2 operational.

3 Q. Again, I'm going to ask some additional
4 questions. If I seem to be repetitive, I apologize.
5 So the accountants for Justice Energy, those are
6 actually supplied by the Blue Stone group.

7 Is that correct?

8 A. Yes.

9 Q. Okay.

10 And who are on the Board of Directors for
11 Justice Energy?

12 A. James C. Justice, III and Jillean, that's
13 spelled J-I-L-L-E-A-N, Justice.

14 Q. And we're talked a little bit about the
15 employees of Justice Energy. The employees that are
16 currently working for Justice Energy had been there
17 roughly since February of 2018.

18 A. Yes.

19 Q. Do you know how many employees that are
20 actually employed there now? Just roughly.

21 A. Yeah, the last time I checked it was
22 approximately 30.

23 Q. Does Justice Energy have any pension plans
24 of any kind?

1 A. The employees of Justice Energy are part of
2 the United Mine Workers bargaining unit. And so
3 there, there is some legacy liability owed to the
4 United Mine Workers' pension plan. So that's all
5 governed by their CBA. Some of the --- there's a
6 distinction if employees start after a certain date.
7 They are not eligible for the pension plan but they
8 have a 401(k) available to them. But that's all
9 dictated by the collective bargaining agreement.

10 Q. And is there a collective bargaining
11 agreement between the UMWA and Justice Energy or is
12 between the UMWA and another entity?

13 A. It's directly with Justice Energy. To be
14 honest with you, that the real reason why Justice
15 Energy continues to operate.

16 Q. At a deficit?

17 A. There would be a larger deficit if they
18 stopped operating.

19 Q. Okay.

20 Do any of the insurance policies of Justice
21 Energy --- well I think you said the insurance is
22 actually provided through one of the Blue Stone
23 companies to Justice Energy.

24 Is that correct?

1 A. Blue Stone Resources, Inc. is the primary
2 insured. But there's a schedule of additional
3 insureds. And Justice Energy is one of those
4 additional insureds.

5 Q. Does Justice Energy have any insurance
6 policies or have any ownership rights in any insurance
7 policies that have a cash value?

8 A. No.

9 Q. Does Justice Energy ever have any
10 stockholder meetings or Board of Director meetings?

11 A. We do --- we do agreements in lieu of
12 meetings. Where it's a closely held business. Jillean
13 is James C. Justice, III's sister. There they work
14 together in a lot of the family's businesses. So I
15 mean we have had not necessarily Justice Energy but
16 the family occasionally will have a board meeting but
17 it's not common. Typically, we dispense with the
18 annual requirements via agreement in lieu of meeting.

19 Q. So they just basically sign a document that
20 says more or less we had a meeting on paper?

21 A. Yes.

22 Q. Okay.

23 And in terms, of corporate minutes, just
24 Justice Energy have any separate corporate minutes of

1 any kind?

2 A. No, just those agreements in lieu of
3 meetings that we just discussed.

4 Q. And other than the BB&T account, are you
5 aware of any other bank accounts that's owned by
6 Justice Energy?

7 A. No.

8 Q. Does Justice Energy have any ownership
9 interest in any kind of foreign bank accounts or
10 foreign investment accounts of any kind?

11 A. No.

12 Q. In fact, does Justice Energy have any
13 investment accounts of any kind?

14 A. No.

15 Q. Does Justice Energy own any stocks or bonds?

16 A. No.

17 Q. And what about reclamation bonds? Does
18 Justice Energy have any reclamation bonds?

19 A. The bonds are in --- the bonds are in the
20 name of Blue Stone Coal Corporation, the permittee.
21 And it's part of what I'll describe as a broader or
22 global bonding program for all of the Blue Stone
23 mining companies.

24 Q. Are those cash bonds or are they surety

1 bonds?

2 A. They're surety bonds.

3 Q. And who is the surety involved or are there
4 --- was there more than one?

5 A. There it's primarily a group called Lexon.
6 My only hesitation is I know globally, we have a
7 couple other smaller bonding companies. I don't think
8 they related to Justice Energy though.

9 Q. Does Justice Energy have any certificates or
10 deposits of any kind?

11 A. No.

12 Q. Does it have any safety deposit boxes?

13 A. No.

14 Q. I may have asked this and forgive me but
15 does Justice Energy own any real estate?

16 A. No.

17 Q. And does Justice Energy have any leases of
18 any kind? Either real estate or coal?

19 A. No.

20 Q. Does Justice Energy have any credit cards?

21 A. No.

22 Q. And does Justice Energy have any letters of
23 credit?

24 A. No.

1 Q. Does Justice Energy have any accounts
2 receivable?

3 A. No.

4 Q. And does anyone owe debts to Justice Energy?

5 A. No.

6 Q. Now we talked about on the mine site that
7 there's like a one of these portable office buildings,
8 I believe. Or something like that. Is there really
9 any office equipment or anything like that in that
10 particular mobile office site or that office site
11 that's on the coal ---

12 A. No.

13 Q. --- on the mine, I'm sorry.

14 A. I'm sorry for talking over you.

15 Q. That's all right.

16 A. No. Typically we have a mine site to
17 satisfy regulatory. Have to have a phone line and a
18 place to have meetings if a safety meeting is
19 required. So it's more for that purpose but it's not
20 a typical office in the sense of, you know, like a
21 bunch of computer equipment and office, you know,
22 office furniture, things like that.

23 Q. And I know this is going to sound kind of
24 weird but I need to ask you this question so forgive

1 me. Does Justice Energy have like any personal
2 property like antiques, jewelry, watches, coins, you
3 know, gold, diamonds, or anything like that?

4 A. No.

5 Q. Okay.

6 And I think we might have covered this but
7 Justice Energy doesn't have any bonds of any kind.
8 Does it?

9 A. No.

10 Q. Does Justice Energy have any lawsuits that
11 are pending against anybody?

12 A. No.

13 Q. And is Justice Energy other than in this
14 particular case, does it have any lawsuits against it?

15 A. I don't believe so.

16 Q. Does Justice Energy have any contracts to
17 either sell coal or produce coal with anyone?

18 A. No.

19 Q. And I take it Justice Energy doesn't have
20 any contracts with either the federal or state
21 government?

22 A. No. Just with the caveat of --- well no
23 it's not the permittee. Sometimes people view mining
24 permits but it doesn't have a mining permits so no.

1 Q. Because Justice Energy is not the permittee
2 that --- for mining the coal there at the Red Fox
3 site.

4 A. Correct.

5 Q. Does Justice Energy have any rental income?

6 A. No.

7 Q. And I think we may have already covered
8 this, does Justice Energy have any liens against it?

9 A. Just what we discussed. This particular
10 matter and then to the extent, it's subject to any of
11 Blue Stone's resources, like it's security agreements
12 as its parent company. But short of that, no other
13 liens.

14 Q. And does Justice Energy have any trust
15 accounts of any kind?

16 A. No.

17 Q. Do you know if there's a separate Dun and
18 Bradstreet report for Justice Energy?

19 A. Not that I'm aware of.

20 Q. Does Justice Energy ever pay any dividends
21 to anybody?

22 A. No.

23 Q. So as we sit here today, what is the capital
24 of Justice Energy? Does it have any capital assets?

1 A. In the --- just so I understand the
2 question, in the form of like stockholder equity
3 capital?

4 Q. Yes.

5 A. I would have to look at the financial
6 statement to answer that for sure.

7 Q. Okay.

8 We're going to talk about a couple that I
9 received ---

10 A. Okay.

11 Q. --- in just a minute so. I'm not sure how
12 to phrase this but I'll do the best I can. Why does
13 Justice Energy exist if it's really not owning
14 anything? What's the purpose of Justice Energy?

15 A. Justice Energy when it was first formed was
16 formed to do exactly what it's doing today. Which was
17 operate the Red Fox surface mine. It's not uncommon
18 for operations to be siloed, for lack of a better
19 description, when collective bargaining agreements are
20 involved.

21 And so, its purpose was and is to operate
22 the Red Fox surface mine. For a long time, in the
23 early 2000s and even, you know, approaching 2010, that
24 mine was an extremely profitable mine. It's in latter

1 stages. What's left is difficult to mine from a mining
2 stand point. So the metallurgical coal market is
3 still good but this is --- this is not the easiest to
4 mine coal for that particular mine. So the costs are
5 a little higher and then what coal is encountered, the
6 quality can be a little more erratic than what was
7 experienced the first 10 or 12 years of the mine.

8 So, you know, it's doing what it was created
9 to do. It's just that what it's doing is more
10 difficult than it was historically.

11 Q. So basically Justice Energy is kind of a ---
12 and I don't want to make light of this but, it's kind
13 of a shell company whose purpose is really just to
14 operate the Red Fox mine.

15 A. Its purpose is to operate the Red Fox mine.
16 I don't know that I agree with the shell company
17 description but that is its purpose.

18 Q. All right.

19 And in terms of the reserves that are still
20 left of the Red Fox mine site, has there been an
21 estimate recently or within the last few years of how
22 much is still left there at the Red Fox mine site?

23 A. Yes.

24 Q. And what is that? What's been the estimate?

1 A. I think the total tonnage number is in the
2 four million ton range. I think the minability of
3 some those tons is questionable. And that there have
4 been, mining studies to determine the best way to try
5 and maximize the recovery of that coal.

6 And I think that under some of those
7 scenarios that the recoverable amount, you know, is
8 about 30 or 40 percent of that four million. Not all
9 of it is recoverable.

10 ATTORNEY CAREY: To clarify, was that
11 within the permit or on the property?

12 THE WITNESS: That's the property.

13 BY ATTORNEY WESTFALL:

14 Q. In terms of the permit, how much is left?

15 A. I don't know that distinction. I just know
16 that that study was done for the whole property.

17 Q. And who did the study?

18 A. It was done in conjunction with, I can't
19 remember if we technically did it. We being Justice
20 Energy or Rowland Land Company did it. But it was
21 part of that lease process.

22 Q. Was there an outside group like an
23 individual group or some sort of professional coal
24 group that came in to do the estimate?

1 A. The principal person that I deal with at
2 Rowland Land Company, his name is Andy Fox. He's a
3 professional engineer by trade. And I don't know if
4 he outsourced that or if he just did that himself. I
5 can't recall.

6 Q. Okay.

7 Let's take a look at Exhibit 2 and 3 for
8 the ---.

9 ---

10 (Whereupon, United States Exhibit 2,
11 Balance Sheet 12/31/16, was marked
12 for identification.)

13 (Whereupon, United States Exhibit 3,
14 Balance Sheet 12/31/17, was marked
15 for identification.)

16 ---

17 ATTORNEY CAREY: Fred, are those the
18 balance sheets?

19 ATTORNEY WESTFALL: Yes, they're the
20 balance sheets for 2016 and 2017.

21 BY ATTORNEY WESTFALL:

22 Q. Now I believe you mentioned before that
23 during this period, basically in 2016 and 2017,
24 Justice Energy was not really doing any operations

1 other than selling these stockpiles that were at the
2 site.

3 Is that correct?

4 A. Correct.

5 Q. Okay.

6 They weren't actively mining at that time?

7 A. No.

8 Q. Okay.

9 Let's take a look at Exhibit 2 which is the
10 unaudited balance sheet for the period ending December
11 31, 2016. Just looking at the first page, it says
12 under accounts receivable there was \$18,000. Do you
13 know what that was for?

14 A. When we looked at this, it was a carryover
15 from the prior year. And to be honest with you, I
16 think it's a mistake. But we --- while this process
17 is going on, we'd not attempted to make any changes to
18 our book. But it was just a carryover from the prior
19 year.

20 Q. Okay.

21 And let's take a look at the next item, it
22 says under inventory and its produced coal, that's
23 listed at \$905,164.20. Was this the stockpile that
24 was on the site?

1 A. Yes.

2 Q. And had --- was that sold?

3 A. Yes.

4 Q. And so there's no more left really of that
5 stockpile.

6 Is that correct?

7 A. That's correct.

8 Q. And looks like under the next section, where
9 it says non-current assets, fixed assets. And it had
10 fixed assets of \$42,771,527.55. What were those fixed
11 assets?

12 A. So when I looked at this number, the first
13 thing I did is to look at the depreciation schedule.
14 Because typically, on our financial statements, fixed
15 assets is just everything that's on the depreciation
16 schedule.

17 That number seemed incorrect to me. It
18 seemed way too high for what Justice Energy does and
19 was doing at the time. And when I reviewed the
20 depreciation schedule, it included a significant
21 amount of underground mining equipment that was
22 actually owned by an affiliate of Justice Energy. And
23 it also included a preparation plant that's in
24 Keystone, West Virginia that's not owned by Justice

1 Energy Company.

2 So that number is incorrect. But what that
3 number reflects is everything that was on the
4 depreciation schedule, under Justice Energy's name as
5 of 12/31/2016.

6 Q. Did Justice Energy own these fixed assets?

7 A. No.

8 Q. Who prepared Exhibit Number 2?

9 A. Exhibit Number 2 is generated from the
10 accounting system, which is called MAS 200.

11 Q. And who has responsibility over that system?

12 A. That has changed. You know, prior to the
13 end of 2016 our senior accountant, her name was Amanda
14 Bulggs. She's a CPA. She left at the end of the year
15 to take another job to be closer to where her family
16 lives. But at the time, these statements were
17 generated, I asked Amanda to generate these. And she
18 generated them for me.

19 Q. When did you say that she left?

20 A. It was right at the end of 2018. There may
21 have been like a week carry over in to this year but
22 it was right at the end of the year.

23 Q. And do you know where she resides?

24 A. She currently, at least she told me, she was

1 moving Bristol. I don't know if that's Virginia or
2 Tennessee. But I know it's right on the state line.

3 Q. Okay.

4 And under other assets, there's like some
5 pre-paid expenses and pre-paid insurance. I take it
6 the insurance is what we talked about earlier as going
7 through the --- that's the share that Justice Energy
8 has to pay over at the group policy.

9 Is that correct?

10 A. Yes.

11 Q. And the pre-paid expenses, do you know what
12 those are?

13 A. That, I can't tell just by looking at this
14 but typically for Justice Energy is would be, you pay
15 the railroad rent in advance. And then sometimes you
16 know, they'll prepay for fuel and things like that.
17 But it would fall in to a category similar to that.

18 Q. Let's take a look under the liabilities and
19 stockholders' equity on Exhibit Number 2 for just a
20 moment. Under the current liabilities has accounts
21 payable of over \$900,000. Do you know what that was
22 for?

23 A. Just general operating expense for operating
24 the mine.

1 Q. And at this time, as I understand, the mine
2 was not operational.

3 Is that correct?

4 A. That's correct. Yes.

5 Q. So why would there be an accounts payable
6 for that?

7 A. It could have been carryover. So, it --- I
8 can't tell just by looking at this particular
9 financial statement. But that would have been the
10 total amount outstanding at the time. So some of that
11 could be really old and some of that would be just
12 general upkeep.

13 I mean, in 2016 it was the time that we were
14 selling the stockpiles that you would have a coal
15 loader. You would have some ongoing reclamation to
16 comply with. Regulatory law, things like that.

17 Q. And under the accrued expense, it looks like
18 it's about almost \$7.4 million. Do you have any idea
19 of what that is? Or what that's for?

20 A. I can't tell just by looking this. No, sir.

21 Q. And the accrued coal taxes, I take it that
22 would be on the stockpile. Maybe some carryover.

23 Is that correct?

24 A. Yeah. Typically those don't drag out too

1 long so I think it would be associated with the
2 stockpile.

3 Q. Take a look at the second page of Exhibit
4 Number 2 for just a moment please. Consolidated
5 income statement is unaudited for the 12 months ending
6 December 31, 2016. We talked about the coal sales.
7 That's from the stockpile that was on the property.

8 Is that correct?

9 A. Yes.

10 Q. And then it has general revenue of \$1.6
11 million. Do you know where that came from? Or what
12 that represents?

13 A. I can just tell you typically on our
14 financial statements what that would represent. I
15 can't tell specifically on this one. It would either
16 be the sale of something that is not coal or --- and I
17 don't know why our accounting system does this, but if
18 there were an inventory adjustment. So they found out
19 there were more coal there than they realized, it
20 shows up as a general revenue adjustment. When they
21 book the additional inventory.

22 Q. And Amanda would have been the person that
23 would be able to tell us where they came from, I take
24 it. Is that correct?

1 A. Yes.

2 Q. Okay.

3 As we go to cost of revenue, the employee
4 expenses are the employees that were working there at
5 the mine.

6 Is that correct?

7 A. Yes.

8 Q. Blasting expense, I take it somebody had to
9 do some blasting work at the mine during that 12 month
10 period.

11 A. Probably related to some reclamation work.
12 A lot of the time with reclamation they need
13 additional material to reclaim high walls. And it
14 will require a little bit of blasting.

15 Q. And then there's a contract labor item.
16 What is that for?

17 A. We were using a third party to provide the
18 laborer. Some of that relates to the fact that it was
19 a union job. And starting and stopping union jobs can
20 be somewhat problematic. And so, a third party was
21 providing the labor.

22 Q. And under legal settlements it says \$1.23
23 million. What is that? Is that the civil penalty in
24 this case?

1 A. That's the civil penalty. The accountants
2 recorded that.

3 Q. And the rest of these expenses other than
4 depreciation basically are all expenses for activity
5 on the mine site.

6 Is that correct?

7 A. Yes.

8 Q. Let's look at Exhibit Number 3 for just a
9 moment. This is the consolidated balance sheet for
10 the period ending December 31, 2017. In looking over
11 Exhibit Number 3, that \$18,000 receivable item still
12 appears to be there.

13 Is that correct?

14 A. Yes.

15 Q. And then under the --- there's no ---
16 there's a list for marketable securities just like in
17 the previous Exhibit 2 and that's zero.

18 Is that correct?

19 A. Correct. Yes.

20 Q. And then under inventory, it looks like you
21 must have sold all of the stockpile because it says
22 there's no further inventory.

23 Is that correct?

24 A. Yes.

1 Q. And again on the fixed assets, this is what
2 we discussed earlier, you're not sure where that came
3 from. Other than it's for equipment perhaps from other
4 sources other than Justice Energy.

5 A. Yes.

6 Q. Okay.

7 ATTORNEY CAREY: And you mentioned the
8 prep plant too.

9 BY ATTORNEY WESTFALL:

10 Q. And the prep plant, which is over in
11 Kentucky somewhere, I believe you said.

12 Right?

13 A. It's in Keystone.

14 Q. Keystone.

15 A. Yes.

16 Q. Okay.

17 And in terms of looking at this other items
18 on the liability stockholder equity, it pretty much is
19 similar to what we talked about in Exhibit Number 2.
20 The same basic sources.

21 Is that correct?

22 A. Yes.

23 Q. Looking at the second page of Exhibit Number
24 3. It looks like there's an item for bank fees of

1 \$732.38. Do you have any idea what that was for?

2 A. Not specifically.

3 Q. Okay.

4 And the fines and penalty, what was --- I
5 take it did MSHA cite you for something or ---?

6 A. That's what the category represents. Either
7 MSHA or DEP.

8 Q. Okay.

9 Let's take a look at Exhibit 4 for just a
10 moment. I received this yesterday.

11 A. Yes.

12 Q. And I kind of wanted to ask you a couple
13 general questions on ---.

14 ATTORNEY CAREY: Can you put the Bates
15 numbers on ---?

16 ATTORNEY WESTFALL: It's 179. It's the
17 property tax.

18 ATTORNEY CAREY: Okay. The return?

19 ATTORNEY WESTFALL: Yeah.

20 ---

21 (Whereupon, United States Exhibit 4,
22 Property Return for Justice/Bluestone,
23 was marked for identification.)

24 ---

1 BY ATTORNEY WESTFALL:

2 Q. Let me just ask you some questions here.
3 Just kind of going through this. Under machinery and
4 equipment, it looks like this return goes from --- I
5 don't know if it really technically goes from 1997
6 forward to 2016 for this first part of it.

7 But it looks like in 2011, there was \$5.9
8 million in equipment. And then in 2012, I'm assuming
9 that that's \$2.4 million. Was this part of the ---
10 the equipment that's listed here, was this part of the
11 --- did this equipment include the Caterpillar
12 equipment that was eventually returned to Caterpillar
13 Financial?

14 A. Some of it, yes.

15 Q. Okay.

16 And in 2016, it shows that there's machinery
17 and equipment of \$1.63 million. What I'm trying to
18 find out is why did that number decrease from 2011 to
19 2016 other than the Caterpillar situation?

20 A. In my understanding of how this form works
21 is you have to look at this columns cumulatively. And
22 so it's not necessarily a decrease. Those are
23 additions for that particular year. And then they,
24 you know, like for example if you look at the 2004,

1 which for us that would have just been a carryover of
2 what Mechel, the prior owner was doing. But, you
3 know, that's only getting valued at 20 percent because
4 it's so heavily depreciated.

5 Whereas the equipment that was added in
6 2016, they're valuing at 92 percent. So this is a
7 cumulative list of --- of everything that was at the
8 mine. But everything 2012 and forward would have just
9 been a carryover of what had been previously
10 submitted.

11 Q. And just so I make sure that I understand,
12 that the amount that's listed for 2016, is that actual
13 physical equipment owned by Justice Energy?

14 A. Yes. That was added in 2016 and it could
15 have been equipment that --- the way that our folks do
16 this and the person at the time, her name --- she no
17 longer works for the company either, but her name was
18 Jaime Fulcher. She was looking at what was actually
19 there at the mine site. And if it was not already
20 submitted in a prior year, she was adding it to the
21 return to make sure that it accurately reflected what
22 was there.

23 I think the problem she was having on this
24 particular return is that it was being submitted

1 jointly for Blue Stone Resources and Justice Energy
2 Company. And it had a lot of old information that was
3 previously submitted by Mechel OAO.

4 Q. And so really, some of this equipment that
5 we're talking about contained in this tax pay --- or
6 this return for 2017 personal property, you know,
7 excuse me, industrial property return for 2017, is
8 most likely equipment that's owned by Blue Stone
9 Resources.

10 A. Correct.

11 Q. Okay.

12 Let's take a look at page 184 or at least
13 it's page stamp is 184 on Exhibit Number 4 for just a
14 moment.

15 There's a listing of equipment and it looks
16 like over on the left hand --- on that particular page
17 says dispose. I take it, is this equipment that was
18 disposed of?

19 A. Yes.

20 Q. Okay.

21 And I'm going through this. So it looks
22 like on pages 184 and 185, that this is equipment that
23 somehow either Blue Stone or Justice Energy disposed
24 of.

1 Is that correct? If you can tell.

2 A. I can't tell for sure but I can tell you
3 what the intent here is because certain machines were
4 included in those prior years on the cover page.

5 Q. Uh-huh (yes).

6 A. Was to go through and try to clear up things
7 that were no longer there. Which was somewhat
8 difficult because many of these items had been
9 disposed of previously by Mechel when they owned it.

10 But it was an effort to try to get a, for
11 lack of a better description, a baseline since our
12 ownership in 2015. Because there were a lot of old
13 things that were still on the return that just weren't
14 there anymore.

15 Q. And so, when I look at pages 186 and 187 of
16 Exhibit Number 4, again this is the continuation.
17 This is still dealing with some of these issues in
18 terms of what equipment is still there and what's not
19 that.

20 Is that correct?

21 A. Yes.

22 Q. Okay.

23 If like I'm looking at the bottom of page
24 187 and I see a lot of Caterpillar equipment listed.

1 And I'm assuming that Caterpillar equipment is no
2 longer there because it was returned back to
3 Caterpillar.

4 Is that right?

5 A. Most of it was, yes.

6 Q. All right.

7 A. On that page 187, for example, the one
8 reason I hesitate to say that all of this was disposed
9 of is and now they're complete junk but those 793s
10 that are handwritten.

11 Q. Yes.

12 A. Some of those Caterpillar rock trucks that
13 are really nothing more than the frame are still on
14 the site up there.

15 Q. So they're ---?

16 A. And so I can't tell if she was intending to
17 dispose of them from a value standpoint because it was
18 no longer an operating piece of equipment. Because
19 it's truly just a frame but ---.

20 Q. Basically scrap.

21 A. Correct. That was my only hesitation in
22 saying that all of them were disposed of per se.
23 Because those 793s were not transferred to a third
24 party but they have become scrap.

1 Q. Okay.

2 Let's look at page 188 for a moment. This
3 is the industrial property return for 2018. And
4 again, looking at this, I see it's going back again
5 for prior years and so on. And it looks like there's
6 been some updating of the numbers. In that first
7 thing, first listing under machinery and equipment on
8 page 188. Because some of those numbers are much
9 greater than what they showed up on page 179. Do you
10 know why the difference is there?

11 A. I think this is a continuation of the effort
12 to get the baseline right. Because previously we had
13 been working with a lot of numbers provided by the
14 prior owner. And this is --- I'm trying to see who
15 worked on this one. This is Jaime Fulcher. I just
16 recall Jaime spent a tremendous amount of time working
17 with the counties, trying to get these number right.

18 Because she felt like a lot of the numbers
19 that had been submitted by Mechel were not accurate.
20 And so she was trying to get them right. It --- I
21 will tell you when I first saw that, it jumped out at
22 me because the old numbers in theory shouldn't change.

23 Because whatever it was for that year, you know,
24 that's what it was. But we were trying to get this

1 cleaned up so it was more accurate going forward.

2 Q. And again, as we discussed before, this
3 equipment we're talking about listed on the property
4 tax or excuse me industrial property tax return for
5 2018 that starts on page 188, is really equipment
6 largely owned by Blue Stone Resources.

7 A. Correct.

8 Q. Let's take a look at industrial property tax
9 return for 2019 that starts on page 192. Because when
10 I look at that, I see a lot of those areas we talk
11 about it forward had been large numbers on the
12 previous return for 2018 like in, like for the year
13 2013 on page 192 are now left blank.

14 But it looks like there was some property
15 listed here as being acquired in 2018. About \$2 ---
16 or if I read that correctly, about \$2.2 million. Do
17 you know what that equipment was?

18 A. Yes. If you look at page 196, those top
19 one, two --- four machines. Blue Stone Resources
20 acquired --- when the job restarted in 2018, Blue
21 Stone Resources acquired those machines to help with
22 the restart of the Justice Energy operation.

23 Q. And as I look at page 196, Blue Stone
24 Resources owns the equipment but shows that the

1 location for all of the equipment is at Justice
2 Energy.

3 Is that correct?

4 A. Yes.

5 Q. Okay.

6 ATTORNEY CAREY: Just for clarification,
7 please.

8 ATTORNEY WESTFALL: Sure.

9 ATTORNEY CAREY: Some of that equipment
10 is actually owned by Justice Energy though.

11 Correct?

12 ATTORNEY WESTFALL: At the bottom.

13 THE WITNESS: So if you look there's
14 really two different categories. There's a separation
15 after about the fourth of fifth line. All those
16 machines at the top were added in 2018. Which is the
17 2018 line item that you and I just discussed.
18 Everything below that are items that were at Justice
19 Energy when it was reacquired in 2015.

20 BY ATTORNEY WESTFALL:

21 Q. Okay.

22 Let me ask you this question and to kind of
23 clear this up. I look at page 196 on Exhibit Number
24 4. The top item on it has an acquisition cost of

1 \$2.247 million with an owner's value of \$2.022
2 million.

3 Is that correct?

4 A. Yes.

5 Q. And those particular items are owned by Blue
6 Stone Resources.

7 Is that right?

8 A. Correct.

9 Q. Then underneath that, I see a listing of
10 several items. Which it looks like the owner's value
11 is totaled to be \$2.5 million. Are those the ones
12 that are owned by Justice Energy?

13 A. Yes.

14 Q. And all of those items are owned by Justice
15 Energy?

16 A. I believe so. Yes.

17 Q. All right. Let's look at Exhibit 5. And
18 this is an equipment list. And it actually looks like
19 5 and 6. I don't know. When I got them, they were
20 two separate documents but then they run together
21 actually.

22 Let me ask you that question first. If you
23 look at Exhibits 5 and 6, is this kind of a running
24 list that runs together or are they actually separate

1 documents?

2

3

(Whereupon, United States Exhibit 5,
4 Equipment list as of 1/21/15, was marked
5 for identification.)

6

(Whereupon, United States Exhibit 6,
7 Depreciation lists 2014-2017, was marked
8 for identification.)

9

10 BY ATTORNEY WESTFALL:

11 A. They run together.

12 Q. Okay.

13 ATTORNEY CAREY: And can you give me the
14 Bates numbers for that?

15 ATTORNEY WESTFALL: Starts with 001.

16 ATTORNEY CAREY: Okay.

17 ATTORNEY WESTFALL: And it looks like it
18 goes through 178.

19 ATTORNEY CAREY: 178. Okay. And you
20 made all that five?

21 ATTORNEY WESTFALL: No. Five is 1
22 through 100. And then 101 through 178 is Exhibit
23 Number 6.

24 ATTORNEY CAREY: Okay. Thank you.

1 BY ATTORNEY WESTFALL:

2 Q. So just generally tell me what 5 and 6 are
3 please.

4 A. Okay. So 5, if you see on the top left hand
5 corner of page --- Bates stamp 001 equipment list as
6 of January 21st, 2015. This was a list generated from
7 Mechel. The transaction ultimately closed on February
8 12, 2015 when it was reacquired. And this was a list
9 they generated that was intended to represent all the
10 equipment that they valued at greater than \$450,000.
11 And that list goes over to Bates number 003.

12 Q. Okay.

13 A. And that's for all companies. Not just
14 Justice Energy. All of the Blue Stone companies.

15 Q. And then we start with 004. This is a
16 depreciation expense report.

17 Is that correct?

18 A. Correct.

19 Q. And how far does that carry over, to what
20 page?

21 A. I think it's 53. Yeah 53.

22 Yes, so this is the full depreciation report
23 as of 12/31/14.

24 Q. Okay. Let me stop you.

1 A. I'm sorry.

2 Q. Okay, pages 1 through 53 represents the list
3 of equipment over \$450,000. Basically at the time ---
4 almost at the time you were closing the deal to
5 reacquire the group.

6 Is that correct?

7 A. Only pages 1 through 3 for that- --

8 Q. I'm sorry.

9 A. --- for that description.

10 Q. Okay.

11 And then you have a depreciation list
12 dealing with that equipment going from 4 through 53.

13 A. Correct. That was the 12/31/15 year end
14 depreciation report for all of Blue Stone that Mechel
15 provided to us.

16 Q. Okay.

17 Now --- starting at page 54 which is part of
18 Exhibit Number 5, it still says depreciation expense
19 report.

20 A. Correct. And this is --- this ties back to
21 pages --- Bates stamped pages 1, 2, and 3. This is
22 the depreciation report as of 12/31. And pages 1, 2,
23 and 3, they were attempting to roll it forward to a
24 date closer to the closing date.

1 Q. Okay.

2 Let's take a look at page 56 for just a
3 moment.

4 A. Okay.

5 Q. This is again in Exhibit Number 5. There's
6 some equipment there listed for Justice --- as Justice
7 Energy being the owner. And it's equipment list as of
8 January 21, 2015. Is this equipment that was actually
9 owned by Justice Energy?

10 A. Yes.

11 Q. And where is that equipment now, if you
12 know?

13 A. Some of that Caterpillar equipment was the
14 equipment that was turned in. And I'll have to double
15 check but I think a couple of these items are still
16 there. They're on the most recent industrial property
17 tax return.

18 Q. Okay.

19 So like the Hitachi hydraulic excavator may
20 still be there?

21 A. The Hitachi excavator is not there. It ---.

22 Q. Where --- I'm sorry. Where is it now?

23 A. I believe it has been sold.

24 Q. Do you know when it was sold?

1 A. Not specifically.

2 Q. Was it sold after 2016? I mean, after
3 January 1 of 2016?

4 A. I don't know the date.

5 Q. Okay.

6 ATTORNEY CAREY: We can find that out
7 for you, Fred.

8 ATTORNEY WESTFALL: Yeah, I need to know
9 that.

10 BY ATTORNEY WESTFALL:

11 Q. Right. Starting with page 57. Looks like
12 another depreciation expense report as of December 31,
13 2014. And it looks like that carries through the end
14 of Exhibit 5, if I'm not mistaken. Can you tell me
15 what that is please?

16 A. It's the same report that started at Bates
17 number 004. Both of these were provided to us by
18 Mechel. I am not sure what the difference is. The
19 bottom line numbers are different. Just by looking at
20 the two, I couldn't --- eyeballing it, I couldn't find
21 the difference other than to say that the numbers were
22 different.

23 Q. Again, looking at Exhibit 5, starting with
24 page four.

1 A. Okay.

2 Q. On these depreciation expense forms not only
3 this one but the one we were just referencing that
4 started on page 57. Let's take a look at those for
5 just a moment. There's some --- if you look at where
6 it says location on these reports ---

7 A. Yes.

8 Q. --- and there's some like initials, like
9 BCC. Now BCC is Blue Stone Coal Group.

10 Is that correct?

11 A. Blue Stone Coal Corporation.

12 Q. Corporation. I'm sorry.

13 A. Yeah.

14 Q. And then there's some others as we go down
15 through here. There might be some other listing of
16 places so those initials are the listings there for
17 location will tell us the natural location of the
18 equipment.

19 Is that correct? At the time of the report
20 is prepared.

21 A. So the BCC would be intended --- yes.

22 There's some companies, like Blue Stone Coal
23 Corporation, at the time they were operating had
24 multiple sites. And so, they could have a separate

1 code for some of those different sites. Like Justice
2 Energy is just a single site though. So when you see
3 Justice Energy you know that that's only Justice
4 Energy.

5 I'm trying to find an example of that.

6 Q. No, let's take a look at page 42 of the
7 Exhibit Number 5 for just a moment. As I look here,
8 for example, it says location equal JHMI.

9 A. Yes.

10 Q. And what is this JHMI.

11 A. Justice Highwall Mining, Inc.

12 Q. So that would tell us, in that particular
13 category, would list like whatever number in it. And
14 they're all located at JHMI.

15 Is that correct?

16 A. Yes.

17 Q. And like on page 43, it says location equal
18 Justice Energy. And it looks like, I'm not sure how
19 many items. I didn't count them up. But that
20 continues over to, it looks like page 44 of Exhibit 5.
21 Those are particular pieces of equipment at that time
22 that were located at Justice Energy.

23 Is that correct?

24 A. Yes.

1 Q. Now let's take a look at page 54, Exhibit
2 Number 5 for just a moment. There's another listing
3 here. It's depreciation expense report. And again,
4 it's got location and it has the initials. That would
5 tell us basically the companies where these particular
6 items of equipment were located.

7 Is that correct?

8 A. Yes.

9 Q. Back on page 55, there's six items listed
10 for Justice Energy and I think as we already discussed
11 some of those Caterpillar equipment that eventually
12 was turned back over to Caterpillar.

13 A. Correct.

14 Q. So really, looking at Exhibits Number 5 and
15 Number 6, we talked about the depreciation expense
16 report but the kind of --- again, these locations are,
17 if you look here where it says like just on page,
18 excuse me, page 101 on Exhibit Number 6 on the first
19 page. It lists some equipment and has Justice Energy
20 for example. Those would be the pieces of equipment
21 associated with Justice Energy.

22 Is that correct?

23 A. Yes.

24 Q. And others may have different --- like

1 there's one here, it looks like --- I'm assuming is
2 Keystone Services or something, like on page 102. For
3 example would have equipment associated with that
4 particular site or location.

5 A. Yeah. Keystone Services is an old
6 preparation plant in Keystone, West Virginia. But
7 yes, that's correct.

8 Q. And all of these, maybe I should --- I don't
9 want to read to, do it too summarily, but all of these
10 locations listed in Exhibit Number 5 and Number 6 are
11 part of the overall companies that are owned by
12 Justice II and Justice III.

13 Is that correct?

14 A. Yes. So each one of these would be a
15 different company. And they would be owned by the
16 chain we discussed earlier where the corporate parent
17 ultimately would be Blue Stone Resources. And then
18 the individual shareholders would be JCJ II and JCJ
19 III.

20 Q. All right.

21 Is there some way through the accounting
22 system of these various groups, that we can determine
23 what equipment was disposed of after January 5, 2016?

24 A. I believe so, yes.

1 Q. Okay.

2 A. If I'm wrong about that, I'll let you know.
3 But I think there's a disposal report that can be ran.

4 Q. Okay.

5 ATTORNEY CAREY: So you want all the
6 disposal equipment after January 5, 2016?

7 ATTORNEY WESTFALL: Well starting with
8 January 5, 2016 really. From there going forward.

9 THE WITNESS: With respect to Justice
10 Energy?

11 ATTORNEY WESTFALL: Probably for all the
12 different companies. I mean, I don't know how detail
13 or how involved that would be but probably for all the
14 companies.

15 ATTORNEY CAREY: You're talking about
16 all the Blue Stone companies.

17 ATTORNEY WESTFALL: Yes.

18 ATTORNEY CAREY: Okay.

19 BY ATTORNEY WESTFALL:

20 Q. If an ultimate decision of some sort had to
21 be made about Justice Energy as far as its future or
22 some sort of business decision of where to go in terms
23 of what direction and a future, who would ultimately
24 have the overall authority to make that decision?

1 A. I'm just trying to think of what ---.

2 Q. Let me rephrase the question.

3 A. Yeah, sorry.

4 Q. That's a poorly worded question and I
5 apologize for that. Let me be straightforward.

6 A. Sure.

7 Q. Justice III and Justice III. If there's
8 going to be some decision about what's going to happen
9 with Justice Energy, would they be the ones that would
10 ultimately either approve or disapprove a decision of
11 what's going to happen with that particular company?
12 Since they're the owners through all the various
13 umbrellas. Or not the umbrellas, through the various
14 corporate structures and so on. Would they be the
15 ones that would have to make --- have the ultimate
16 authority to make a decision on the company?

17 A. And just so I understand the question, do
18 you mean if the company would wind down or something
19 like that?

20 Q. If the company was wind down, if it was a
21 major operational decision that had to be made about
22 the future of the company.

23 A. To my knowledge, any operational decisions
24 today would solely be made by James C. Justice, III.

1 Q. Okay.

2 A. The reason I ask for that distinction is I'm
3 sure James C. Justice, II if it were a winding down
4 type question as a shareholder would have some say.
5 But all operational big picture decisions would be
6 made by James C. Justice, III.

7 Q. And has that been the same since January of
8 2016?

9 A. '17.

10 Q. '17.

11 If I can have a couple minutes, I think I'm
12 about finished.

13 ATTORNEY CAREY: We may have one more
14 page for you. If it came in. That might help ---

15 ATTORNEY WESTFALL: Okay.

16 ATTORNEY CAREY: --- focus things for
17 you.

18 ---

19 (WHEREUPON, A PAUSE IN THE RECORD WAS HELD.)

20 ---

21 BY ATTORNEY WESTFALL:

22 Q. I'm going to show you what's been marked as
23 Exhibit 7 to assist the interview. Can you tell me
24 what that is please?

1 A. Yes. I had asked David Stoneburner who
2 oversees the equipment for our companies to do a
3 physical inspection and inventory of what is actually
4 at the Justice Energy Red Fox mine. And this is what
5 he provided me.

6 ---

7 (Whereupon, United States Exhibit 7,
8 Revised Property list as of March 2019,
9 was marked for identification.)

10 ---

11 BY ATTORNEY WESTFALL:

12 Q. Okay.

13 So this Exhibit 7 is a list of the equipment
14 that's actually located at the Red Fox mine.

15 Is that correct?

16 A. Correct.

17 Q. Who owns that equipment?

18 A. So we added a column to this exhibit and the
19 items in yellow identify equipment that's owned by
20 someone other than Justice Energy. And you'll see a
21 column that says owner, and most of it is Blue Stone
22 Resources. There is one item that's owned by Southern
23 Coal.

24 Q. So the items that are not highlighted in

1 yellow are actually owned by Justice Energy.

2 Is that correct?

3 A. Yes.

4 Q. And do you know if --- has the company
5 assessed any value to any of this equipment that's
6 actually owned by Justice Energy?

7 A. Not recently. Some of these and in fact,
8 most of those items appear on the June 2018 industrial
9 property tax return. And so there was a value
10 associated at that time. But nothing since then.

11 Q. I see on Exhibit Number 7, and I'll hand
12 this back to you but there's two items that are listed
13 as scrap. A Caterpillar 773 Lube Truck and an
14 International Lube Truck. Other than those two scrap
15 items, are the other items on Exhibit Number 7 owned
16 by Justice Energy, are they actually used in the day
17 to day operation of the mine?

18 A. No. And I'm not sure why he did that
19 distinction only for those two because I know that the
20 793s, the Caterpillar 793C Mining Trucks they at least
21 several of them are scrap as well.

22 Q. I think you mentioned earlier that they're
23 basically down to the frame.

24 A. Several of them are, yes.

1 Q. Now, we had an off the record conversation
2 concerning differences between Exhibit Number 1 and
3 the other exhibits that were produced. And there's
4 differences obviously between Exhibit Number 1 and the
5 other exhibits. And this is the opportunity for you
6 to explain why there's a difference. Can you tell me
7 why there's a difference between exhibit --- what's
8 listed on Exhibit 1 and these other exhibits?

9 A. Yes. When I was preparing Exhibit Number 1,
10 I was collecting the financial statement form Amanda
11 Boggs, and when I received those financial statements
12 I noticed the large equipment number that was on the
13 balance sheet. And undertook to take a review of the
14 depreciation schedule. And when I did that, it became
15 obviously to me that there was an error on the
16 depreciation schedule.

17 And that it included several items that were
18 not at Justice Energy or owned by Justice Energy. And
19 so at that point, I, for lack of a better
20 description, interviewed David Stoneburner and a
21 couple people that worked for him. One gentlemen's
22 name is Whitt Broce. To ask them to provide me
23 with the equipment that is actually owned by Justice
24 Energy.

1 And at that point, they advised me that
2 they believed all of that equipment was owned by
3 Blue Stone Resources that was at the Red Fox mine.
4 And so, I did a little bit further research to see
5 if Justice Energy had paid any property taxes or
6 anything like that. And I could not find that they
7 had.

8 So we submit --- we were up against
9 a deadline so we submitted the form which is
10 Exhibit 1. That following week, Mr. Stoneburner
11 approached me and said I had found that the
12 information I gave you last week was inaccurate.
13 And he provided me with the 2019 personal property
14 tax return. He actually had to reach out to McDowell
15 County to get a copy of that. We did not have it
16 in house.

17 And at that point, we immediately started
18 trying to put the pieces together. Going back to
19 2015 to figure out exactly what equipment originated
20 at Justice Energy. What was there today and piece
21 the two together.

22 Q. Looking at Exhibit 7 for just a moment, is
23 that the only --- is that a list of the only
24 equipment that remains owned by Justice Energy?

1 Or is there other potential equipment owned by
2 Justice Energy that's not on Exhibit Number 7?

3 A. This is the complete list.

4 Q. Okay.

5 And so, if we want to determine --- let
6 me ask the question this way, is it possible for
7 your company records to determine what equipment
8 existed as of January 5, 2016 owned by Justice Energy
9 and what's been disposed of between that date up to
10 the present day?

11 A. I can't say for sure but I think that is
12 possible. If I had to guess.

13 Q. All right.

14 ATTORNEY WESTFALL: That's all that I
15 have. Thank you very much.

16 ---

17 EXAMINATION

18 ---

19 BY ATTORNEY CAREY:

20 Q. Steve, just in term of Exhibit 1, you
21 can testify on that. At the time you submitted
22 did you believe at the time that the information
23 was true and accurate based on the inquiry that you
24 had done at that point?

1 A. Yes, I did.

2 Q. And it was subsequent to submitting
3 that you realized that based on your discussion with
4 Mr. who?

5 A. Stoneburner.

6 Q. That is may not be accurate.

7 Is that correct?

8 A. Yes.

9 Q. And at that time did you advise both John
10 and I that it needed to be, further inquiry need
11 to be made to make sure the information that was
12 being provided pursuant to this proceeding was
13 accurate?

14 A. Yes. As soon as I became aware of that.
15 I reached out to counsel to let them know.

16 Q. Okay.

17 ATTORNEY WESTFALL: And that inquiry
18 led to the generation of the Exhibits 2 through 7.

19 Is that correct?

20 THE WITNESS: That's correct. Yes,
21 sir.

22 ATTORNEY WESTFALL: That's all I've got.
23 Thank you. You want him to ---?

24 ATTORNEY CAREY: Read and sign it.

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* * * * *

DEPOSITION CONCLUDED AT 11:58 A.M.

* * * * *

1 STATE OF WEST VIRGINIA)

2 CERTIFICATE

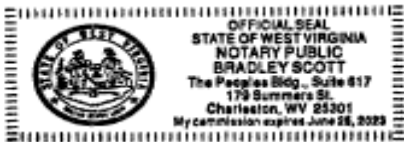
3 I, Bradley Scott, a Notary Public in and for
4 the State of West Virginia, do hereby certify:

5 That the witness whose testimony appears in the
6 foregoing deposition, was duly sworn by me on said date,
7 and that the transcribed deposition of said witness is a
8 true record of the testimony given by said witness;

9 That the proceeding is herein recorded fully
10 and accurately;

11 That I am neither attorney nor counsel for, nor
12 related to any of the parties to the action in which
13 these depositions were taken, and further that I am not
14 a relative of any attorney or counsel employed by the
15 parties hereto, or financially interested in this
16 action.

17 I certify that the attached transcript meets the
18 requirements set forth within article twenty-seven,
19 chapter forty-seven of the West Virginia Code.



Bradley Scott
Court Reporter

24