



IN THE CIRCUIT COURT OF OHIO COUNTY, WEST VIRGINIA

**IN RE: MINGO COUNTY COAL
SLURRY LITIGATION**

CIVIL ACTION NO. 10-C-5000

THIS DOCUMENT APPLIES TO:

Rawl Sales & Processing Co., et al. v. AIG Casualty Company, et al.
Case No. 06-C-520 MNG Insurance Coverage Action

JOINT MOTION TO EXTEND FACT DISCOVERY AND OTHER CASE DEADLINES

Third-Party Plaintiffs Rawl Sales & Processing Co. and Massey Energy Company (collectively "Massey") and the Third-Party Defendants submit this joint motion to extend the fact discovery deadline, and consequently all other deadlines, and in support state as follows:

1. On November 24, 2010, a Case Management Order was entered in this action that provided that all fact discovery shall be completed by June 30, 2011.
2. In its ruling on cross-motions to compel certain deposition discovery, on May 12, 2011, the Court ruled that the Rule 30(b)(7) depositions that were the subject of the motions to compel must be completed by the close of fact discovery on June 30, 2011. The Court's May 12, 2011 order was otherwise silent as to fact discovery. Massey and Third-Party Defendants (the "Parties") are in the process of attempting to comply with the Court's May 12, 2011 order regarding the Rule 30(b)(7) depositions that were the subjects of the cross motions to compel.
3. For the Court's information, the following depositions have been scheduled by the Parties in the coverage action:

| Date | Deponent | Location |
|-------------|---|-----------------|
| June 3 | David Few (Massey Fact Witness) | Richmond, VA |
| June 6 | Aon/Frank B. Hall and Aon/Alexander Howden Group (pursuant to | Chicago, IL |

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| | | |
|---------|---|----------------|
| | commission) | |
| June 7 | Phillip Nichols (Massey Fact Witness) | Richmond, VA |
| June 8 | Harold Miller and Patricia Harton (Massey Broker Witnesses) | Bluefield, WV |
| June 10 | Lexington 30(b)(7)- Claims Witness | New York, NY |
| June 13 | Wells Fargo Insurance Services/Atlanta Broking Services, Inc. (pursuant to commission) | Chicago, IL |
| June 14 | St. Paul Mercury and St. Paul Surplus 30(b)(7) Witness | Baltimore, MD |
| June 15 | Willis Limited (pursuant to commission) | New York, NY |
| | Massey 30(b)(7) Witness on Topic 2 of 7/16/08 Notice and Topic 1 of 4/21/11 Notice | Richmond, VA |
| June 16 | Phillip Monroe-Fact Witness and Massey 30(b)(7) –Topics 3 and 13 of 7/16/08 Notice | Charleston, WV |
| | Marsh & McLennan, Marsh & McLennan/Fred James, Marsh & McLennan/Johnson & Higgins of California | New York, NY |
| June 21 | Underwriters Safety & Claims (pursuant to commission) | Louisville, KY |
| June 22 | Old Republic 30(b)(7) – Claims Witness | Greensburg, PA |
| June 23 | Continental Ins. 30(b)(7) Witness | Chicago, IL |
| June 24 | Old Republic 30(b)(7) – Underwriting Witness | Greensburg, PA |
| | Massey 30(b)(7) – Topics 4-11 of 7/16/08 Notice | Charleston, WV |
| June 27 | OneBeacon 30(b)(7) Witness | Boston, MA |
| June 28 | OneBeacon 30(b)(7) Witness | Boston, MA |
| June 29 | Continental Ins. 30(b)(7) Witness | Chicago, IL |
| June 30 | Lexington 30(b)(7) Witness | New York, NY |

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| | | |
|--|---------------------------------------|--------------|
| | Baxter Phillips (Massey Fact Witness) | Richmond, VA |
| | First State 30(b)(7) Witness | Hartford, CT |

4. As the Court can see from the above schedule, the Parties are working diligently to accomplish as much fact discovery as possible within the June 30th deadline, including double- and triple-tracking depositions when necessary.

5. Additionally, Third Party Defendants have requested the depositions of the following Massey Fact Witnesses that have yet to be scheduled: Glenn Conner, Don Crum, Ben Hatfield, Eugene Kitts, Hiram Mahon, and Don Blankenship. Massey also has requested the depositions of the following 23 Third-Party Defendant fact witnesses that have not yet been scheduled: Jerry Alpine, John Beckett, Peter Bone, Jineki Butler-Clark, Thomas L. Carlson, Christopher S. Dardis, Mark Ellberg, Jeff Emory, Pat Espey, Richard Grey, Jr., Nancy Haglund, Lori Hatem, Cynthia Heideman, Bob Lloyd, Jim Ludwigsen, Andrew Maxwell, Dennis Monahan, Stephen Petersen, R. Pickett, Evelyn Riley, Armando Romeo, Leo Sullivan, and Sandy Waszo.

6. Other 30(b)(7) depositions of the Parties are in the process of being scheduled.

7. In late April/May 2011, depositions of the following 30(b)(7) Witness and Massey Fact Witness were scheduled but were taken off calendar and, therefore, now must be conducted during the month of June: John Poma and Phillip Monroe.

8. Furthermore, Massey, several Third Party Defendants, and several non-party insurance brokers are continuing to produce documents. Until these documents are produced, it is impossible to know whether new information or fact witnesses will be revealed, making it virtually impossible to complete any such fact discovery by the June 30th deadline.

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9. Most important, facts that may be relevant to the insurance coverage dispute are still being developed in the underlying claims, which will not go to trial until August 2011. If the June 30, 2011 fact discovery deadline were to remain in place, it is possible that the Parties to the insurance coverage action could be deprived of the ability to discover relevant facts. Therefore, the Parties submit that fact discovery in the insurance coverage action should be permitted to continue for a reasonable period after the completion of the trial of the underlying claims.

10. The Parties require additional time to complete all fact discovery. Pursuant to the May 12, 2011 Order, the Parties have met and conferred regarding their discovery disputes and have worked to schedule as many depositions and other fact discovery activities as possible to occur prior to the close of fact discovery on June 30, 2011. The Parties have found, however, that it is unrealistic, overly burdensome and potentially prejudicial to attempt to complete all fact discovery before June 30, 2011.

11. Extending the fact discovery deadline will not prejudice either side in the insurance coverage action. Prejudice could result to all Parties, however, if they are forced to complete all fact discovery by June 30, 2011. Given that the underlying claims have not concluded and, in fact, are still in discovery themselves, the Parties could suffer great prejudice by attempting to complete fact discovery of the insurance coverage claims at this time.

12. Due to the factors outlined above, the Parties believe it is necessary to extend the fact discovery cut-off. Further, given that all other deadlines in the current Case Management Order flow from the conclusion of fact discovery, the Parties believe it is necessary to extend the remaining deadlines as follows:

| | |
|--|------------------------------|
| Final Day To Serve Requests For Admissions | Monday, October 31, 2011 |
| Close of Fact Discovery | Wednesday, November 30, 2011 |

| | |
|--|---------------------------|
| Third-Party Plaintiffs' Expert Designations | Friday, December 23, 2011 |
| Third-Party Defendants' Expert Designations | Friday, January 27, 2012 |
| Third-Party Plaintiffs' Rebuttal Expert Designations | Friday, February 17, 2012 |
| Last Day for Expert Depositions | Friday, March 30, 2012 |
| Last Day for Filing Dispositive Motions | Monday, April 30, 2012 |
| Trial | Monday, June 18, 2012 |

WHEREFORE, the Parties respectfully request that the Court issue an order extending the case deadlines pursuant to the proposed case schedule. ¹

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¹ Prior to this filing, the Parties agreed that Massey would sign and file this joint motion on behalf of Massey and Third-Party Defendants.

Dated: June 1, 2011

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Denied Judge James P. Mazzone Jun 23, 2011

This document constitutes a ruling of the court and should be treated as such.

Court: WV Ohio County Circuit Court

File & Serve

Transaction ID: 37896817

Current Date: Jun 23, 2011

Case Number: 06-C-520 MNG Insurance Coverage Action

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Court Authorizer: James P Mazzone

/s/ Judge James P Mazzone