



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**

**ORDER REGARDING TELEPHONIC HEARING ON MOTION TO CONVENE
AN EXPEDITED SETTLEMENT HEARING BEFORE RESOLUTION JUDGES**

On October 7, 2011, the Court notified the parties there will be a telephonic hearing on Third-Party Plaintiffs Rawl Sales & Processing Co.'s and Massey Energy Company's "Motion to Convene an Expedited Settlement Hearing Before Resolution Judges" at 1:30 p.m. on October 20, 2011.

Having reviewed Third-Party Plaintiffs' motion, the Court has determined that the subject of the hearing is the parties' discussions during mediation and settlement negotiations. West Virginia Trial Court Rule 25.12 states in relevant part that, "Mediation shall be regarded as confidential settlement negotiations, subject to W.Va. R.Evid. 408. A mediator shall maintain and preserve the confidentiality of all mediation proceedings and records."

Correspondingly, Rule 408 of the West Virginia Rules of Evidence states in relevant part that:

Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible.

Consistent with West Virginia Trial Court Rule 25.12 and Rule 408 of the West Virginia Rules of Evidence, the Court entered orders on August 31, 2010, December 29, 2010, and June 30, 2011, requiring that mediation discussions, including any resolution or settlement of the Mingo County Coal Slurry Litigation shall remain confidential. See TID# 32968007 at paragraph 8, TID# 35103485 at paragraph 5, and TID# 38453691 at paragraph 5. As such, the Court hereby **ORDERS** that the October 20, 2011, telephonic hearing of Third-Party Plaintiffs Rawl Sales & Processing Co.'s and Massey Energy Company's "Motion to Convene an Expedited Settlement Hearing Before Resolution Judges" is a closed hearing. Only parties to the litigation and their counsel may participate in or listen to the telephonic hearing.

It is so **ORDERED**.

ENTER: October 13, 2011

/s/ Derek C. Swope
Lead Resolution Judge,
Mingo County Coal Slurry Litigation