

IN THE CIRCUIT COURT OF LOGAN COUNTY, WEST VIRGINIA

THE BRUCE McDONALD HOLDING  
COMPANY, et al,

Plaintiffs,

v.

ADDINGTON, INC., et al,

Defendants.

Civil Action No. 16-C-70

ANSWER

Defendants, Addington, Inc. ("Addington") and The Brink's Company

("Brink's"), by counsel, for their Answer to the Complaint filed against them by plaintiffs, The Bruce McDonald Holding Company, David B. McDonald Land Company, Oakley, LLC, S.E. McDonald, LLC, C.B. Morris, LLC, L.O.U., LLC, Glenn T. Yost, as attorney-in-fact for Ernest Phipps Credit Shelter Trust, and CDC Real Estate, LLC ("McDonald Companies" or "lessors"), state as follows:

**I. The Parties**

1. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 1 and, accordingly, deny the same.

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LOGAN COUNTY, WV

2. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 2 and, accordingly, deny the same.

3. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 3 and, accordingly, deny the same.

4. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 4 and, accordingly, deny the same.

5. The allegations in paragraph 5 are admitted.

6. The allegations in paragraph 6 are admitted.

7. The allegations in paragraph 7 are admitted.

8. The allegations in paragraph 8 are admitted.

## **II. Jurisdiction and Venue**

9. The allegations in paragraph 9 are admitted.

10. The allegations in paragraph 10 are admitted.

## **III. Background**

11. Responding to the allegations in paragraph 11, defendants admit that the McDonald Companies own certain coal lands in the Huff Creek area of Logan County, West Virginia. The remaining allegations in paragraph 11 are denied.

12. Responding to the allegations in paragraph 12, defendants admit the price of coal in 1978 can be determined from historical records. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 12 and, accordingly, deny the same.

13. Responding to the allegations in paragraph 13, defendants admit that certain subsidiaries of The Pittston Company ("Pittston") were engaged in sale of metallurgical coal and that they exported metallurgical coal to Japan and other countries. The remaining allegations in paragraph 13 are denied.

14. Responding to the allegations in paragraph 14, defendants admit that certain subsidiaries of Pittston were also engaged in the sale of steam coal and that they sold steam coal to utilities, including the Tennessee Valley Authority. The remaining allegations in paragraph 14 are denied.

15. Responding to the allegations in paragraph 15, defendants admit the parties met to discuss a prospective lease of coal. The remaining allegations of paragraph 15 are denied.

16. Responding to the allegations in paragraph 16, defendants admit that some of the McDonald Companies have entered into other leases with Elkay. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 16 and, accordingly, deny the same.

17. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 17 and, accordingly, deny the same.

18. Responding to the allegations in paragraph 18, defendants admit that Elkay Mining Company ("Elkay") and other subsidiaries of Pittston were experienced in the mining business. The remaining allegations in paragraph 18 are denied.

#### **IV. The Lease and the Guaranty**

19. The allegations in paragraph 19 are admitted.

20. Responding to the allegations in paragraph 20, defendants admit the parties entered into the Agreement of Lease ("Lease"), which document speaks for itself. Accordingly, to the extent that the allegations in paragraph 20 are inconsistent with the express provisions of the Lease, they are denied.

21. Responding to the allegations in paragraph 21, defendants admit that Pittston executed the Guaranty Agreement ("Guaranty"), which document speaks for itself. Accordingly, to the extent that the allegations in paragraph 21 are inconsistent with the express provisions of the Lease, they are denied.

22. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 22 and, accordingly, deny the same.

23. Subject to other provisions and the context of the Lease taken as a whole, defendants admit that the Lease contains the quoted provision in paragraph 23.

24. Subject to other provisions and the context of the Lease taken as a whole, defendants admit that the Lease contains the quoted provision in paragraph 24.

25. Subject to other provisions and the context of the Lease taken as a whole, defendants admit that the Lease contains the quoted provision in paragraph 25.

26. Subject to other provisions and the context of the Lease taken as a whole, defendants admit that the Lease contains the quoted provision in paragraph 26.

27. Subject to other provisions and the context of the Lease taken as a whole, defendants admit that the Lease contains the quoted provision in paragraph 27.

28. Responding to the allegations in paragraph 28, defendants state that the Lease speaks for itself. Accordingly, to the extent that the allegations in paragraph 28 are inconsistent with the express provisions in the Lease, they are denied.

29. Responding to the allegations in paragraph 29, defendants state that the Lease speaks for itself. Accordingly, to the extent that the allegations in paragraph 29 are inconsistent with the express provisions in the Lease, they are denied.

30. Responding to the allegations in paragraph 30, defendants state that the Lease speaks for itself. Accordingly, to the extent that the allegations in paragraph 30 are inconsistent with the express provisions in the Lease, they are denied.

31. Subject to other provisions and the context of the Lease taken as a whole and the prior rulings of the Court in the earlier litigation between the parties, defendants admit that the Lease contains the quoted provision in paragraph 31.

32. Subject to other provisions and the context of the Lease taken as a whole, defendants admit that the Lease contains the quoted provisions in paragraph 32.

33. Responding to the allegations in paragraph 33, defendants state that the Lease speaks for itself. Accordingly, defendants deny plaintiffs' description in paragraph 33.

34. Responding to the allegations in paragraph 34, defendants state that the Lease speaks for itself. Accordingly, defendants deny plaintiffs' description in paragraph 34.

35. Responding to the allegations in paragraph 35, defendants state that the Lease speaks for itself. Accordingly, defendants deny plaintiffs' description in paragraph 35.

36. Responding to the allegations in paragraph 36, defendants state that the Lease speaks for itself. Accordingly, defendants deny plaintiffs' description in paragraph 36.

37. Responding to the allegations in paragraph 37, defendants state that the Lease speaks for itself. Accordingly, defendants deny plaintiffs' description in paragraph 37.

38. Responding to the allegations in paragraph 38, defendants state that the Lease speaks for itself. Accordingly, defendants deny plaintiffs' description in paragraph 38.

39. The allegations in paragraph 39 are admitted.

40. The allegations in paragraph 40 are admitted.

**V. Performance Under the Lease and Prior Litigation**

41. Responding to the allegations in paragraph 41, defendants admit that Elkay engaged in certain exploration of the property. The remaining allegations in paragraph 41 are denied.

42. Responding to the allegations in paragraph 42, defendants admit that there have been various reserve reports and mine plans over the years, which reports and plans speak for themselves. Accordingly, the remaining allegations in paragraph 42 are denied.

43. Responding to the allegations in paragraph 43, defendants admit that the reserve reports contain various estimates of the coal on the property, which reports speak for themselves. Accordingly, the remaining allegations in paragraph 43 are denied.

44. Responding to the allegations in paragraph 44, defendants admit that the reserve reports assume various mines on the property, which reports speak for themselves. Accordingly, the remaining allegations in paragraph 44 are denied.

45. Responding to the allegations in paragraph 45, defendants admit that Elkay has obtained permits from the state at various times. The remaining allegations in paragraph 45 are denied.

46. The allegations in paragraph 46 are admitted.

47. Responding to the allegations in paragraph 47, defendants admit that Elkay and Pittston sent a notice of termination to the lessors on the grounds set forth in

the notice. Defendants state that the notice speaks for itself. Accordingly, the remaining allegations in paragraph 47 are denied.

48. Responding to the allegations in paragraph 48, defendants admit that lessors disputed the notice and brought an action in the Circuit Court of Boone County, which action was later transferred to the Circuit Court of Logan County. The remaining allegations in paragraph 48 are denied.

49. Responding to the allegations in paragraph 49, defendants admit that there were three prior civil actions between the parties, 84-C-256, 86-C-195, and 86-C-599, which were ultimately consolidated ("Prior Litigation"). Defendants further admit that the Court in the Prior Litigation proceeded to determine whether Elkay and Pittston could terminate the Lease on the grounds stated in their notice and to decide other issues. The remaining allegations in paragraph 49 are denied.

50. Responding to the allegations in paragraph 50, defendants admit that the Court in the Prior Litigation issued an Opinion dated August 26, 1987, which opinion speaks for itself. Accordingly, plaintiffs' description of the Opinion is denied.

51. Responding to the allegations in paragraph 51, defendants admit that in its Opinion dated August 26, 1987, the Court ruled that plaintiffs were entitled to damages. The Court stated that the amount of damages would be determined at a later date. The remaining allegations in paragraph 51 are denied.

52. Responding to the allegations in paragraph 52, defendants admit that the Opinion dated August 26, 1987, contains, among other things, the quoted language,



but they deny that this language became the ultimate ruling of the Court or in any way amended or altered the express terms of the Lease. The remaining allegations in paragraph 52 are denied.

53. Responding to the allegations in paragraph 53, defendants admit that the Court held a hearing to determine damages in the Prior Litigation and that it entered a Judgment Order dated November 1, 1988, which order speaks for itself. The remaining allegations in paragraph 53 are denied.

54. Responding to the allegations in paragraph 54, defendants admit that the Court fixed damages as stated in its Judgment Order, which order speaks for itself. The remaining allegations in paragraph 54 are denied.

55. The allegations in paragraph 55 are denied.

56. The allegations in paragraph 56 are admitted.

57. Responding to the allegations in paragraph 57, defendants admit that the Supreme Court of Appeals in West Virginia refused the petition for appeal filed by Pittston and Elkay. The remaining allegations in paragraph 57 are denied.

58. Responding to the allegations in paragraph 58, defendants admit that lessors released the lessee from any liability arising from the Prior Litigation. Defendants state that the release speaks for itself. Accordingly, to the extent that the allegations in paragraph 58 are inconsistent with the express provisions of the release, they are denied.

59. The allegations in paragraph 59 are denied.

60. Responding to the allegations in paragraph 60, defendants admit that lessee under the Lease has prepared or considered various mine plans. The remaining allegations in paragraph 60 are denied.

61. Responding to the allegations in paragraph 61, defendants admit that lessee under the Lease has prepared or considered various mine plans. The remaining allegations in paragraph 61 are denied.

62. Responding to the allegations in paragraph 62, defendants admit that lessee under the Lease has prepared or considered various mine plans. The remaining allegations in paragraph 62 are denied.

63. Responding to the allegations in paragraph 63, defendants admit that the surface mining laws and regulations have adversely affected the merchantability and mineability of the coal. The remaining allegations in paragraph 63 are denied.

64. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 64 and, accordingly, deny the same.

65. Responding to the allegations in paragraph 65, defendants admit that various mine plans relating to the property subject to the Lease have assumed the use of certain preparation plants. The remaining allegations in paragraph 65 are denied.

66. Responding to the allegations in paragraph 66, defendants admit that mine plans relating to the property subject to the Lease have assumed various mines. The remaining allegations in paragraph 66 are denied.

67. Responding to the allegations in paragraph 67, defendants admit that mine plans relating to the property subject to the Lease have assumed various mining times. The remaining allegations in paragraph 67 are denied.

68. The allegations in paragraph 68 are admitted.

69. Responding to the allegations in paragraph 69, defendants admit that the referenced Peng report, which report speaks for itself, contains various estimates. The remaining allegations in paragraph 69 are denied.

70. Responding to the allegations in paragraph 70, defendants admit that the referenced Peng report, which report speaks for itself, contains various descriptions as stated therein. The remaining allegations in paragraph 70 are denied.

71. Responding to the allegations in paragraph 71, defendants admit that the referenced Peng report, which report speaks for itself, identified various coal seams. The remaining allegations in paragraph 71 are denied.

72. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 72 and, accordingly, deny the same.

73. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 73 and, accordingly, deny the same.

74. Responding to the allegations in paragraph 74, defendants admit that Pittston and Elkay did not mine any coal from the property. The remaining allegations in paragraph 74 are denied.

75. Responding to the allegations in paragraph 75, defendants admit that lessee under the Lease has paid all amounts due under the Lease and the Court's rulings in the Prior Litigation. The remaining allegations in paragraph 75 are denied.

76. Responding to the allegations in paragraph 76, defendants admit that Addington has made payments at the rate of \$2.00 per ton under the Lease and the Court's rulings in the Prior Litigation. The remaining allegations in paragraph 76 are denied.

#### **VI. Developments at Pittston and in the Coal Industry in Central Appalachia from 1991 to the Present**

77. Responding to the allegations in paragraph 77, defendants admit that reserve reports make statements as stated in the reports, which speak for themselves. Accordingly, the remaining allegations in paragraph 77 are denied.

78. Responding to the allegations in paragraph 78, defendants state that the referenced mine plan speaks for itself. Accordingly, to the extent that the allegations in paragraph 78 are inconsistent with the plan, they are denied.

79. Responding to the allegations in paragraph 79, defendants admit that a subsidiary of Pittston developed and later closed the Heartland mine. The remaining allegations in paragraph 79 are denied.

80. Responding to the allegations in paragraph 80, defendants admit that Elkay and other subsidiaries of Pittston have developed various mines at various times. The remaining allegations in paragraph 80 are denied.

81. Responding to the allegations in paragraph 81, defendants admit that Elkay and other subsidiaries of Pittston have developed various mines at various times. The remaining allegations in paragraph 81 are denied.

82. Responding to the allegations in paragraph 82, defendants admit that Elkay and other subsidiaries of Pittston have developed various mines at various times. The remaining allegations in paragraph 82 are denied.

83. Responding to the allegations in paragraph 83, defendants admit that Elkay has terminated various permits at various times. The remaining allegations in paragraph 83 are denied.

84. Responding to the allegations in paragraph 84, defendants admit that subsidiaries of Pittston have obtained various permits at various times. The remaining allegations in paragraph 84 are denied.

85. Responding to the allegations in paragraph 85, defendants admit that Elkay has sold various assets to Massey Energy or its subsidiaries. The remaining allegations in paragraph 85 are denied.

86. Responding to the allegations in paragraph 86, defendants admit that subsidiaries of Pittston have obtained various permits at various times. The remaining allegations in paragraph 86 are denied.

87. Responding to the allegations in paragraph 87, defendants admit that Addington and other subsidiaries of Pittston have leased various property at various times, which leases speak for themselves. The remaining allegations in paragraph 87 are denied.

88. Responding to the allegations in paragraph 88, defendants state that the referenced leases speak for themselves. Accordingly, to the extent that the allegations in paragraph 88 are inconsistent with the leases, they are denied.

89. Responding to the allegations in paragraph 89, defendants admit that subsidiaries of Pittston have obtained various permits at various times. The remaining allegations in paragraph 89 are denied.

90. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 90 and, accordingly, deny the same.

91. The allegations in paragraph 91 are admitted.

92. Responding to the allegations in paragraph 92, defendants admit that Pittston and its subsidiaries sold various assets. The remaining allegations in paragraph 92 are denied.

93. Responding to the allegations in paragraph 93, defendants admit that the Lease was assigned to Addington, that Addington has retained the Lease, and that Pittston retained the Guaranty Agreement. The remaining allegations in paragraph 93 are denied.

94. The allegations in paragraph 94 are admitted.

95. Responding to the allegations in paragraph 95, defendants admit that coal markets have fluctuated over the years. The remaining allegations in paragraph 95 are denied.

96. Responding to the allegations in paragraph 96, defendants admit that mines have opened and mines have closed depending upon conditions. The remaining allegations in paragraph 96 are denied.

97. Responding to the allegations in paragraph 97, defendants admit Hampden Coal Company has opened and operated certain mines. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 97 and, accordingly, deny the same.

98. Responding to the allegations in paragraph 98, defendants admit that the Toney Fork mine was opened and operated. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 98 and, accordingly, deny the same.

99. Responding to the allegations in paragraph 99, defendants admit that Massey Energy or its subsidiaries developed certain assets. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 99 and, accordingly, deny the same.

100. Responding to the allegations in paragraph 100, defendants admit that the price of metallurgical coal has fluctuated. Defendants are without knowledge or

information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 100 and, accordingly, deny the same.

101. Responding to the allegations in paragraph 101, defendants admit that the price of steam coal has fluctuated. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 101 and, accordingly, deny the same.

102. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 102 and, accordingly, deny the same.

103. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 103 and, accordingly, deny the same.

104. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 104 and, accordingly, deny the same.

105. Responding to the allegations in paragraph 105, defendants admit that certain operators have developed their reserves at certain times. The remaining allegations in paragraph 105 are denied.

106. Responding to the allegations in paragraph 106, defendants admit that they have not mined any coal from the property. Some of the property, however, has



been surrendered or assigned. Therefore, the remaining allegations in paragraph 106 are denied.

**VII. Plaintiffs' Allegations that Brink's and Addington Thwart Efforts of the McDonald Companies to Have the McDonald Reserves Mined**

107. The allegations in paragraph 107 are admitted.

108. Responding to the allegations in paragraph 108, defendants admit that lessors refused to consent of assignment of the Lease to Massey Energy or its subsidiary. Defendants state the lessors' refusal to consent was unreasonable. The remaining allegations in paragraph 108 are denied.

109. Responding to the allegations in paragraph 109, defendants admit that lessors refused to consent to a sublease of the Lease to Massey Energy or its subsidiary. Defendants state the lessors' refusal to consent was unreasonable. The remaining allegations in paragraph 109 are denied.

110. Responding to the allegations in paragraph 110, defendants admit lessee entered into a contract mining agreement with Massey Energy or its subsidiary. The remaining allegations in paragraph 110 are denied.

111. Responding to the allegations in paragraph 111, defendants admit that they provided a redacted copy of the contract mining agreement to lessors. Defendants state that all the redactions were appropriate. The remaining allegations in paragraph 111 are denied.

112. Responding to the allegations in paragraph 112, defendants admit that they answered a letter from lessors about the contract mining agreement. Defendants state that their answer to the letter speaks for itself. Accordingly, defendants deny the remaining allegations in paragraph 112 to the extent inconsistent with the express contents of that letter.

113. Responding to the allegations in paragraph 113, defendants admit that they have not provided lessors with a specific mine plan from Massey Energy or its affiliates. The remaining allegations in paragraph 113 are denied.

114. Responding to the allegations in paragraph 114, defendants admit that Massey Energy reimbursed Addington for certain payments to lessors for certain years. The remaining allegations in paragraph 114 are denied.

115. Responding to the allegations in paragraph 115, defendants admit that Massey Energy and its affiliates have not mined the property. The remaining allegations in paragraph 115 are denied.

116. The allegations in paragraph 116 are admitted.

117. Responding to the allegations in paragraph 117, defendants admit that they presented and the parties negotiated a possible agreement for mining by Ramaco or its subsidiary. The remaining allegations in paragraph 117 are denied.

118. Responding to the allegations in paragraph 118, defendants admit that the parties discussed recoupment and other terms for a possible agreement with Ramaco. The remaining allegations in paragraph 118 are denied.

119. Responding to the allegations in paragraph 119, defendants admit that an agreement with Ramaco is not complete. Defendants state that the terms and conditions proposed by lessors are not reasonable. The remaining allegations in paragraph 119 are denied.

120. The allegations in paragraph 120 are admitted.

121. Responding to the allegations in paragraph 121, defendants admit that an agreement with Blackhawk Mining or its subsidiary has not been completed. Defendants stated that the terms and conditions proposed by lessors are not reasonable.

122. The allegations in paragraph 122 are denied.

123. The allegations in paragraph 123 are denied.

**COUNT I – Claim for Declaratory Judgment Regarding  
Alleged Duty to Diligently Mine**

124. Responding to the allegations in paragraph 124, defendants adopt and incorporate by reference their responses in paragraphs 1-123 above.

125. Responding to the allegations in paragraph 125, defendants admit that plaintiffs are seeking certain declaratory relief but deny that they are entitled to any such relief. The remaining allegations in paragraph 125 are denied.

126. The allegations in paragraph 126 are denied.

127. The allegations in paragraph 127 are denied.

128. The allegations in paragraph 128 are denied.

**COUNT II – Claim for Breach of the Lease: Alleged Duty to Diligently Mine**

129. Responding to the allegations in paragraph 129, defendants adopt and incorporate by reference their responses in paragraphs 1-128 above.

130. Responding to the allegations in paragraph 130, defendants admit that the lessee has certain duties as stated in the Lease, which speaks for itself. The remaining allegations in paragraph 130 are denied.

131. The allegations in paragraph 131 are denied.

132. The allegations in paragraph 132 are denied.

133. The allegations in paragraph 133 are denied.

**COUNT III – Claim for Declaratory Judgment Regarding  
Alleged Deficiency Payment**

134. Responding to the allegations in paragraph 134, defendants adopt and incorporate by reference their responses in paragraphs 1-133 above.

135. Responding to the allegations in paragraph 135, defendants admit that plaintiffs seek certain declaratory relief but deny that plaintiffs are entitled to any such relief. The remaining allegations in paragraph 135 are denied.

136. The allegations in paragraph 136 are denied.

137. The allegations in paragraph 137 are denied.

138. Responding to the allegations in paragraph 138, defendants admit that lessee is paying the minimum production payment at a rate of \$2.00 per ton under the

Lease and rulings of the Court in the Prior Litigation. The remaining allegations in paragraph 138 are denied.

139. The allegations in paragraph 139 are denied.

**COUNT IV – Alleged Breach of the Lease for Minimum Annual  
Royalty Production Payment**

140. Responding to the allegations in paragraph 140, defendants adopt and incorporate by reference their responses in paragraphs 1-139 above.

141. Responding to the allegations in paragraph 141, defendants admit that the Lease contains a provision about minimum payments. This provision and the rulings of the Court in the Prior Litigation speak for themselves. Accordingly, defendants deny the remaining allegations in paragraph 141.

142. The allegations in paragraph 142 are denied.

143. Responding to the allegations in paragraph 143, defendants admit that they have made the minimum production payments at the rate of \$2.00 per ton under the Lease and rulings of the Court in the Prior Litigation. The remaining allegations in paragraph 143 are denied.

144. The allegations in paragraph 144 are denied.

145. Defendants deny that plaintiffs are entitled to any judgment or other relief.

146. All allegations not expressly admitted are denied.

**FIRST DEFENSE**

147. The Complaint fails to state a claim upon which relief can be granted.

**SECOND DEFENSE**

148. This action is barred by res judicata and collateral estoppel.

**THIRD DEFENSE**

149. This action is barred by judicial estoppel.

**FOURTH DEFENSE**

150. This action is barred by the statute of limitations.

**FIFTH DEFENSE**

151. This action is barred by the doctrine of laches.

**SIXTH DEFENSE**

152. This action is barred by the doctrine of waiver.

**SEVENTH DEFENSE**

153. This action is barred by the doctrine of estoppel.

**EIGHTH DEFENSE**

154. This action is barred by plaintiffs' failure to give notice of breach or notice to develop.

**NINTH DEFENSE**

155. This action is barred by payment and acceptance of all amounts due under the Lease.

**TENTH DEFENSE**

156. The obligations under the Lease are governed by the course of performance and dealings of the parties.

**ELEVENTH DEFENSE**

157. Plaintiffs' claims are barred or diminished by their refusal to permit development of the property by others.

**TWELFTH DEFENSE**

158. The action is barred by plaintiffs' breach of their duties under the Lease.

**THIRTEENTH DEFENSE**

159. This action is barred by plaintiffs' breach of their duties of good faith and by the doctrine of unclean hands.

**FOURTEENTH DEFENSE**

160. Plaintiffs' claims for damages are barred or diminished by their failure to mitigate.

**FIFTEENTH DEFENSE**

161. Defendants are entitled to a credit or set off for payments already made under the Lease.

**SIXTEENTH DEFENSE**

162. Defendants are entitled to a credit or set off for the annual minimum production tons under the Lease.

**SEVENTEENTH DEFENSE**

163. Plaintiffs' claims are barred to the extent that the coal is not merchantable or mineable.

**EIGHTEENTH DEFENSE**

164. Plaintiffs' claims are barred to the extent that laws or regulations restrict or limit mining or other operations on the property.

**NINETEENTH DEFENSE**

165. Defendants are released and discharged from any liability for property or coal assigned or surrendered.

**TWENTIETH DEFENSE**

166. Plaintiffs' claims for damages are uncertain and speculative.

**TWENTY-FIRST DEFENSE**

167. Brink's relies upon all defenses available to it as a surety or guarantor, including, but not limited to, acceptance of performance by the principal, failure to give notice of a breach or a claim, and other impairment of status as a surety or guarantor.

**TWENTY-SECOND DEFENSE**

168. To the extent that this action is not barred by res judicata and collateral estoppel, defendants reserve and rely upon all defenses raised in the Prior Litigation.



WHEREFORE, this action should be dismissed and the defendants awarded their costs.

ADDINGTON, INC.  
THE BRINK'S COMPANY

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IN THE CIRCUIT COURT OF LOGAN COUNTY, WEST VIRGINIA

THE BRUCE McDONALD HOLDING )  
COMPANY, et al, )

Plaintiffs, )

v. )

ADDINGTON, INC., et al, )

Defendants. )

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CERTIFICATE OF SERVICE

I hereby certify that on this 15<sup>th</sup> day of April, 2016, a true copy of the Answer has been mailed first class mail and emailed to

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