IN THE CIRCUIT COURT OF LOGAN COUNTY, WEST VIRGINIA

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,

Plaintiffs,

v.

ADDINGTON, INC., and
THE BRINK'S COMPANY,

Defendants.

Civil Action No. 16-C-70

(JURY TRIAL DEMANDED)

COMPLAINT

Come now, 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, Plaintiffs (collectively "McDonald Heirs"), by counsel Bailey & Glasser, LLP, and for their Complaint against Addington, Inc. ("Addington") and The Brink's Company ("Brink's"), state the following:

I. The Parties

1. Plaintiff, The Bruce McDonald Holding Company, is a West Virginia corporation with its principal place of business in West Virginia.

2. Plaintiff, David B. McDonald Land Company, is a West Virginia corporation with its principal place of business in West Virginia.

3. Plaintiffs Oakley, LLC; S. E. McDonald, LLC; C. B. Morris, LLC; L.O.U., LLC; and CDC Real Estate, LLC are West Virginia limited liability companies with members throughout the United States, including members domiciled in Virginia.

4. Plaintiff, Glenn T. Yost, as attorney-in-fact for Ernest Phipps Credit Shelter Trust, is a citizen of the State of West Virginia.

5. Defendant, Addington, Inc., is a Kentucky corporation with its principal place of business in Virginia, and it is ultimately owned by Defendant Brink's.

6. Defendant Brink's is a Virginia corporation with its principal place of business in Virginia, and it is publicly traded on the New York Stock Exchange under the symbol "BCO."

7. Brink's was formerly known as The Pittston Company.

8. The corporate entity now known as Brink's and formerly known as The Pittston Company (referred to in this Complaint as either "Pittston" or "Brink's") has existed continuously from 1978 through the present.

II. Jurisdiction and Venue

9. This Court has jurisdiction to hear this action under W. Va. Code § 51-2-2, which grants this court original and general jurisdiction over "all matters at law where the amount in controversy, excluding interest, exceeds two thousand five hundred dollars." The amount in controversy in this action exceeds the jurisdictional minimum.

10. Venue is proper in this Court, since this matter involves a lease of mineral located within Logan County, and, more specifically, since the Parties agreed in the Addendum to Lease made September 1, 1998, that "any legal and/or equitable action to be brought thereon, or by reason thereof, shall be brought in the Circuit Court of Logan County, West Virginia, and not elsewhere."

III. Background

11. The McDonald Heirs own valuable steam and metallurgical coal reserves in the Huff Creek area of Logan County, West Virginia.

12. In 1978, the price of coal, when adjusted for inflation, was at near-record highs.

13. By 1978, Pittston had built one of the country's largest metallurgical coal export businesses, having secured coal supply relationships with steel mills in emerging economies, especially in Japan.

14. Pittston had also earned contracts with electric utilities, who needed low-sulfur coal to comply with the new requirements of the Clean Air Act, including a ten-year contract to supply the Tennessee Valley Authority's coal plants, beginning in 1978.

15. That same year, in 1978, capitalizing on its expanding customer base and a record coal market, Pittston and its subsidiary, Elkay Mining Company ("Elkay"), sought out the McDonald Heirs to obtain the rights to mine their valuable low-sulfur steam and metallurgical coal.

16. Prior to 1978, certain of the McDonald Heirs had entered into other coal leases with Elkay, and Elkay had developed mines and paid royalties under those other leases.

17. Based on their past experience with Elkay and based upon Pittston's leadership position within the industry, the McDonald Heirs had the reasonable belief that Pittston and Elkay would mine and sell their coal and pay them royalties.

18. Pittston and Elkay had the mining expertise, infrastructure, and customer base, and the McDonald Heirs had the high-grade coal to make an agreement between the parties a lucrative one for both sides.

IV. The Lease and the Guaranty

19. On June 19, 1978, Elkay executed an Agreement of Lease with the McDonald Heirs (or their predecessors in interest) (the "Lease"), granting Elkay specified rights to coal seams underlying more than 3,000 acres of property in the Huff Creek area of Logan County. The leased premises under the Lease are referred to herein as "the McDonald Reserves."

20. The Lease has a primary term of 40 years, from 1978 through 2018, and it is currently a valid and subsisting agreement, with the McDonald Heirs named herein as Plaintiffs as the current Lessors under the Lease.

21. On June 22, 1978, Pittston executed a Guaranty Agreement, making itself primarily liable for Elkay's performance of the Lease.

22. The Guaranty Agreement was and is an integral part of the arrangement between the parties, and the McDonald Heirs would not have executed the Lease without the Guaranty Agreement.

23. The Lease, on its first page, recites that

> it is the mutual intent of all parties hereto that the Lessee shall properly prospect and engineer such property, and that the Lessee herein shall systematically mine such property by multi-level deep, strip, and auger mining in such a manner as to ensure that all the merchantable and mineable coal in all of the seams hereby leased as provided in Article X of this Lease, is mined and that all such coal so mined will be prepared, marketed, and sold by such means and methods as will ensure the highest available sales prices therefor.

24. In Article III of the Lease, Elkay warranted (and Pittston guaranteed) that "it will conduct sufficient coal prospecting and preliminary engineering to enable Lessee to proficiently plan multi-level deep, strip and auger mining operations upon the demised premises in such manner as to mine and remove all the merchantable and mineable coal hereby leased."

25. In Article X of the Lease, Elkay warranted (and Pittston guaranteed) that "Elkay will diligently prosecute its operations on the premises hereby leased so that all the merchantable and mineable coal herein provided to be mined shall be mined and royalties therefor paid to McDonalds."

26. In Article X of the Lease, Elkay warranted (and Pittston guaranteed) that "it will carry on its operations in a careful, skillful and workmanlike manner, according to approved and suitable methods of modern mining . . . and in such matter as to mine all the merchantable and mineable coal and use due regard for the future value of the premises."

27. In Article X of the Lease, Elkay warranted (and Pittston guaranteed) that Lessee "shall mine all merchantable and mineable coal herein provided to be mined as the same is encountered and shall not select the better grade and leave the poorer, or mine that which is more accessible and more profitable and leave that which is more expensive and more difficult to mine."

28. In Article XIII of the Lease, Elkay warranted (and Pittston guaranteed) that Elkay would meet certain minimum annual production levels during certain lease years.

29. For example, for the lease years since 2006, Addington (following an assignment from Elkay to Addington as set forth in Paragraph 39 below), has been required to meet a minimum annual production of 250,000 tons of clean coal produced and sold from the McDonald Reserves.

30. In Article XIII of the Lease, Elkay warranted (and Pittston guaranteed) that it would produce at least 250,000 tons of coal annually from the McDonald Reserves "until all the merchantable and minable coal herein contemplated to be mined shall have been mined and

removed from the demised premises," and until it has paid "to Lessors all royalties thereon as herein provided."

31. In the event that the minimum annual production is not met in a lease year, then Article XIII of the Lease requires that Lessee must pay the McDonald Heirs

> royalties upon the balance of the minimum annual production which Lessee failed to mine during such year, which royalties shall be based upon the average price at which the same quality of coal was sold by Lessee to consumers by arm's length transactions from the same preparation plant from which Lessors' said coal, hereby leased, was sold, which average price shall be obtained by the use of the monthly sales average for such quality of coal sold from said preparation plant during the last (3) months of the lease year during which such deficiency in production occurred.

32. In Article VIII of the Lease, Elkay warranted (and Pittston guaranteed) to pay the following royalty rates:

a. "a percentage tonnage royalty of ten percent (10%) of the average monthly selling price f.o.b. the mines of each and every ton of 2,000 pounds of coal mined from the demised premises by the deep mine method, or $2.00 per ton of 2,000 pounds, whichever is greater";

b. "for coal mined by the strip mine method, a percentage tonnage royalty of twelve and one-half percent (12.5%) of the average monthly selling price f.o.b. the mines of each and every ton of 2,000 pounds of coal mined from the demised premises by such method, or $2.50 per ton of 2,000 pounds, whichever is greater"; and

c. "for coal mined by the auger mine method, a percentage tonnage royalty of twenty percent (20%) of the average monthly selling price f.o.b. the mines of each and every ton of 2,000 pounds of coal mined from the demised premises by such method, or $4.00 per ton of 2,000 pounds, whichever is greater[.]"

33. The Lease contains an express promise that the Lessee will diligently mine the McDonald Reserves.

34. The Lease contains an express promise that the Lessee will mine the McDonald Reserves in a skillful and workmanlike manner.

35. The Lease contains an express promise that the Lessee will mine and remove all the merchantable and mineable coal from the McDonald Reserves.

36. The Lease contains an express promise that the Lessee will prepare, sell, and market the coal produced from the McDonald Reserves at the highest possible prices.

37. The Lease contains an express promise that the Lessee will produce and sell certain minimum annual production during specified lease years.

38. The Lease contains an express promise that if Lessee fails to produce and sell the required minimum annual production during a certain lease year, then it will pay to the McDonald Heirs royalties on the deficiency (hereinafter called a "Deficiency Payment"), and the royalty rate for the Deficiency Payment is to be determined by the sales price of coal of a similar quality; provided, however, that payment of a Deficiency Payment does not discharge the Lessee's express duties to diligently mine the premises and sell the coal at the highest possible prices.

39. In September 1998, Elkay assigned the Lease to an affiliate, Addington, Inc. ("Addington"), also a wholly-owned subsidiary of Pittston.

40. Also in September 1998, Pittston reaffirmed its Guaranty Agreement with the McDonald Heirs, guaranteeing Addington's performance under the Lease as if Addington had been the original Lessee.

V. Performance Under the Lease and Prior Litigation

41. Between signing the Lease in 1978 and the end of 1980, Pittston and Elkay engaged in pre-mining exploration of the McDonald Reserves.

42. Based on that exploration, Pittston and Elkay, in conjunction with Gates Engineering, prepared a geologic analysis of the coal reserves, a Production Requirements and Contract Mine Proposal, and a Five Year Plan in anticipation of mining the McDonald Reserves.

43. In these documents described in Paragraph 42, Pittston and Elkay estimated that over 30 million tons of recoverable coal exist within McDonald Reserves.

44. In these documents described in Paragraph 42, Pittston and Elkay proposed at least seven (7) mines be installed to recover the 30 million tons of coal within the McDonald Reserves.

45. In 1981, Elkay was issued two permits from the West Virginia Division of Reclamation to engage in coal mining on the McDonald Reserves, Permit D-11-81, which authorized the construction and operation of an underground coal mine in the McDonald Reserves, and Permit O-7-81, which authorized the construction and operation of certain surface facilities and access roads adjacent to the underground coal mine.

46. From 1981 through 1984, Elkay did not mine any coal from the McDonald Reserves.

47. In 1984, Pittston and Elkay sent notice to the McDonald Heirs that, in Pittston's and Elkay's view, the Lease was subject to termination because deteriorating market conditions for coal had rendered the coal no longer merchantable and mineable.

48. The McDonald Heirs disputed that the Lease could be terminated on such grounds and brought legal action to protect their rights against Pittston and Elkay in Boone County Circuit Court, and that court later transferred the action to this Court.

57. In or around January 1991, the West Virginia Supreme Court of Appeals refused the petition for appeal filed by Pittston and Elkay.

58. On January 25, 1991, the McDonald Heirs signed a release acknowledging payment by Pittston and Elkay in satisfaction of the Judgment Order.

59. From 1984 through 1991, Pittston and Elkay made no efforts to mine the McDonald Reserves.

60. In 1991, following this Court's finding that the Lease remained in full force and effect, Pittston and Elkay began preparing mine plans for the McDonald Reserves.

61. Pittston and Elkay prepared a General Mining Plan for McDonald Land Company dated April 16, 1991 ("Elkay Mine Plan").

62. In the Elkay Mine Plan, Pittston and Elkay determined that over 15.8 million tons of recoverable clean coal could be mined from the McDonald Reserves using the underground mining method.

63. In the Elkay Mine Plan, Pittston and Elkay represented to the McDonald Heirs that "the enactment of stringent environmental laws has made contour surface mining virtually impossible on steep slopes such as those on the Huff Creek properties." Thus, the Elkay Mine Plan contains no projected production from the surface or auger mining methods.

64. Despite the statement in the Elkay Mine Plan regarding environmental laws preventing surface mining, between 1991 and the present, 61 surface mining permits were issued in Logan County, alone, many for contour and auger mining. Hundreds more surface mining permits were issued in adjacent counties.

49. This Court consolidated three civil actions between the McDonald Heirs and Pittston and Elkay, numbered 84-C-256, 86-C-195, and 86-C-599, into one proceeding to determine, among other things, whether Pittston and Elkay could terminate the Lease.

50. This Court, in an Opinion signed August 26, 1987 ("Opinion"), found in favor of the McDonald Heirs and rejected the attempts of Pittston and Elkay to terminate the Lease, making the express finding of fact that Pittston and Elkay "assumed the risk of the market" in entering into the Lease.

51. This Court further found in the Opinion that Pittston and Elkay owed the McDonald Heirs past Deficiency Payments for the lease years ending in 1984 through 1987.

52. This Court further held in the Opinion that the amount of the Deficiency Payment under Article XIII is "to be based upon sale prices for other comparable coals sold by the Lessee at the royalty rates provided in Article VIII of said Lease, being ten percent (10%) of the average monthly sales price f.o.b. the mines, for each ton of two thousand (2,000) pounds of coal, or Two Dollars ($2.00) per ton, whichever is greater[.]"

53. The Court held an evidentiary hearing to determine the sales price for other comparable coals, and, in a Judgment Order entered on November 1, 1988 ("Judgment Order"), the Court found that neither party had presented evidence sufficient to vary from the $2.00 per ton floor imposed on the royalty set by Article VIII of the Lease.

54. Accordingly, in the Judgment Order, this Court fixed damages for past lease years ending in 1984, 1985, 1986, and 1987.

55. The Court said nothing about future lease years in the Opinion or Judgment Order.

56. Pittston and Elkay appealed this Court's Opinion and Judgment Order to the West Virginia Supreme Court of Appeals.

65. In the Elkay Mine Plan, Pittston and Elkay proposed to wash and ship Plaintiffs' coal from Elkay's Rum Creek Preparation Plant, which, according to the Elkay Mine Plan, had more than enough capacity to handle coal from the McDonald Reserves.

66. In the Elkay Mine Plan, Pittston and Elkay determined that roughly 20 separate underground mines could be installed to extract coal from the McDonald Reserves, with some mines being proposed that would mine adverse property together with the McDonald Reserves.

67. In the Elkay Mine Plan, by their own projections, Pittston and Elkay believed mining would occur for no less than 8 years in just one of the 20 proposed mines, alone, and a fully developed multi-seam complex as envisioned by the Lease and by the Elkay Mine Plan would support mining for well over 15 years.

68. Pittston and Elkay also commissioned Dr. Syd Peng, Ph. D. and Department Chair at the West Virginia University College of Engineering and Mineral Resources, to prepare a Mine Design for the Huff Creek Properties, and he did so on October 18, 1991 ("Syd Peng Report").

69. The Syd Peng Report estimates that over 30 million tons of recoverable raw coal could be mined from the McDonald Reserves.

70. The Syd Peng Plan states that "all coal seams on the [McDonald] Properties are flat and free of geological anomalies such as folds and faults."

71. Twelve or more coal seams are identified as potential candidates for mining in the Elkay Mine Plan and Syd Peng Report.

72. The McDonald Heirs retained L.A. Gates Company to review the Elkay Mine Plan, and L. A. Gates Company generated its Reserve Estimate and Mining Plan Review of the Huff Creek Properties on December 1991, as revised in May 1992 ("Gates Report").

73. The Gates Report concludes that there are 21.3 million tons of recoverable clean coal within the McDonald Reserves.

74. Despite the engineering and mine design work commissioned by the parties in 1991, Pittston and Elkay did not mine, and have not mined, as of today, any coal from the McDonald Reserves.

75. Each lease year since at least 2006, Elkay's assignee, Addington, Inc., has paid, or caused to be paid, $500,000 as a Deficiency Payment under Article XIII of the Lease.

76. Addington has made its $500,000 annual Deficiency Payment using a royalty rate based on the $2.00 per ton floor in Article VIII of the Lease, rather than upon sale prices for other comparable coals.

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

77. In the 1991 Elkay Mine Plan, Pittston and Elkay told the McDonald Heirs that Pittston considered the McDonald Reserves for development on a yearly basis, based on market conditions and production from its other mines, compared to the expected coal quality and production costs, driven in part by geologic conditions, of a proposed new mine.

78. In the 1991 Elkay Mine Plan, Pittston and Elkay state, "[N]o specific date for the beginning of production can be assigned at this time."

79. In 1991, the same year of the Elkay Mine Plan, rather than developing the McDonald Reserves under the Lease, Pittston and/or a subsidiary developed the Heartland Complex in Lincoln County, West Virginia at a cost of around $27 million dollars. In March 1994, Pittston reported the Heartland Complex was experiencing coal quality issues, and in June 1994, Pittston prematurely closed the Heartland complex due to poor geologic conditions.

80. In 1992, rather than developing the McDonald Reserves, Pittston and/or a subsidiary developed the Pinson Ridge No. 1 mine in Pike County, KY.

81. In 1993, rather than developing the McDonald Reserves, Pittston developed the Tower Mountain mine in Logan County. It sold the Tower Mountain mine and related assets to an affiliate of A. T. Massey Coal Company ("Massey") five years later, in 1998, for $18 million, representing a loss of $2.2 million on the assets.

82. In 1994, rather than developing the McDonald Reserves, Pittston paid $157 million to acquire five mining complexes in West Virginia, Ohio, and Kentucky from Addington Resources, Inc.

83. In 1995, Pittston and Elkay began taking efforts to terminate permits D-11-81 and O-7-81, the Division of Reclamation permits that allowed coal mining on certain parts of the McDonald Reserves.

84. During the same year in which it is taking actions to terminate mining permits on the McDonald Reserves, in 1995, Pittston subsidiary Buffalo Mining Company sought and was issued a permit for the Alma No. 1 Mine in the Buffalo Creek watershed, near the McDonald Reserves and in the Alma seam, which was proposed to be mined in the Elkay Mine Plan.

85. In 1998, Pittston and Elkay sold major assets they held in Logan County, including the Rum Creek Preparation Plant at which they had proposed to wash and ship coal from the McDonald Reserves, to a subsidiary of Massey.

86. Also in 1998, Pittston and Buffalo Mining Company continued pursuing permits in the Buffalo Creek area of Logan County, and they were issued permits to begin building the Toney Fork Surface Mine.

87. In 1998, despite having the McDonald Reserves leased, Addington and its subsidiary, Huff Creek Energy Company, entered into new long-term leases with a subsidiary of Pardee Resources Company and with Baisden-Vaughn, Inc.

88. The Pardee and Baisden-Vaughn leases grant certain coal mining rights to Addington and Huff Creek Energy Company in some of the same seams as the McDonald Reserves.

89. Rather than developing the McDonald Reserves, in February 1999, Pittston, Addington, and Huff Creek Energy Company sought permits to mine the newly-leased Pardee and Baisden-Vaughn Reserves, and the portal into those reserves is located roughly ½ mile from the McDonald Reserves.

90. In 1999, Massey began seeking permits to add and expand the former Pittston assets, including the Rum Creek Preparation Plant, into its Logan County Resource Group.

91. In December 1999, Pittston retained John T. Boyd Company as technical advisor and Rothschild Group as financial advisor to assist in coal asset disposition.

92. Pittston eventually sold many of its coal mining assets in a piecemeal fashion, with Appalachian Fuels, LLC, or its affiliates buying most of Pittston's West Virginia assets in 2003.

93. However, Addington (who took assignment of the Lease in September 1998), retained the Lease with the McDonald Heirs at issue in this case, and Pittston retained the Guaranty Agreement.

94. In 2003, Pittston changed its name to The Brink's Company.

95. During the late 2000s, the world market for metallurgical coal, fueled by demand in China and India and supply constraints in Australia, experienced rapidly increasing prices.

96. The surge in prices caused development of new coal mines during this time period throughout Central Appalachia, including in Logan County.

97. Hampden Coal Company, to the southwest of the McDonald Reserves, opened new mines in Logan County and Mingo Counties, in coal reserves of similar quality to the McDonald Reserves.

98. Former executives of Pittston opened the Toney Fork Complex, built from former Pittston assets, in Logan County, in coal reserves of similar quality to the McDonald Reserves.

99. Massey developed former Pittston assets, including the Tower Mountain complex and Rum Creek Preparation Plant, along with some other properties, into a key shipping point to metallurgical coal customers in Brazil, Egypt, China, Japan, Korea, and India.

100. From 2006 through 2011, the Australian benchmark price for high-volatile metallurgical coal rose, reaching a height of $330 per metric ton, f.o.b. port.

101. The increase in metallurgical coal prices also drove up the price for Central Appalachian 12,500 BTU steam coal, which, between 2006 and 2015 peaked around $150 per ton, f.o.b. river docks.

102. In 2010, the Toney Fork Complex, developed by former Pittston executives out of former Pittston assets, was sold to Cliffs Natural Resources for roughly $757,000,000.

103. In 2011, Hampden Coal's assets, a substantial portion of which were developed in Logan and Mingo counties in coal reserves similar to the McDonald Reserves, were sold to James River Coal Company for approximately $475,000,000.

104. Also in 2011, Alpha Natural Resources acquired Massey (including the Logan County Resource Group formed from former Pittston assets) for over $7,000,000,000.

105. Reasonably prudent coal operators developed their reserves, especially their metallurgical coal reserves, to take advantage of these record coal markets.

106. As of today, the Defendants have not mined any coal from the McDonald Reserves.

VII. Brink's and Addington Thwart Efforts of the McDonald Heirs to have the McDonald Reserves Mined

107. In August 2008, Pittston, now known as Brink's, and Addington, requested that the McDonald Heirs consent to an assignment of the Lease to Massey.

108. In response to the request, the McDonald Heirs formulated a proposal to accomplish the assignment of the Lease to Massey, but in or around October 2008, Brink's and Addington rejected the proposal, stating, "Your proposal is unacceptable and is hereby rejected."

109. Later in October 2008, Brink's and Addington rejected a similar proposal from the McDonald Heirs to facilitate a sublease of the Lease to Massey.

110. Sometime in 2008 or 2009, Brink's and/or Addington, secretly and without informing the McDonald Heirs beforehand, entered into a Contract Mining Agreement with Massey to allow it to "contract mine" the McDonald Reserves.

111. Brink's and Addington refused to provide an un-redacted copy of the Contract Mining Agreement to the McDonald Heirs, saying certain terms were "proprietary."

112. In response to a request from the McDonald Heirs regarding their intentions with respect to the Contract Mining Agreement with Massey, Brink's and Addington informed the McDonald Heirs that Massey was preparing a comprehensive mine plan for the McDonald Reserves, but that they could not provide substantive details of the Massey mine plan until it was completed.

113. To date, Brink's and Addington have not provided the McDonald Heirs with a copy of the purported comprehensive mine plan for the McDonald Reserves prepared by Massey.

114. For at least two lease years, a subsidiary of Massey made the annual rent and Deficiency Payments on behalf of Addington to the McDonald Heirs.

115. Despite all of the efforts of the McDonald Heirs vis-à-vis Massey and despite the Contract Mining Agreement, Massey did not mine any coal from the McDonald Reserves.

116. In 2015, another potential operator, a subsidiary of RAMACO, LLC ("RAMACO") became interested in mining on the McDonald Reserves.

117. For around nine (9) months, RAMACO and the McDonald Heirs negotiated acceptable terms to which the McDonald Heirs would consent to a sublease from Addington to RAMACO.

118. The terms of the consent to sublease made important concessions to Addington and RAMACO, granting them the right to recoup Deficiency Payments from future production royalties, a provision not included in the Lease.

119. The McDonald Heirs presented the agreed-upon terms to Brink's and Addington, and in or around September 2015, they rejected the proposed sublease, stating that the terms of the sublease "were not acceptable[.]"

120. In or around October 2015, yet another operator, an affiliate of Blackhawk Mining, LLC ("Blackhawk") sought to mine certain portions of the McDonald Reserves.

121. The McDonald Heirs were willing to consent to a sublease from Addington to Blackhawk for relevant portions of the McDonald Reserves and to even allow Brink's and Addington to credit any royalties paid by Blackhawk against their Deficiency Payment obligation, but, again, Brink's and Addington rejected this arrangement.

122. Brink's and Addington have not only failed to take even the first steps to mine the McDonald Reserves, but they have also prevented mining on the McDonald Reserves by refusing to assign or sublease the Lease to other entities that anticipated mining the property.

123. Brink's and Addington's lack of diligence and reasonable prudence has squandered the opportunity for the coal from the McDonald Reserves to be sold at the highest possible prices as required by the Lease.

COUNT I – Declaratory Judgment Regarding Duty to Diligently Mine

124. Plaintiffs incorporate the allegations in Paragraphs 1 – 123 as if fully set forth here.

125. This Count seeks a declaratory judgment pursuant to W. Va. Code § 55-13-1, *et seq.*, for the purpose of determining a question of actual controversy between the parties as more fully appears below.

126. Plaintiffs, as lessors are "person(s) interested" in the Lease under W. Va. Code § 55-13-2.

127. There is now existing between the parties to this action an actual, justiciable controversy in respect to which Plaintiffs are entitled to have a declaration of their rights, as well as further appropriate relief, because of the facts, conditions, and circumstances set forth above, showing that Brink's and Addington refuse to act in accordance with their duties under the Lease.

128. Plaintiffs therefore request that this Court enter a judgment declaring that the Lease imposes on Defendants a duty to diligently prosecute mining operations on the McDonald Reserves; to mine, prepare, market, and sell all the merchantable and mineable coal from the McDonald Reserves by such means and methods as to ensure the highest available sales prices therefor; and to pay royalties to Plaintiffs on such coal at such prices.

COUNT II – Breach of the Lease: Duty to Diligently Mine

129. Plaintiffs incorporate the allegations in Paragraphs 1 – 128 as if fully set forth here.

130. Brink's and Addington owed a duty to the Plaintiffs under the Lease to diligently prosecute mining operations on the McDonald reserves and to mine, prepare, market, and sell all the merchantable and mineable coal from the McDonald Reserves by such means and methods as to ensure the highest available sales prices and pay royalties to Plaintiffs on such coal at such prices.

131. Brink's and Addington breached their duties to Plaintiffs under the Lease by having failed to even begin mining the McDonald Reserves, and even according to the Elkay Mine Plan, Brink's and Addington, if they began mining today, could not mine and remove all the merchantable and mineable coal in the McDonald Reserves prior to the ultimate expiration of the Lease in 2032.

132. As a result of Defendants' breach, Plaintiffs have missed out on royalties on substantially more than 20 million tons of coal which could have earned royalties as high as $27.50 per ton.

133. As a result of the foregoing, Plaintiffs have been damaged, and hereby request judgment, in an amount to be proved at trial.

COUNT III – Declaratory Judgment Regarding Deficiency Payment

134. Plaintiffs incorporate the allegations in Paragraphs 1 – 133 as if fully set forth here.

135. This Count seeks a declaratory judgment pursuant to W. Va. Code § 55-13-1, *et seq.*, for the purpose of determining a question of actual controversy between the parties as more fully appears below.

136. Plaintiffs, as lessors are "person(s) interested" in the Lease under W. Va. Code § 55-13-2.

137. There is now existing between the parties to this action an actual, justiciable controversy in respect to which Plaintiffs are entitled to have a declaration of their rights, as well as further appropriate relief, because of the facts, conditions, and circumstances set forth above, showing that Brink's and Addington continue to underpay the amount required as a Deficiency Payment.

138. Rather than paying the Deficiency Payment at a royalty rate determined by the sales price of coal of a similar quality, Defendants continue to calculate their Deficiency Payment using the lesser rate of $2.00 per ton.

139. Plaintiffs therefore request that this Court enter a judgment declaring that the Lease requires Defendants to pay the Deficiency Payment at a royalty rate determined by the sales price of coal of a similar quality and not the $2.00 per ton amount.

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

140. Plaintiffs incorporate the allegations in Paragraphs 1 – 139 as if fully set forth here.

141. If during a lease year, Brink's and Addington fail to mine the minimum annual production required in the Lease, then the Lease requires Brink's and Addington to pay a Deficiency Payment to Plaintiffs.

142. The royalty rate for the Deficiency Payment is to be determined by the sales price of coal of a similar quality.

143. For each Deficiency Payment under the Lease made by Defendants since 2006, Defendants have paid at a $2.00 per ton royalty rate rather than a rate determined by the sales

price of coal of a similar quality as required by the Lease, and such royalty rate could be as high as $27.50 per ton during certain lease years.

144. As a result of the foregoing, Plaintiffs have been damaged, and hereby request judgment, in an amount to be proved at trial.

WHEREFORE, based upon all of the foregoing, Plaintiffs respectfully demand judgment against the Defendants declaring their rights under the Lease as set forth above and for an award of damages in an amount to be proved at trial as set forth above, including pre- and post-judgment interest and taxable court costs.

PLAINTIFFS DEMAND A TRIAL BY JURY.

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,

By Counsel

Brian A. Glasser (WVSB # 6597)
Isaac R. Forman (WVSB # 11668)
Bailey & Glasser LLP
209 Capitol Street
Charleston, West Virginia 25301
(304) 345-6555 telephone
(304) 324-1110 facsimile

Nicholas S. Johnson (WVSB # 10272)
Bailey & Glasser LLP
1054 31st St, NW
Suite 230
Washington, DC 20007
(202) 463-2101