

In the Circuit Court of Wyoming County, West Virginia

RICKY M VARNEY,
Plaintiff,

v.

Case No. CC-55-2018-C-41
Judge Micheal M. Cochrane

JUSTICE HIGHWALL MINING, INC.,
DYNAMIC ENERGY, INC,
Defendants

**ORDER DENYING DEFENDANTS' RENEWED MOTION FOR JUDGMENT AS A
MATTER OF LAW, OR IN THE ALTERNATIVE, MOTION FOR A NEW TRIAL, AND
MOTION TO ALTER OR AMEND JUDGMENT ORDER**

The Court held a hearing in this matter via Microsoft on July 20, 2022. The Plaintiff appeared through counsel, Samuel Petsonk and Bren Pomponio. The Defendants, Justice Highwall Mining Inc., Dynamic Energy, Inc., and Bluestone Industries, Inc. appeared through counsel, Ronald H. Hatfield Jr. At said hearing, the Court heard argument on the Defendants' Motion to Alter or Amend Judgment Order and the Defendants' Renewed Motion for Judgment as a Matter of Law, or In the Alternative, for a New Trial.

Regarding the Defendants' Motion to Alter or Amend Judgment Order, the Defendants are asking the Court to amend or alter the amount of attorney fees awarded by the Court and the pre-judgment interest amount awarded by the Court. The Court painstakingly assessed reasonable attorney fees in this matter. The Court finds no merit to the Defendants' argument that the Court improperly instructed the jury regarding awarding of reasonable attorney fees. The Court awarded prejudgment interest as required in West Virginia Code § 56-6-31(b)(1). Accordingly, the Court **ORDERS** that the Defendants' Motion to Alter or Amend Judgment Order is **DENIED**.

Regarding the Defendants' Renewed Motion for Judgment as a Matter of Law, Defendants first asked for a judgment as a matter of law at the close of the evidence and argued that under based upon the principles set forth in *Thomas Memorial Hospital Assoc. v. Nutter* 795 S.E. 2d 530, the Defendants argued that there was insufficient evidence to establish liability against the Defendants in this matter. The Defendants argument for the Renewed Motion for Judgment as a Matter of Law focuses on the

retaliatory nature of the Plaintiff's discharge. The Court found evidence to support the jury's conclusion that the Plaintiff suffered an unlawful retaliatory discharge in contravention of substantial public policy. The Plaintiff presented evidence of more than one incident between the Plaintiff and his superior involving faulty equipment. The Defendant failed to prove to the Court that there is no legally sufficient evidentiary basis for a reasonable jury to have to found in favor of the Plaintiff. Accordingly, the Court **ORDERS** that the Defendants Renewed Motion for Judgment as a Matter of Law is **DENIED**.

Regarding the Defendants Motion for a New Trial, the Defendants argued that the verdict was against the clear weight of the evidence, the Defendants were prejudiced by references regarding specific e-mail communication(s), and the jury was not properly instructed regarding attorney fees. The Court has already reviewed and addressed the totality of the evidence in the Defendants Renewed Motion for Judgment as a Matter of Law. The Court has already addressed the issue of Jury Instruction No.8 regarding attorney fees. The Defendants argue that they were prejudiced by the Plaintiffs reference to some e-mail communication(s) involving an individual named Leslie Wells. The Court ruled that the e-mail communication(s) were hearsay. The Court has included the portion of the Court transcript involving the question by the jury attached herein. The question did not reference any names or ask for any e-mail communication(s). The Court finds no prejudicial error in reference to the specific e-mail communication(s). Therefore, the Court **ORDERS** that the Defendants Motion for a New Trial is **DENIED**.

/s/ Micheal M. Cochrane

Circuit Court Judge

27th Judicial Circuit

Note: The electronic signature on this order can be verified using the reference code that appears in the upper-left corner of the first page. Visit www.courtswv.gov/e-file/ for more details.