

IN THE CIRCUIT COURT OF RALEIGH COUNTY, WEST VIRGINIA

**ALEX ENERGY, INC., d/b/a EDWIGHT
MINING COMPANY, a West Virginia
corporation, INDEPENDENCE COAL
COMPANY, INC., a West Virginia corporation,
and MARFORK COAL COMPANY, INC., a
West Virginia corporation,**

Plaintiffs,

v.

**CIVIL ACTION NO. 09-C-187-B
CIVIL ACTION NO. 09-C-188-B
CIVIL ACTION NO. 09-C-189-B**

**ANTRIM LAURA CASKEY, GLEN COLLINS,
JAMES GERARD MCGUINNESS, RORY MCILMOIL,
MICHAEL LEE ROSELLE and CHAD STEVENS,**

Defendants.

and

**GOALS COAL COMPANY, a West Virginia corporation,
and ALEX ENERGY, INC., d/b/a EDWIGHT MINING
COMPANY, a West Virginia corporation,**

Plaintiffs,

v.

**CIVIL ACTION NO. 09-C-209-B
CIVIL ACTION NO. 09-C-210-B**

**JOSEPH ANDREW GORMAN, CASSANDRA JO RICE,
ANDREW R. MUNN, NICOLE RUTH MOTSON and
MATTHEW SOLOMON LOUIS-ROSENBERG,**

Defendants.

**ORDER FINDING *ALEX ENERGY*
RESPONDENTS IN CONTEMPT OF COURT**

On May 1, 2009, Alex Energy Plaintiffs, Alex Energy, Inc., d/b/a Edwight Mining Company ("Alex Energy"), Independence Coal Company, Inc. ("Independence"), and Marfork Coal Company, Inc. ("Marfork") (collectively referred to as "Alex Energy Plaintiffs"), and Alex

Energy Defendant/Respondent Antrim Laura Caskey and Respondents Jordan Maurice Freeman, Madeline Jean Gardner, Charles Livingston Suggs, IV, and William B. Wickham (hereinafter collectively referred to as "Alex Energy Respondents") came before this Court and presented arguments and evidence in hearing for the Alex Energy Respondents to show cause why they have not violated the Temporary Restraining Order entered by this Court in Alex Energy, Inc., et al. v. Caskey, et al., Nos. 09-C-187-B, 09-C-188-B and 09-C-189-B, February 27, 2009 (Cir. Ct. Raleigh Co. W. Va.) ("Alex Energy TRO"). Plaintiffs moved the Court to find the Alex Energy Respondents in contempt of court for violating the terms and conditions of the Alex Energy TRO for trespassing on the Edwight Surface Mine property on April 16, 2009.

The Court, having heard the testimony and evidence presented by the parties, and having considered the facts and matters shown thereby, does find, and hereby adjudicates, that the Alex Energy Respondents have violated this Court's Order and are in contempt of Court.

Upon the evidence submitted, the Court makes the following findings:

1. On February 27, 2009, upon the Alex Energy Plaintiffs' Verified Complaint and accompanying Affidavit, the Court issued a TRO against the above-named Alex Energy Defendants (Alex Energy Defendants Caskey, Collins, McGuiness, McIlmoil, Roselle and Stevens).¹

2. By Order dated March 9, 2009 and at a hearing in which all Alex Energy Defendants present consented, this Court continued the hearing on Plaintiffs' Motion for a Preliminary Injunction until March 24, 2009, and extended the February 27, 2009 TRO until 11:59 p.m. on March 24, 2009.

¹ See Order Granting Temporary Restraining Order, Alex Energy, Inc., et al. v. Caskey, et al., Nos. 09-C-187-B, 09-C-188-B and 09-C-189-B, February 27, 2009 (Cir. Ct. Raleigh Co. W. Va.).

3. On March 23, 2009, all of the Alex Energy Defendants, including Alex Energy Defendant/Respondent Caskey, requested a continuance of the March 24, 2009 hearing on the Alex Energy Plaintiffs' Motion for a Preliminary Injunction and expressly consented and agreed to extending the March 9, 2009 TRO (earlier the February 27, 2009 TRO) and all its conditions, terms and prohibitions until such date when the Court could reschedule the hearing on the Alex Energy Plaintiffs' Motion for a Preliminary Injunction.

4. On March 26, 2009, the Alex Energy Plaintiffs and the Alex Energy Defendants jointly submitted an agreed upon and jointly executed Order, signed by all counsel of record, including counsel for Alex Energy Defendant/Respondent Caskey. The Order, entered by the Court on March 30, 2009, memorialized the March 23, 2009 agreement between the parties and extended the March 9, 2009 TRO and all its conditions, terms and prohibitions until June 2, 2009, at 11:59 p.m. (the March 30, 2009 Order is hereinafter referred to as "the March 23, 2009 TRO").²

5. The Alex Energy TRO restrained the Alex Energy Defendants, as well as their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of the TRO by personal service or otherwise, from:

- (a) Trespassing or otherwise congregating on any of the mining properties of corporate entities affiliated with A.T. Massey Coal Company, Inc. and Massey Energy Company, including but not limited to the Beetree Surface Mine and Edwight Surface Mine properties in Raleigh County, West Virginia;
- (b) Interfering, obstructing, blocking, impeding or tampering with any coal operating equipment, trucks or other vehicles of any of the corporate entities affiliated with A.T. Massey Coal

² See Order Extending the Temporary Restraining Order and Continuing the Hearing on Plaintiffs' Motion for a Preliminary Injunction, Alex Energy, Inc., et al. v. Caskey, et al., Nos. 09-C-187-B, 09-C-188-B and 09-C-189-B, March 30, 2009 (Cir. Ct. Raleigh Co. W. Va.).

Company, Inc. and Massey Energy Company, including but not limited to Plaintiffs, no matter where such equipment, trucks or other vehicles may be located; and

- (c) Doing any other unlawful act of any kind to interfere with or prevent Plaintiffs from conducting their businesses in a lawful manner.

See Order Granting a Temporary Restraining Order, Alex Energy, Inc., et al. v. Caskey, et al., Nos. 09-C-187-B, 09-C-188-B and 09-C-189-B, February 27, 2009 (Cir. Ct. Raleigh Co. W. Va.).

6. Prior to April 16, 2009, Alex Energy Defendant/Respondent Caskey had:

- a. Knowledge of and was served with the February 27, 2009 TRO;

- b. Attended the March 9, 2009 hearing before the Honorable John Hutchinson in the Circuit Court of Raleigh County, West Virginia, and consented to the extension of the February 27, 2009 TRO and all its conditions, terms and prohibitions until March 24, 2009, at 11:59 p.m.; and

- c. Requested the extension of, and expressly consented and agreed to, and through counsel executed, the March 23, 2009 TRO which extended the March 9, 2009 TRO and all its conditions, terms and prohibitions until June 2, 2009 at 11:59 p.m.

7. Alex Energy Defendant/Respondent Caskey had actual notice of the aforementioned February 27, 2009, March 9, 2009 and March 23, 2009 Temporary Restraining Orders.

8. Alex Energy Defendant/Respondent Caskey had twice been cited by the West Virginia State Police – February 16, 2009 and February 25, 2009 – for trespassing on the Edwight Surface Mine and continues to be subject to the Alex Energy TRO.

9. On April 16, 2009, Alex Energy Defendant/Respondent Caskey, in contempt of this Court and in violation of the Alex Energy TRO, knowingly, intentionally, and unlawfully

entered onto and trespassed on the Edwight Surface Mine property, and in doing so, acted in concert and privity with, and participated in such trespass with, Respondents Freeman, Gardner, Suggs and Wickham.

10. Alex Energy Defendant/Respondent Caskey is not exempt or otherwise excused from the conditions, terms, or prohibitions of, or being found in contempt of this Court for violating, the Alex Energy TRO because of her status as a photojournalist. No such privilege exists.

11. Furthermore, a person, although not a party to the proceeding, may be charged with contempt for the violation of a court's order entered therein if the person has actual knowledge of such order and is acting in concert or privity with a party to the proceeding who is subject to such order.

12. Respondents Freeman, Gardner, Suggs and Wickham all had actual knowledge of the existence, conditions, terms and prohibitions of the Alex Energy TRO prior to April 16, 2009.

13. On April 16, 2009, Respondents Freeman, Gardner, Suggs and Wickham, notwithstanding their knowledge of the Alex Energy TRO, in contempt of this Court and in violation of the Alex Energy TRO, knowingly, intentionally and unlawfully entered onto and trespassed on the Edwight Surface Mine property with Defendant/Respondent Caskey, who is expressly subject to the Alex Energy TRO, and in doing so, acted in concert and privity with, and participated in such trespass with, each other and with Alex Energy Defendant/Respondent Caskey.

14. Plaintiffs have suffered and will continue to suffer irreparable and incalculable injury if the Alex Energy Respondents are permitted to continue violating the conditions, terms and prohibitions of the Alex Energy TRO.

15. In violating the Alex Energy TRO, the Alex Energy Respondents acted “in bad faith, vexatiously, wantonly, or for oppressive reasons,” thereby justifying an award of attorneys’ fees and costs to the Alex Energy Plaintiffs incurred in prosecuting the May 1, 2009 Show Cause Hearing. See Sally-Mike Properties v. Yokum, 179 W. Va. 48, 365 S.E.2d 256 (1986).

Accordingly, it is hereby **ORDERED, ADJUDGED** and **DECREED** by the Court as follows:

The Alex Energy Respondents – Antrim Laura Caskey, Jordan Maurice Freeman, Madeline Jean Gardner, Charles Livingston Suggs, IV, and William B. Wickham – are in contempt of Court for violating the Alex Energy TRO on April 16, 2009, as described above.

It is further **ORDERED**, having been found in contempt of Court for violating the Alex Energy TRO, that each of the above-named Alex Energy Respondents shall pay the Alex Energy Plaintiffs a civil penalty in the amount of Five Hundred Dollars and No Cents (\$500.00) for the Alex Energy Respondents’ unlawful violation and disregard of the conditions, terms and prohibitions of the Alex Energy TRO; and each such Alex Energy Respondent shall be subject to a civil penalty of One Thousand Dollars and No Cents (\$1,000.00) per person per violation for each subsequent violation of the Alex Energy TRO.

It is further **ORDERED** that each Alex Energy Respondent shall pay their individual civil penalty in the amount of Five Hundred Dollars and No Cents (\$500.00) by certified check made payable to counsel for the Alex Energy Plaintiffs, **SPILMAN THOMAS & BATTLE**,

PLLC, within ten (10) days from the date of entry of this Order by the Court, at the following address:

Samuel M. Brock, III
Spilman Thomas & Battle, PLLC
300 Kanawha Boulevard, East
P.O. Box 273
Charleston, West Virginia 25321-0273

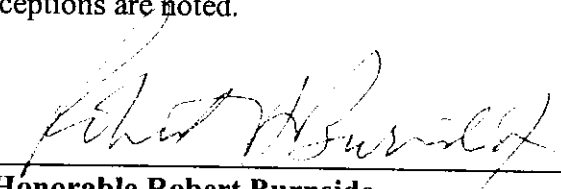
It is further **ORDERED** that, as a result of their bad faith, vexatious, wanton or otherwise oppressive conduct in violating the Alex Energy TRO, the Alex Energy Respondents found in contempt of Court shall pay the Alex Energy Plaintiffs the attorneys' fees and costs made necessary by the misconduct of the Alex Energy Respondents and incurred by the Alex Energy Plaintiffs in prosecuting this Motion for Issuance of Order to Show Cause, the amount of which shall later be determined by Order of this Court.

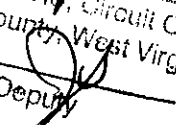
The Clerk is directed to send a certified copy of this Order by certified mail to all counsel of record.

Issued this 24 day of September, 2009 at 12 noon :m.

Defendants' objections and exceptions are noted.

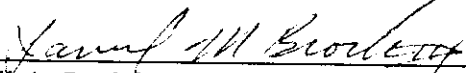
ENTERED:


Honorable Robert Burnside
Circuit Court of Raleigh County, West Virginia

The foregoing is a true copy of an order entered in this office on the 25 day of September, 2009
of FBI
JANICE B. DAVIS, Circuit Clerk of Raleigh County, West Virginia
By: 
Deputy

PRESENTED BY:

SPILMAN THOMAS & BATTLE, PLLC


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