

collateral order doctrine established in *Cohen v. Beneficial Ind. Loan Corp.*, 337 U.S. 541 (1949) and its progeny.¹

Simultaneously, with the filing of the instant Notice of Appeal, the West Virginia Supreme Court shall cause to be filed in the United States Court of Appeals for the Fourth Circuit, a Petition for Writ of Mandamus, seeking a writ requiring the district court to dismiss this action on grounds set forth in the West Virginia Supreme Court's Motion to Dismiss. Upon filing, copies of the Petition for Writ of Mandamus shall be served upon all counsel of record and the district court.

Dated: January 31, 2008

Respectfully submitted,

**SUPREME COURT OF APPEALS OF
WEST VIRGINIA**

By The Tinney Law Firm, PLLC

/s/ John H. Tinney, Jr.

John H. Tinney (WV State Bar #3766)
John H. Tinney, Jr. (WV State Bar #6970)
James K. Tinney (WV State Bar # 9173)
707 Virginia Street, East, 14th Floor
P. O. Box 3752
Charleston, WV 25337-3752
Telephone: (304) 720-3310
Telecopier: (340) 720-3315

¹ See e.g., *Coopers & Lybrand v. Livesay*, 437 U.S. 463 (1978); *Mitchell v. Forsyth*, 472 U.S. 511 (1985); *Digital Equip. Corp. V. Destop Direct Inc.*, 511 U.S. 863 (1994); *Ridpath v. Board of Governors Marshall Univ.*, 447 F.3d 292 (4th Cir. 2006); *Blankenship v. Manchin*, 471 F.3d 523 (4th Cir. 2006); *Campbell v. Galloway*, 483 F.3d 258 (4th Cir. 2007).

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF WEST VIRGINIA

CHARLESTON DIVISION

MASSEY ENERGY COMPANY,

and

MARFORK COAL COMPANY, INC., a
Subsidiary of Massey Energy Company,

Plaintiffs,

v.

Civil Action No. 2:06-0614
(Judge Copenhaver)

SUPREME COURT OF APPEALS OF
WEST VIRGINIA,

Defendant.

CERTIFICATE OF SERVICE

I, John H. Tinney, Jr., hereby certify that on the 31st day of January, 2008, the foregoing "Defendant Supreme Court of Appeals of West Virginia's Notice of Appeal" was electronically filed with the Clerk of the Court and served electronically upon counsel as follows:

Scott Caudill, Esquire
Caudill Law
100 Capitol Street, Suite 1100
Charleston, WV 25301

Robert D. Luskin, Esquire
Patton Boggs, LLP
2550 M Street, N.W.
Washington, DC 20037-1350

/s/ John H. Tinney, Jr.

John H. Tinney, Jr. (WV State Bar #6970)