

COPY

IN THE CIRCUIT COURT OF LOGAN COUNTY, WEST VIRGINIA

ARACOMA COAL COMPANY, INC.

Plaintiff,

v.

Civil Action No. 08C 322-0

AMERICAN INTERNATIONAL SPECIALTY
LINES INSURANCE COMPANY,

Defendant.

COMPLAINT

COMES NOW the plaintiff, Aracoma Coal Company, Inc. ("Aracoma"), and for its
Complaint against American International Specialty Lines Insurance Company ("AISLIC")
alleges as follows:

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PARTIES

1. Aracoma is a West Virginia corporation with its principal place of business in Boone County, West Virginia. Aracoma is a subsidiary of Elk Run Coal Company, Inc., which is a subsidiary of A.T. Massey Coal Company, Inc., which is also a West Virginia corporation with a principal place of business in Boone County, West Virginia.

2. AISLIC is an insurance company duly organized under the laws of the State of Alaska with its principal place of business in New York, New York.

SUBSTANTIVE ALLEGATIONS

3. AISLIC, in consideration of valuable premium, sold excess liability insurance, Policy No. 7411153 (the "Policy") to A.T. Massey Coal Company, Inc., for the policy period November 1, 2005 to November 1, 2006. The Policy's General Liability coverage provides a \$15 million per occurrence limit of liability, with a per occurrence retention of \$10 million. The

Policy's West Virginia Employer's Liability/Stop Gap Liability coverage has a \$20 million per occurrence limit of liability and a \$5 million per occurrence retention.

4. Under the Policy's General Liability Coverage, AISLIC agrees to indemnify "the insured" for "ultimate net loss" which the insured becomes obligated to pay by reason of liability imposed by law or assumed by the insured under contract or agreement for damages on account of "personal injury" caused by an occurrence. Under the terms of the Policy, the "insured" is defined as the named insured and any subsidiary, affiliate or associated company of the named insured for any annual period whose accounts are consolidated in the financial statements of the named insured or were eligible for such consolidation. Pursuant to this definition, Aracoma is an insured under the Policy.

5. "Ultimate net loss" is defined by Policy No. 7411153 as the total sum which the insured shall become obligated to pay for Damages on account of personal injury covered under the Policy, either through adjudication or compromise. "Personal injury" is defined by the Policy as including bodily injury, mental injury, mental anguish, shock, sickness, disease and disability. An "occurrence" is defined by the Policy as an event or continuous, intermittent or repeated exposure to harmful conditions or acts or omissions.

6. Under the Policy's West Virginia Employer's Liability/Stop Gap Liability Coverage, AISLIC agrees to indemnify "the insured" for "ultimate net loss" which the insured becomes legally obligated to pay by reason of liability imposed by law or assumed by the insured under contract or agreement for damages on account of bodily injury to its employee caused by an occurrence, if the bodily injury arises out of and in the course of the injured employee's employment by the insured and occurs during the policy period.

7. On December 11, 2006, Delorice Bragg, individually and as Administratrix of the Estate of Don Israel Bragg, and Freda Hatfield, individually and as Administratrix of the Estate of Ellery "Elvis" Hatfield, filed Civil Action No. 06-C-372-P (the "Underlying Action"), in the Circuit Court of Logan County, West Virginia, against Aracoma, Massey Energy Company, Inc., A.T. Massey Coal Company, Inc, and Don L. Blankenship, seeking damages arising out of the deaths of Mr. Bragg and Mr. Hatfield on or about January 19, 2006 at Alma 1 Mine in Logan County West Virginia.

8. The Underlying Action asserts a cause of action against Aracoma under W.Va. Code § 23-4-2, alleging that Aracoma created and/or knowingly allowed to exist numerous egregious unsafe working conditions that were likely to cause serious injury and death to its miners; that these conditions were violations of state and federal duties and of commonly accepted safety standards in the mining industry; that Aracoma had actual knowledge of the existence of and risks related to some or all of the conditions; that the dangers inherent in the unsafe working conditions were obvious and self-evident; and that notwithstanding Aracoma's actual knowledge of the unsafe working conditions and hazards they created, Aracoma intentionally exposed Mr. Bragg and Mr. Hatfield to the unsafe conditions, which directly and proximately resulted in their pain, suffering, mental anguish, and death.

9. The causes of action asserted against Aracoma in the Underlying Action are claims which fall within the coverage afforded by Policy No. 7411135 and AISLIC has not denied coverage to Aracoma.

10. The Underlying Action also asserts negligence and wrongful death against A.T. Massey Coal Company, Inc. and Massey Energy Company as controllers and/or owners of the Alma mine that had a duty to provide the plaintiffs' decedents with a safe workplace and to

exercise ordinary care for the safety of miners on the premises. The Complaint alleges in Count II that these defendants negligently or recklessly failed to fulfill these duties.

11. The Underlying Action further asserts a cause of action for negligence and wrongful death against Don Blankenship as Chairman, Chief Executive Officer and President of A.T. Massey, alleging in Count III that he had an individual duty to exercise reasonable care in the operation and direction of the Massey associated mines and to not assent to or participate in any torts committed by them, but that he violated these duties through his negligent and/or reckless disregard of safety hazards and violations at the Alma mine. The Complaint in the Underlying Action also asserts a Count against Don Blankenship for outrage.

12. During the course of litigation in the Underlying Action, the parties have engaged in mediation and subsequent settlement discussions in an effort to resolve all causes of action. During such discussions, plaintiffs have offered to settle within the applicable limits of coverage under the West Virginia Stop Gap portion of the Policy, and such settlement would result in a full and complete release of the insured, Aracoma, as well as all other defendants. Aracoma has agreed to pay its \$5 million retention toward the settlement of the claims.

13. However, Aracoma's insurer, AISLIC, has refused to effect a settlement of the Underlying Action within the limit of the West Virginia Stop Gap Liability coverage of the Policy, which settlement would result in a full and complete release of its insured, Aracoma. Rather, AISLIC has insisted that the other defendants, Massey Energy Company, Inc., A.T. Massey Coal Company, Inc., and Don L. Blankenship, tender all or a portion of their \$10 million retention under the General Liability coverage of the Policy before taking any further steps to resolve the claims against Aracoma.

14. The failure of AISLIC to effect a settlement within the limits of its West Virginia Stop Gap Liability coverage under the Policy for the benefit of its insured, and thereby exposing Aracoma to a verdict in excess of that limit in order to extract a settlement more favorable to AISLIC, results in AISLIC not according the interests and rights of its insured at least as great a respect as its own.

COUNT I – DECLARATORY JUDGMENT

15. Aracoma reiterates the allegations contained in paragraphs 1 through 14 of the Complaint as if fully set forth verbatim herein.

16. Aracoma seeks a declaratory judgment, pursuant to W.Va. Code § 55-13-1, *et seq.*, and Rule 57 of the West Virginia Rules of Civil Procedure, of the rights and legal relations of the parties under the Policy for the damages sought in the Underlying Action.

17. Specifically, Aracoma seeks a legal determination that AISLIC cannot refuse to settle the claims against Aracoma in the Underlying Action within the \$20 million limit of liability for West Virginia Stop Gap Liability coverage by first requiring payment under the General Liability coverage of the Policy, which would require the other defendants, Massey Energy Company, Inc., A.T. Massey Coal Company, Inc., and Don L. Blankenship, to tender all or a portion of their \$10 million retention.

COUNT II – COMMON LAW BAD FAITH

18. Aracoma reiterates the allegations contained in paragraphs 1 through 17 of the Complaint as if fully set forth verbatim herein.

19. The actions of AISLIC in refusing to settle the claims against Aracoma under the West Virginia Stop Gap Liability coverage of the Policy unless and until the other defendants in the Underlying Action tender all or a portion of their \$10 million retention under the General

Liability coverage of the Policy in order to extract a settlement more favorable to AISLIC and, thereby, potentially exposing Aracoma to a verdict in excess of the Stop Gap coverage limit violate the implied covenant of good faith and fair dealing implicit in the insurance contract.

20. The actions of AISLIC in refusing to settle the claims against Aracoma under the West Virginia Stop Gap portion of Policy No. 7411153 unless and until the other defendants in the Underlying Action tender all or a portion of their \$10 million self-insured retention under the General Liability portion of the Policy amount to common law bad faith. AISLIC has not accorded the interests and rights of the insured, Aracoma, at least as great a respect as its own. Instead, AISLIC has elevated its own interests above those of its insured.

COUNT III – STATUTORY BAD FAITH

21. Aracoma reiterates the allegations contained in paragraphs 1 through 20 of the Complaint as if fully set forth verbatim herein.

22. The actions of AISLIC as set forth herein amount to statutory bad faith. Specifically, AISLIC has violated the Unfair Claim Settlement Practices section of the West Virginia Unfair Trade Practices Act, W.Va. Code § 33-11-4(9), including but not limited to subsection (a) by misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue; subsection (d) by refusing to pay claims without conducting a reasonable investigation based upon all available information; and subsection (m) by failing to promptly settle claims under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage.

23. The arbitration section of the Policy, specifically the requirement found in Endorsement No. 18, is invalid, unenforceable, and violates the reasonable expectations of the insured. In addition, the arbitration provision does not apply to the Counts asserted against

AISLIC in the present case because the dispute at issue is not one under the Policy; rather, it seeks extra-contractual damages against AISLIC.

WHEREFORE, for the claims asserted in Counts I, II and III of this Complaint, Aracoma seeks judgment against AISLIC as follows:

(a) Judgment declaring that AISLIC cannot refuse to settle the claims against Aracoma in the Underlying Action within the \$20 million limit of liability for West Virginia Stop Gap Liability coverage by first requiring payment under the General Liability coverage of the Policy, which would require the other defendants, Massey Energy Company, Inc., A.T. Massey Coal Company, Inc., and Don L. Blankenship, to tender all or a portion of their \$10 million retention;

(b) Judgment against AISLIC in a amount sufficient to compensate it for all damages proximately caused by the acts and omissions, common law bad faith and statutory bad faith complained of herein;

(c) Pre- and post-judgment interest in an amount allowed by law;

(d) Attorney fees, costs and expenses incurred in the prosecution of this action;

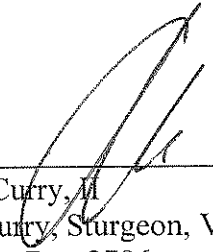
(e) Punitive damages; and

(f) Such other and further relief as the Court may deem proper.

PLAINTIFF DEMANDS A TRIAL BY JURY ON ALL ISSUES SO TRIABLE.

ARACOMA COAL COMPANY, INC.
By Counsel

Dated: October 29, 2008



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