



**IN THE CIRCUIT COURT OF OHIO COUNTY, WEST VIRGINIA**

**IN RE: MINGO COUNTY COAL  
SLURRY LITIGATION**

**CIVIL ACTION NO. 10-C-5000**

**THIS DOCUMENT APPLIES TO:**

**Rawl Sales & Processing Co., et al., v. AIG Casualty Company, et al.  
Case No. 06-C-520 MNG Insurance Coverage Action**

**CASE MANAGEMENT ORDER  
THIRD-PARTY INSURANCE COVERAGE ACTION**

THIS MATTER is now before the Court for a conference in accordance with Rules 16 and 26(f) of the West Virginia Rules of Civil Procedure. It appears to the Court after conferring with counsel for all parties that the Court should enter this Case Management Order to aid in the fair and efficient disposition of this complex insurance coverage action, to reduce expenses to all parties, to protect the parties from unreasonable annoyance and undue burdens, and to facilitate the administration of discovery in this matter consistent with the ends of justice within a reasonable time.

This Case Management Order shall apply only to the third-party action in this case between Third-Party Plaintiffs Rawl Sales & Processing Co. and Massey Energy Company and the Third-Party Defendants.

THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED that:

**1. General Scope of Order**

This Order establishes certain procedures to be used and sets deadlines for various matters likely to arise in this complex insurance coverage action prior to trial. This Order shall remain in effect until rescinded by the Court or superseded by subsequent Case

Management Orders. The West Virginia Rules of Civil Procedure and the West Virginia Trial Court Rules shall govern all matters not expressly covered by this Order.

**2. Application of Order**

Unless specifically ordered to the contrary, this Order and any subsequent Case Management Orders shall bind all parties to this action. In the event additional parties are added to the case in the future, Third-Party Plaintiffs shall provide notice of this Order and any subsequent Case Management Orders to such additional parties within ten (10) days after they are added to the case.

**3. Modification of Order**

The terms of this Order may be changed, amended, or supplemented only by the Court as deemed appropriate upon motion of any third-party plaintiff, any third-party defendant or upon the Court's own motion.

**4. Communication With the Parties**

In the event the Court wishes to communicate with the parties, the Court need only communicate with (i) Arden J. Curry, II, Pauley, Curry, Sturgeon, & Vanderford, PLLC, Post Office Box 2786, Charleston, WV 25330-2786, tel. (304) 342-6000, fax (304) 353-0344, john@pcsv.com as counsel for the Third-Party Plaintiffs; and (ii) Daniel J. Konrad, Huddleston Bolen LLP, 611 Third Avenue, Huntington, WV 25722-2185, tel. (304) 691-8396, fax (304) 522-4312, dkonrad@huddlestonbolen.com, who has been designated to receive communications from the Court on behalf of the Third-Party Defendants and who agrees to disseminate such communications to all Third-Party Defendants.

**5. Communication Among the Parties**

As provided in Section 3 of the Electronic Filing and Service Case Management Order,

Within **five (5) business days** of a case or party being dismissed, a withdrawal or substitution of counsel, or any other event that changes case information, the moving party shall update the LexisNexis File & Serve system with the information necessary to effect the change in case or party status using the Case & Party Management feature. The moving party must provide LexisNexis with verification of the change in case or party information, either by providing LexisNexis with the Transaction ID Number of the order or other document that verifies the change, or by uploading a copy of the order or document that verifies the change.

**6. Filing and Service of Papers**

**a. Electronic Filing and Service**

West Virginia Trial Court Rule 15.01, *et seq.* and the June 24, 2010

Electronic Filing and Service Case Management Order shall govern filing and service of all pleadings, motions, and other papers in this case.

All pleadings, motions and other papers that apply solely to the third-party insurance coverage action shall bear the following caption:

**IN THE CIRCUIT COURT OF OHIO COUNTY, WEST VIRGINIA**

**IN RE: MINGO COUNTY  
COAL SLURRY LITIGATION**

**CIVIL ACTION NO. 10-C-5000**

**THIS DOCUMENT APPLIES TO:**

**Rawl Sales & Processing Co., et al. v. AIG Casualty Co., et al.  
Case No.: 06-C-520 MNG Insurance Coverage Action**

**b. Certificate of Service**

It shall be sufficient to state in a certificate or proof of service that service was made on counsel for all parties electronically via LexisNexis File & Serve.

**7. Written Discovery**

**a. Availability of Written Discovery**

The parties, without leave of Court, may serve written interrogatories on any other party.

The parties may also, without leave of Court, serve written requests for admissions, as permitted by Rule 36 of the West Virginia Rules of Civil Procedure, and written requests for the production of documents and things and entry on land for inspection and other purposes, as permitted by Rule 34 of the West Virginia Rules of Civil Procedure. In order to avoid duplication, the Third-Party Defendants shall make reasonable efforts to coordinate written discovery to the Third-Party Plaintiffs. An individual Third-Party Defendant may serve additional written discovery concerning matters that are particular to that Third-Party Defendant.

**b. Objections/Disputes**

Counsel for the parties shall engage in good faith attempts to resolve any and all disputes and objections to written discovery before seeking the Court's assistance. Motions to compel shall specifically describe the discovery request at issue and the steps taken in good faith to resolve the disputes. If the parties cannot resolve any discovery dispute, they shall submit their dispute to the Court for resolution. Any party seeking intervention by the Court shall submit the discovery dispute to the Court in a writing not to exceed fifteen (15) pages, excluding supporting affidavits and exhibits, unless otherwise agreed to in advance by the parties. Any party who wishes to respond to a submission to the Court shall do so within ten (10) calendar days of service of any such submission. Any such response shall be in writing and may not exceed fifteen (15) pages, excluding supporting affidavits and exhibits, unless otherwise agreed to in advance by the parties. A party that

submits a discovery dispute to the Court shall not be entitled to file a reply submission, unless otherwise agreed to in advance by the parties.

**c. Protocol for Exchange of Documents**

Documents produced by each party shall be numbered prior to distribution to any parties. If a party's responsive documents are voluminous, such documents may be made available for inspection and copying by the requesting party prior to numbering and only those documents selected for copying shall be numbered. The entity producing the documents shall be identified on each page by a letter code followed by a sequential number of at least seven digits ("control number"). Each entity's document production shall begin with the control number 0000001.

**d. Privilege Log**

Unless otherwise agreed, within forty-five (45) days of the substantial completion of a production of documents in response to a request for production of documents, the producing party shall serve a privilege log which identifies each document withheld from production or redacted on the basis of any claim of privilege or protection from disclosure, to the extent possible, by its: document numbers, type of document, date, author, addressees, recipients of copies, the subject matter of the document other than the document's title or "re" line, and the nature of the privilege asserted. The same information shall be provided for each attachment to each withheld document if the attachment also is withheld from production. With respect to emails containing a chain of messages relating to the same subject matter, it is sufficient for a party to identify each email chain once on the privilege log; parties are not required to log separately each message in an email chain relating to one subject matter. The parties are not required to comply with the foregoing

provisions with respect to any privileged correspondence written after the commencement of this litigation.

**e. Inadvertent Production of Privileged Materials**

The parties shall make a good faith effort to review the documents they produce in this action for privilege and to withhold all documents that they claim are privileged or otherwise protected from disclosure. However, if a producing party inadvertently produces information, documents, objects or things that it considers to be, in whole or in part, privileged or protected material, such inadvertent production does not constitute a waiver of any applicable privilege or protection, and such party may retrieve such information or materials or parts thereof by means of the procedures described below. No party shall use any such retrieved information or materials in any way in connection with the prosecution or defense of this action except as provided herein.

Within thirty (30) days (i) after the discovery of the inadvertent production or (ii) after a document has been marked at a deposition or attached to a motion, whichever is sooner, but in any event no less than sixty (60) days before trial, the producing party shall give written notice to all parties that the producing party claims such information or material to be, in whole or in part, privileged or protected from disclosure and shall state the nature of the asserted privilege or protection. If privileged or protected material is inadvertently produced less than sixty (60) days before trial and/or a party discovers within sixty (60) days before trial that it inadvertently produced privileged or protected material at any time, the parties shall use their best efforts to resolve the matter in a manner consistent with their professional responsibilities. If they cannot resolve the matter, it may be presented to the Court for resolution.

Upon receipt of such notice, all parties who have received copies of the produced information or material shall within fifteen (15) days (i) return to the producing party or destroy and certify in writing to the producing party that all copies thereof in their possession or control have been returned or destroyed, or (ii) object in writing to the producing party's assertion of privilege, setting forth the basis for the objection. Should any party object to the producing party's assertion that privileged or protected material has inadvertently been produced, it shall be the producing party's burden to promptly move the Court for an Order compelling the return of material and information on the ground it is privileged or protected.

**8. Depositions in General**

**a. Rules**

All depositions shall be conducted in accordance with the West Virginia Rules of Civil Procedure, except as modified herein.

**b. Pre-Designation of Documents**

Counsel for the party conducting the deposition of a fact witness shall designate by control number the documents that it may use during a deposition, and shall provide by email a list of such documents to all counsel on the Master Service List at least three (3) business days prior to the scheduled date of the deposition.

**c. Objections**

All objections shall be reserved except as to form and foundation. Whether or not testimony is objected to at the time of the deposition, objections to the admissibility of the substance of any testimony still may be asserted at trial or at any hearing in this matter. There is deemed to be an objection to each question and a motion to strike each answer, and

such objections and motions to strike shall be ruled on at the time all or any portion of the deposition is offered into evidence at trial or at any other hearing in the matter.

**d. Signing**

Unless the deponent specifically waives his or her right to read and sign his or her deposition transcript, the deponent shall have forty-five (45) days from the date the transcript is delivered by the court reporter to the witness to read and sign his or her deposition transcript.

**9. Motions**

Unless otherwise agreed among the parties or upon approval by the Court, memoranda in support of motions, including dispositive motions, and memoranda in response thereto, each shall not exceed twenty (20) pages, exclusive of supporting affidavits. Replies shall not exceed twenty (20) pages, exclusive of supporting affidavits.

Unless otherwise agreed among the parties, supporting memoranda shall be filed and served contemporaneously with all motions, memoranda in response to motions shall be filed and served within thirty (30) days of the filing and service of any motion and supporting memorandum, and replies shall be filed and served within fifteen (15) days thereafter. No sur-replies shall be permitted.

**10. Confidentiality**

The parties hereby agree that the Protective Order entered on November 19, 2009, which is attached hereto as Exhibit 1, shall govern the treatment, use, and disclosure of confidential materials in this action.

**11. Pre-Trial Schedule**

A table setting forth the pre-trial schedule in this action is attached hereto as Exhibit 2.

**a. Discovery Deadlines**

All fact discovery shall be completed on or before June 30, 2011. For a discovery request to be timely, the request must be served on or prior to May 31, 2011.

**b. Requests for Admissions**

All requests for admissions shall be served on or before May 31, 2011.

**c. Expert Witnesses**

The period for expert discovery (discovery relating to evidence that may be presented at trial under Rule 702 of the West Virginia Rules of Evidence) shall begin at the close of fact discovery on June 30, 2011. The parties shall designate their experts without need for interrogatories propounded by any other parties. The parties' expert designations shall include: (1) the name of each person whom they expect to call as an expert witness at trial; (2) the subject matter on which each expert is expected to testify; (3) the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion; (4) a listing of all documents that the expert has reviewed in connection with the preparation of the facts and opinions to which the expert is expected to testify; (5) the qualifications of each expert, including a list of all publications authored by each expert within the preceding ten years; (6) a listing of any other cases in which each expert has testified as an expert at trial or by deposition within the preceding five years; and (6) the dates on which each expert is available for deposition within the following thirty (30) days.

**(1) Third-Party Plaintiffs' Experts**

Third-Party Plaintiffs shall identify their experts in the manner described above no later than July 15, 2011.

**(2) Third-Party Defendants' Experts**

Third-Party Defendants shall designate their experts in the manner described above no later than August 1, 2011.

**(3) Third-Party Plaintiffs' Rebuttal Experts**

Third-Party Plaintiffs shall identify any rebuttal experts in the manner described above no later than August 15, 2011.

**(4) Expert Depositions**

The final day for expert depositions is October 17, 2011.

\* \* \* \* \*

The expert disclosures described herein are in addition to, and in no way limit, any discovery available under the West Virginia Rules of Civil Procedure.

**d. Dispositive Motions**

Dispositive motions, including motions for partial dismissal or partial summary judgment, may be filed and served at any time from the date of this Order up to and including the latter of November 18, 2011 or 30 days after entry of final judgment in the underlying case.

**12. Trial**

Trial will start on January 23, 2012, or as soon thereafter as the Court deems convenient. Dates for (1) filing a final pretrial order and (2) holding the pretrial conference shall be set by the Court at a later date.

This 24th day of November, 2010.

James P. Mazzone  
The Honorable James P. Mazzone  
Lead Presiding Judge  
Mingo County Coal Slurry Litigation

**EXHIBIT 1**

**STIPULATED PROTECTIVE ORDER GOVERNING CONFIDENTIALITY**



**EXHIBIT 1**

**STIPULATED PROTECTIVE ORDER GOVERNING CONFIDENTIALITY**

IN THE CIRCUIT COURT OF MINGO COUNTY, WEST VIRGINIA

DANNY HALLEY SR., ET AL,

Plaintiffs,

v.

RAWL SALES AND PROCESSING, CO. and  
MASSEY ENERGY COMPANY,

Defendants,

RAWL SALES AND PROCESSING, CO. and  
MASSEY ENERGY COMPANY,

Third-Party Plaintiffs,

v.

AIU INSURANCE COMPANY, ET AL.

Third-Party Defendants.

CIVIL ACTION NO. 06-C-520

**STIPULATED PROTECTIVE ORDER GOVERNING CONFIDENTIALITY**

This Stipulated Protective Order Governing Confidentiality ("Protective Order") is entered by the Court in the above-captioned action for the purpose of establishing the terms and conditions herein set forth.

WHEREAS, the defendants, Rawl Sales and Processing Company and Massey Energy Company (together "Massey") filed their Third-Party Complaint for Declaratory Judgment and Other Relief against the Third-Party Defendants in order to recover damages for breach of contract and also to seek a determination of the parties' rights and obligations, if any, under certain alleged insurance contracts in connection with the various claims that the Plaintiffs in this matter have asserted against Massey,

**WHEREAS**, it is desirable for Massey and the Third-Party Defendants (together the "Coverage Action Parties") and their respective counsel to coordinate their efforts and to exchange information for purposes of litigating Massey's third-party claims in this action in the most expeditious fashion possible, with a minimum of burden, expenses, disputes and delay;

**WHEREAS**, the Coverage Action Parties and certain non-party witnesses, who may become bound by this Protective Order, may from time to time be required to produce documents or provide testimony pursuant to requests made by the Coverage Action Parties;

**WHEREAS**, some of these documents or testimony may contain "Confidential Information" (as defined herein) within the scope of this Protective Order, and

**WHEREAS**, some of these documents or testimony may contain "Underlying Privileged Material" (as defined herein) within the scope of this Protective Order.

**NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED** by and between the Coverage Action Parties, through their respective counsel of record herein, as follows:

#### **MATERIALS COVERED**

1. This Protective Order shall apply to all confidential and proprietary information and documents and/or Underlying Privileged Material produced or disclosed by the Coverage Action Parties, or any non-party which produces or discloses such information and documents, whether pursuant to a subpoena served in this action or any other court order or process, including information and documents disclosed:

- (a) through discovery;
- (b) at any hearing;
- (c) in any pleading, document, affidavit, brief, motion, transcript, or other writing;
- (d) in testimony given in a deposition or hearing, or
- (e) any copies, abstracts or summaries of, or notes about such information.

The information and documents described in this paragraph shall hereinafter be referred to as the "Discovery Materials."

2. "Confidential Information" shall mean and refer to any Discovery Materials designated as "Confidential" by a producing party in the manner set forth in Paragraph 5 below, as well as any copies, abstracts or summaries of, or notes about such information, regardless of whether said copies, abstracts, summaries or notes have themselves been designated as "Confidential." As used in Paragraph 1 and elsewhere, the term "document" shall include written, recorded or graphic material or any portion thereof, including computer software and databases. The "producing party" shall mean any party and/or non-party witness who either produces or testifies as to "Confidential Information" and/or "Underlying Privileged Material" or who asserts a confidentiality interest and/or privilege pertaining to information produced or testimony given in this action.

3. Discovery Materials which may be designated "Confidential" shall be limited to those that, in the good faith belief of a party and/or non-party witness, contain or refer to confidential medical information, trade secrets and nonpublic financial information regarding the producing party or its affiliates; proprietary information regarding the producing party or its affiliates; or any other information of a confidential nature or proprietary nature, the disclosure of which would or might be harmful to the proprietary or business interests of the producing party or its affiliates.

4. "Underlying Privileged Material" shall mean and refer to any Discovery Materials designated as "Underlying Privileged" by a producing party in the manner set forth in Paragraph 5 below, as well as any copies, abstracts or summaries of, or notes about such information, regardless of whether said copies, abstracts, summaries or notes have themselves been designated as "Underlying Privileged." Discovery Materials which may be designated "Underlying Privileged" shall be limited to those materials that, in the good faith belief of a Coverage Action Party and/or non-party witness, contain information that is related to the defense of the underlying claims at issue in this action and that a Coverage Action Party

reasonably believes to constitute material privileged from disclosure to persons other than the Coverage Action Parties pursuant to the attorney-client privilege, attorney work product protection, joint defense privileges, or any other applicable privilege or protection. To the extent that any Underlying Privileged materials are produced in this action, the Coverage Action Parties agree that any such production shall not constitute a waiver of any applicable privileges. In addition, the Coverage Action Parties agree that nothing in this Paragraph 4 should be construed as an affirmative obligation of, or an agreement by, any Coverage Action Party to, in fact, produce Underlying Privileged materials.

#### METHOD OF DESIGNATION

5. Any Coverage Action Party and any non-party which produces information and documents in this action may designate as "Confidential" and/or "Underlying Privileged" any Discovery Materials in the following manner:

- (a) Any producing party shall mark any documents or items it wishes to designate "Confidential" and/or "Underlying Privileged" (as appropriate) with the appropriate confidentiality markings at the time of production. A party's review of documents before they are stamped as such does not waive the confidentiality of the documents or the right to later designate such documents as "Confidential" and/or "Underlying Privileged." Initial failure, by inadvertence or otherwise, to mark a particular item as "Confidential" and/or "Underlying Privileged" shall not preclude a subsequent marking of such item.
- (b) Deposition or other testimony taken in this action, including any document marked for identification during a deposition, may be designated "Confidential" and/or "Underlying Privileged" by any one of the following means: (i) by stating orally on the record that the information is "Confidential" and/or "Underlying Privileged" on the day the testimony is given; (ii) by sending written notice to all parties herein designating information as "Confidential" and/or "Underlying Privileged" within ten (10) business days after the transcript of the testimony is delivered to the party designating the testimony or document as confidential; or (iii) by stamping or writing the legend "Confidential" and/or "Underlying Privileged" on the relevant portion of the transcript or document at or before the signing of the transcript by the witness or as soon thereafter as practicable. All information disclosed during a deposition shall be deemed to have been designated "Confidential" and/or "Underlying Privileged" for ten (10) business days after the transcript of

the deposition has been delivered, whether or not any portion of the transcript or document has been so designated previously. Written notices of "Confidential" and/or "Underlying Privileged" information contained in a deposition transcript shall be attached by each party to the face of the relevant transcript and each copy thereof in its possession, custody or control.

- (c) Any party may designate a document produced by a non-party pursuant to subpoena, order of court, or otherwise as "Confidential" and/or "Underlying Privileged" by sending written notice to all parties herein designating such document as "Confidential" and/or "Underlying Privileged" within ten (10) business days after the document is delivered to the party designating the document as confidential. All documents produced by non-parties shall be deemed to have been designated "Confidential" and/or "Underlying Privileged" for ten (10) business days after the documents have been delivered, whether or not any portion of the document has been so designated previously.
- (d) Any copies, abstracts or summaries of, or notes about information designated as "Confidential" and/or "Underlying Privileged" pursuant to paragraphs 5(a) through 5(c), also shall qualify as "Confidential" and/or "Underlying Privileged" regardless of whether said copies, abstracts, summaries or notes have themselves been designated as "Confidential" and/or "Underlying Privileged."

#### TREATMENT OF "CONFIDENTIAL" MATERIALS

6. No copies of Discovery Materials qualifying, under the terms of this Protective Order, as "Confidential" shall be made except to the extent necessary for the preparation and conduct of this litigation, including discovery, motion practice, evidentiary hearings, trial and appeal. Any person responsible for making such copies must ensure that the copies adequately reflect any "Confidential" stamp or legend thereon.

7. Discovery Materials designated "Confidential," and any copies, abstracts or summaries thereof, or notes about such materials, shall be maintained in confidence by the person to whom such materials are produced or disclosed, shall be used only in connection with this action and may not be used for any other purpose, and shall not be disclosed to any person, except as follows:

- (a) any court and its staff in connection with this litigation;

- (b) any court reporter who records any deposition or other testimony in this case;
- (c) any attorney acting on the trial team of a party in the above-captioned action, and corporate counsel of any party;
- (d) any paralegal, clerical employee, and/or law clerk retained or employed or supervised by counsel of record who is working on the prosecution or defense of this action;
- (e) any corporate employee of Massey and/or its affiliated entities who has been directed to assist counsel's preparation with respect to litigation between the parties;
- (f) any corporate employee or agent of Third-Party Defendants and/or their affiliated entities who has been directed to assist counsel's preparation with respect to litigation between the parties;
- (g) employees of copying, storage, microfilming or other litigation support services utilized with respect to this action, or the prosecution or the defense thereof;
- (h) any mediators hired by the parties to assist in settlement efforts;
- (i) experts, consultants, adjusters, and private investigators retained, specifically employed, or informally consulted by counsel concerning the preparation and trial of this action;
- (j) witnesses or potential witnesses in this action who are utilized by or on behalf of the parties' respective counsel of record for purposes of pretrial investigation, deposition preparation, witness interrogation, and/or trial;
- (k) a third party to whom a party is legally or contractually obligated to make disclosure of material designated as confidential, including, but not limited to, a party's insurers, reinsurers, reinsurance intermediaries, retrocessionaires, regulators, claims handling agents, or auditors; and
- (l) any other person agreed upon in writing by the Party that initially produced the material at issue.

In the event that a party desires to disclose to any person not included in (a) through (l) above any document qualifying as "Confidential," such party shall provide at least five (5) business days' advance notice in writing to attorneys for the producing party. Should such counsel object in writing to the disclosure of such confidential information to that person, the party seeking

disclosure may seek an order from the Court. Until the Court resolves the application, no such disclosure shall be made.

8. Each person to whom information qualifying as "Confidential" is revealed, disclosed or made available for inspection (except the persons identified in Paragraphs 7(a) through 7(k) above) shall, prior to having access to such information, sign the Acknowledgement and Agreement to be Bound by Protective Order in the form annexed hereto marked as Exhibit A.

9. All persons authorized by this Protective Order to receive copies of Discovery Materials designated "Confidential" and/or information qualifying as "Confidential" derived therefrom shall maintain such information as "Confidential" in accordance with this Protective Order, and shall use such information solely for the purpose of preparing for and conducting the above-captioned litigation.

10. All persons authorized to receive "Confidential" information under this Protective Order (other than any court and its staff) to whom any "Confidential" materials are furnished, shown or disclosed, shall be given a copy of this Protective Order, and shall be bound by its terms.

#### **TREATMENT OF "UNDERLYING PRIVILEGED" MATERIALS**

11. No copies of Discovery Materials qualifying, under the terms of this Protective Order, as "Underlying Privileged" shall be made except to the extent necessary for the preparation and conduct of the litigation of Massey's third-party claims, including discovery, motion practice, evidentiary hearings, trial and appeal. Any person responsible for making such copies must ensure that the copies adequately reflect any "Underlying Privileged" stamp or legend thereon.

12. Discovery Materials designated "Underlying Privileged," and any copies, abstracts or summaries thereof, or notes about such materials, shall be maintained in confidence by the person to whom such materials are produced or disclosed, shall be used only in

connection with this action and may not be used for any other purpose, and shall not be disclosed to any plaintiff in this action, any attorney for any plaintiff in this action, or any other person, except as follows:

- (a) the court and its staff in connection with Massey's third-party claims in this action;
- (b) any court reporter who records any deposition or other testimony connection with Massey's third-party claims in this action;
- (c) any attorney acting on the trial team of any Coverage Action Party, and corporate counsel of any Coverage Action Party;
- (d) any paralegal, clerical employee, and/or law clerk retained or employed or supervised by counsel of record for any Coverage Action Party who is working on the prosecution or defense of Massey's third-party claims in this action;
- (e) any corporate employee of Massey and/or its affiliated entities who has been directed to assist counsel's preparation with respect to Massey's third-party claims in this action;
- (f) any corporate employee or agent of Third-Party Defendants and/or their affiliated entities who has been directed to assist counsel's preparation with respect to Massey's third-party claims in this action;
- (g) employees of copying, storage, microfilming or other litigation support services utilized with respect to Massey's third-party claims in this action, or the prosecution or the defense thereof;
- (h) any mediators hired by the Coverage Action Parties to assist in settlement efforts in connection with Massey's third-party claims in this action;
- (i) experts, consultants, adjusters, and private investigators retained or specifically employed by counsel for any of the Coverage Action Parties concerning the preparation and trial of Massey's third-party claims in this action;
- (j) witnesses or potential witnesses in this action who are utilized by or on behalf of the Coverage Action Parties' respective counsel of record for purposes of pretrial investigation, deposition preparation, witness interrogation, and/or trial of Massey's third-party claims in this action;
- (k) a third party to whom a Coverage Action Party is legally or contractually obligated to make disclosure of material designated as confidential, including, but not limited to, a Coverage Action Party's insurers,

reinsurers, reinsurance intermediaries, retrocessionaires, regulators, claims-handling agents, or auditors; and

- (l) any other person agreed upon in writing by the Party that initially produced the material at issue.

In the event that a Coverage Action Party desires to disclose to any person not included in (a) through (l) above any document qualifying as "Underlying Privileged," such party shall provide at least five (5) business days' advance notice in writing to attorneys for the producing party.

Should such counsel object in writing to the disclosure of such Underlying Privileged information to that person, the party seeking disclosure may seek an order from the Court. Until the Court resolves the application, no such disclosure shall be made.

13. Each person to whom information qualifying as "Underlying Privileged" is revealed, disclosed or made available for inspection (except the persons identified in Paragraphs 12(a) through 12(k) above) shall, prior to having access to such information, sign the Acknowledgement and Agreement to be Bound by Protective Order in the form annexed hereto marked as Exhibit A.

14. All persons authorized by this Protective Order to receive copies of Discovery Materials designated "Underlying Privileged" and/or information qualifying as "Underlying Privileged" derived therefrom shall maintain such information as "Underlying Privileged" in accordance with this Protective Order, and shall use such information solely for the purpose of preparing for and conducting the above-captioned litigation.

15. All persons authorized to receive "Underlying Privileged" information under this Protective Order (other than any court and its staff) to whom any "Underlying Privileged" materials are furnished, shown or disclosed, shall be given a copy of this Protective Order, and shall be bound by its terms.

#### INADVERTENT DISCLOSURE

16. In the event that information qualifying as "Confidential" and/or "Underlying Privileged" is disclosed to someone not authorized to receive such information under this Protective Order, or if a person so authorized breaches any of his or her obligations under this

Protective Order, counsel who learns of such unauthorized disclosure or breach shall (to the extent consistent with applicable ethical cannons and/or rules) immediately give notice of such unauthorized disclosure or breach to the other counsel of record, disclose the circumstances of the unauthorized disclosure or breach, and take all actions reasonably necessary to mitigate the harm caused by such unauthorized disclosure or breach. The inadvertent or unintentional disclosure of "Confidential" and/or "Underlying Privileged" Discovery Materials shall not be deemed a waiver in whole or in part of a party's claim of confidentiality as to the Discovery Materials.

**FILING OF "CONFIDENTIAL" AND/OR "UNDERLYING PRIVILEGED"  
DOCUMENTS**

17. If Discovery Materials qualifying as "Confidential" and/or "Underlying Privileged," or quotations from or references to such materials, are included in papers or motions filed with or otherwise disclosed to the Court, such papers or motions shall be labeled "Confidential-Subject to Protective Order" and/or "Underlying Privileged - Subject to Protective Order" (as appropriate) and, unless otherwise agreed by counsel, or directed by the Court, shall be filed or lodged with the Court in a sealed envelope and kept under seal.

18. Nothing contained herein shall prevent any of the parties from using "Confidential" and/or "Underlying Privileged" information in connection with any motion filed with the Court (as long as motions that contain or refer to "Confidential" and/or "Underlying Privileged" Discovery Materials are filed in accordance with Paragraph 17 above), or in a trial, a hearing, or any other proceeding in this action.

19. Nothing contained herein shall prevent any producing party from seeking further protection with respect to the use of any information qualifying as "Confidential" and/or "Underlying Privileged" in connection with any trial, hearing, or other proceeding in this action.

**OBJECTIONS TO DESIGNATIONS OF "CONFIDENTIAL" AND/OR "UNDERLYING PRIVILEGED"**

20. If any party (i) objects to the designation of any Discovery Materials as "Confidential" and/or "Underlying Privileged" or (ii) objects to any other party's use of this Protective Order, the objecting party shall state the objection by letter to such other party's counsel. If the parties are then unable to resolve any such objection, any party may move the Court to do so. Until the Court rules on any such motion, the Discovery Materials shall continue to be deemed "Confidential" and/or "Underlying Privileged," as designated, under the terms of this Protective Order, and all other terms and conditions of this Protective Order shall remain in full force and effect.

**SUBPOENA BY THIRD PARTY**

21. If any party receives a subpoena or document request from a non-party to this Protective Order seeking production or other disclosure of another party's "Confidential" and/or "Underlying Privileged" information, the party upon whom discovery is served shall give written notice to counsel for the party whose material is sought within five (5) business days, identifying the "Confidential" and/or "Underlying Privileged" material sought and enclosing a copy of the subpoena or document request. Subject to the duty to comply with such subpoena or document request, no production or disclosure of "Confidential" and/or "Underlying Privileged" Discovery Materials shall be made until the designating party has received a reasonable opportunity to consider or respond to the subpoena or document request.

**AMENDMENT TO THIS PROTECTIVE ORDER**

22. The provisions of this Protective Order may be modified at any time by written stipulation of the parties as approved by an Order of Court. In addition, a party may at any time apply to the Court for modification of this Protective Order pursuant to a motion brought in accordance with the Rules of the Court.

### RESERVATION OF RIGHTS

23. Nothing contained in this Protective Order shall prevent any party from disclosing its own "Confidential" and/or "Underlying Privileged" information to any person.

24. Nothing contained in this Protective Order shall constitute: (a) an admission that any information designated "Confidential" is, in fact, confidential, even if a party has not objected to this designation; (b) an admission that any information designated "Underlying Privileged" is, in fact, privileged, even if a party has not objected to this designation; (c) an agreement by the parties to produce any documents or supply any information or testimony in discovery not otherwise agreed upon, or required by Rules of Court or by Court Order; (d) a waiver by any person or party of any right to object to or seek a further protective order with respect to any discovery request in this or in any other action; (e) a waiver of any claim of immunity or privilege with regard to any testimony, documents or information; (f) a waiver by any party of its right to apply to the Court for an order designed to preserve the confidentiality of its "Confidential" and/or "Underlying Privileged" information at trial; or (g) an admission that any particular document is or is not admissible into evidence in this case.

### CONCLUSION OF THE LITIGATION

25. Within sixty (60) days of the conclusion of this action, including any post-trial motions or appellate proceedings, counsel of record for the parties shall use reasonable efforts to secure the return of all Discovery Materials designated "Confidential" and/or "Underlying Privileged" (and all copies thereof and notes, abstracts or summaries made therefrom) from all persons to whom such materials were disclosed under the terms of this Protective Order, and shall either destroy all such materials or return them to counsel for the party who produced such materials. In the event any such person elects to destroy the materials, he or she shall certify the destruction in writing to counsel for Massey and Third-Party Defendants. A party and its counsel may retain their work product, court filings and official transcripts and exhibits, and any other "Confidential" and/or "Underlying Privileged" material, provided that the party that retains

the Discovery Materials designated as "Confidential" and/or "Underlying Privileged" continues to treat them in the manner provided herein.

#### **CONTINUING EFFECT**

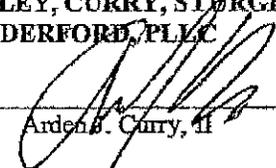
26. Insofar as the provisions of this Protective Order restrict the use or communication of any document or information produced hereunder, such Order shall continue to be binding after the conclusion of this litigation, except that a party may seek the written permission of the producing party or further order of the Court with respect to dissolution or modification of this Protective Order and the Court shall retain jurisdiction of all parties bound hereby for the purposes of this Protective Order.

#### **IMMEDIATE DUTY OF CONFIDENTIALITY**

27. The Coverage Action Parties agree that, to the extent that any materials governed by this Protective Order are produced prior to the Court's signing of this Protective Order, that all Coverage Action Parties nevertheless will maintain and will adhere to the duties of confidentiality set forth herein.

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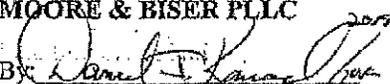
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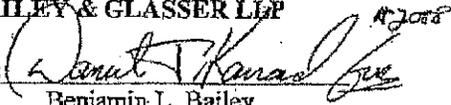
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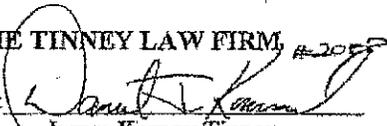
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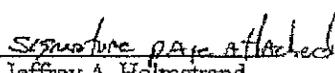
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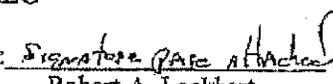
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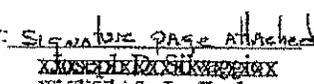
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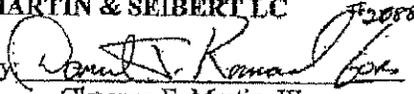
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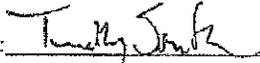
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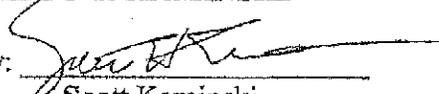
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July \_\_, 2009

IT IS SO STIPULATED

**BAILEY & WYANT, PLLC**

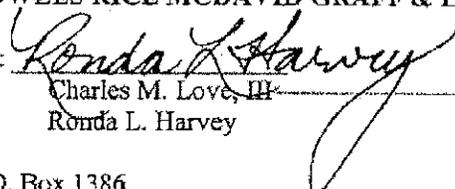
By: \_\_\_\_\_  
Robert P. Martin

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MIDSTATES REINSURANCE CORPORATION p/k/a MEAD REINSURANCE  
CORPORATION**

July \_\_, 2009

**BOWLES RICE MCDAVID GRAFF & LOVE LLP**

By:   
\_\_\_\_\_  
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STAR REINSURANCE CORPORATION**

July 17, 2009

IT IS SO STIPULATED

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July \_\_, 2009

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PAUL MERCURY INSURANCE COMPANY; ST. PAUL SURPLUS LINES  
INSURANCE COMPANY; AND TRAVELERS CASUALTY AND SURETY  
COMPANY f/w/a THE AETNA CASUALTY AND SURETY COMPANY**

July \_\_, 2009

IT IS SO STIPULATED

**BAILEY & GLASSER LLP**

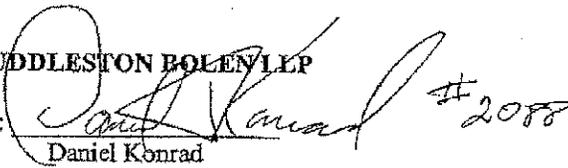
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July \_\_, 2009

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INSURANCE COMPANY; AND TRAVELERS CASUALTY AND SURETY  
COMPANY f/k/a THE AETNA CASUALTY AND SURETY COMPANY**

July \_\_, 2009

AND NOW, this 19<sup>th</sup> day of NOV, it is so ORDERED.

Thomas C. Evans III

Judge Thomas C. Evans, III  
Chief Judge, 5th Judicial Circuit

*Designated Judge, Mingo Co. Cir Ct.*

A COPY TESTE

Grant Peeler

CIRCUIT CLERK, MINGO COUNTY, W.VA.

IN THE CIRCUIT COURT OF MINGO COUNTY, WEST VIRGINIA

DANNY HALLEY SR., ET AL,	)	
	)	
Plaintiffs	)	
v.	)	CIVIL ACTION NO. 06-C-520
	)	
RAWL SALES AND PROCESSING, CO. and	)	
MASSEY ENERGY COMPANY,	)	
	)	
Defendants,	)	
	)	
RAWL SALES AND PROCESSING, CO. and	)	
MASSEY ENERGY COMPANY,	)	
	)	
Third-Party Plaintiffs,	)	
	)	
v.	)	
	)	
AIU INSURANCE COMPANY	)	
	)	
Third-Party Defendants.	)	

EXHIBIT A

ACKNOWLEDGEMENT AND AGREEMENT  
TO BE BOUND BY PROTECTIVE ORDER

The undersigned hereby acknowledges having read the Stipulated Protective Order Governing Confidentiality in the above-entitled action, understands the terms thereof, and agrees to be bound by its terms and conditions, and by such orders as may be made by the Court regarding the confidential treatment to be accorded discovery materials in this action. The undersigned further agrees not to reveal such "Confidential Information" and/or "Underlying Privileged Material" to anyone other than the persons authorized in the Stipulated Protective Order Governing Confidentiality and to use such "Confidential Information" and/or "Underlying Privileged Material" solely for purposes relating to the litigation of Massey's third-party claims.

Name: \_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_  
(Print)

Dated: \_\_\_\_\_

**EXHIBIT 2**

**Halley et al. v. Rawl Sales and Processing, Co. et al.  
Case No. 06-C-520  
Schedule**

Close of Fact Discovery	June 30, 2011
Final Day to Serve Requests for Admissions	May 31, 2011
Third-Party Plaintiffs' Expert Designations	July 15, 2011
Third-Party Defendants' Expert Designations	August 1, 2011
Third-Party Plaintiffs' Rebuttal Expert Designations	August 15, 2011
Last Day for Expert Depositions	October 17, 2011
Last Day for Filing Summary Judgment Motions	The latter of November 18, 2011, or 30 days after entry of final judgment in the underlying case
Trial	January 23, 2012, or as soon thereafter as the Court deems convenient