COMMONWEALTH OF KENTUCKY
UNION CIRCUIT COURT
MORGANFIELD, KENTUCKY 42431
CIVIL ACTION NO. 15-CI-00212

THOMAS RANDY GREENWELL, and his wife,
JENNIFER LEE GREENWELL;
JAMES NEAL GREENWELL;
GREGORY BERNARD GREENWELL, and his wife,
CAMILLE ELIZABETH GREENWELL;
BERNARD GERALD GREENWELL, and his wife,
MARILYN GREENWELL;
ROBERT JOSEPH ELDER;
KEITH BENTON ELDER;
RICHARD STANNUS ELDER;
THOMAS DAMIEN ELDER, JR;
THOMAS E. RUDD, and his wife,
TOMMIE ANN RUDD;
ROBERT ELMORE MILLS, and his wife,
CAROLYN B. MILLS;
BRYAN KEITH HENDRICKSON, and his wife,
BETH HENDRICKSON;
JAMES D. HENDRICKSON, and his wife,
ANN HENDRICKSON;
JERALD A. THOMPSON, and his wife,
KATHLEEN THOMPSON;
THE ESTATE OF GEORGE THOMPSON, by and through its EXECUTOR GEORGE THOMPSON, JR AND EXECUTRIX, BRENDA THOMAS, and THE ESTATE OF JANICE THOMPSON, by and through its EXECUTOR GEORGE THOMPSON, JR AND EXECUTRIX, BRENDA THOMAS;
CHRISTINE DUNCAN;
PATRICK FRENCH, and his wife,
TERESA FRENCH;
THOMAS LAND HOLDINGS, L.P.;
TRAVIS FARMS, INC.;
ROBERT J. ELDER IRREVOCABLE LIVING TRUST;
GREENWELL BROTHERS FARM;
THE ESTATE OF GERALD R ELDER, by and through its EXECUTRIX, DEBRA ELDER;
MC ELDERS LLC — PLAINTIFFS

v.

RIVERVIEW COAL, LLC. — DEFENDANT

FILED
NOV 24 2015
UNION CIRCUIT/DISTRICT COURTS
BY: _____ D.C.

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Serve:

National Corporate Research, LTD
828 Lane Allen Road, Suite 219
Lexington, KY 40504
Certified Mail

COMPLAINT WITH JURY DEMAND

Come now Plaintiffs, Thomas Randy Greenwell and his wife, Jennifer Lee Greenwell: James Neal Greenwell; Gregory Bernard Greenwell, and his wife, Camille Elizabeth Greenwell: Gerald Ray Greenwell, and his wife, Marilyn Greenwell; Robert Joseph Elder: Keith Benton Elder; Richard Stannus Elder; Thomas Damien Elder, Jr.; Thomas E. Rudd, and his wife, Tommie Ann Rudd; Robert Elmore Mills, and his wife, Carolyn B. Mills: Bryan Keith Hendrickson, and his wife, Beth Hendrickson; James D. Hendrickson, and his wife, Ann Hendrickson; Jerald A. Thompson, and his wife, Kathleen Thompson: The Estate of George Thompson by and through its Executor, George Thompson Jr. and Executrix, Brenda Thomas, and The Estate of Janice Thompson by and through its Executor, George Thompson Jr. and Executrix, Brenda Thomas; Christine Duncan; Patrick French, and his wife, Teresa French: Thomas Land Holdings, L.P.; Travis Farms, Inc.; Robert J. Elder Irrevocable Living Trust: Greenwell Brothers Farm; The Estate of Gerald R Elder, by and through its Executrix, Debra Elder; and MC Elders LLC (hereinafter at times referred to collectively as "Plaintiffs"), by and through undersigned counsel, and complain, allege and state of Defendant, River View Coal, LLC ("River View Coal and/or Defendant"), as follows:

INTRODUCTION

1. This case arises from trespass of the land on which Plaintiffs' properties are located near Morganfield, Union County, Kentucky (collectively Plaintiffs' property). The

trespass is willful and knowing and has caused, and will cause, extensive damage to Plaintiffs' property coupled with a diminution in value of the Plaintiffs' properties.

THE PARTIES

2. That the Plaintiffs herein are all residents of the Commonwealth of Kentucky, and own real property located in Union County, Kentucky.

a) That the Plaintiffs, Thomas Randall Greenwell, and his wife, Jennifer Lee Greenwell are the owners of the real property described in the deed attached hereto, made a part hereof, and marked collectively Exhibit A and Exhibit B.

b) That the Plaintiffs, James Neal Greenwell is the owner of the real property described in the deed attached hereto, made a part hereof, and collectively marked Exhibit B and Exhibit C.

c) That the Plaintiffs, Bernard Gerald Greenwell, and his wife, Marilyn Sue Greenwell, are the owners of the real property described in the deed attached hereto, made a part hereof, and collectively marked Exhibit D.

d) That the Plaintiffs, Gregory Bernard Greenwell, and his wife, Camille Elizabeth Greenwell, are the owners of the real property described in the deed attached hereto, made a part hereof, and collectively marked Exhibit E.

e) That the Plaintiff, MC Elders LLC, Sandra Elder, managing member, is the owner of the real property described in the deed attached hereto, made a part hereof, and collectively marked Exhibit F.

f) That the Plaintiff, Robert J. Elder Irrevocable Living Trust, is the owner of the real property described in the deed attached hereto, made a part hereof, and marked Exhibit G.

g) That the Plaintiff, Robert Joseph Elder, is the owner of the real property described in the deed attached hereto, made a part hereof, and collectively marked Exhibit H.

h) That the Plaintiffs, Keith Benton Elder, are the owner of the real property described in the deed attached hereto, made a part hereof, and collectively marked Exhibit H.

i) That the Plaintiff, Richard Stannus Elder, is the owner of the real property described in the deed attached hereto, made a part hereof, and collectively marked Exhibit H.

j) That the Plaintiff, Thomas Damien Elder, Jr., single, is the owner of the real property described in the deed attached hereto, made a part hereof, and collectively marked Exhibit H.

k) That the Plaintiffs, Thomas E. Rudd, and his wife, Tommie Ann Rudd are the owners of the real property described in the deed attached hereto, made a part hereof, and collectively marked Exhibit I.

l) That the Plaintiffs, Robert Elmore Mills, and his wife, Carolyn B. Mills, are the owners of the real property described in the deed attached hereto, made a part hereof, and collectively marked Exhibit J.

m) That the Plaintiffs, Bryan Keith Hendrickson, and his wife, Beth Hendrickson, are the owners of the real property described in the deed attached hereto, made a part hereof, and marked Exhibit K.

n) That the Plaintiffs, James D. Hendrickson, and his wife, Ann Hendrickson, are the owners of the real property described in the deed attached hereto, made a part hereof, and marked Exhibit K.

o) That the Plaintiffs, Jerald A. Thompson, and his wife, Kathleen Thompson, are the owners of the real property described in the deed attached hereto, made a part hereof, and collectively marked Exhibit L.

p) That the Plaintiffs, The Estate of George Thompson by and through its Executor, George Thompson Jr. and Executrix, Brenda Thomas, and The Estate of Janice Thompson by and through its Executor, George Thompson Jr. and Executrix,

Brenda Thomas, are the owners of the real property described in the deed attached hereto, made a part hereof, and collectively marked Exhibit L.

q) That the Plaintiff, Christine Duncan, widow, is the owner of the real property described in the deed attached hereto, made a part hereof, and collectively marked Exhibit M.

r) That the Plaintiffs, Patrick French, and his wife, Teresa French, are the owners of the real property described in the deed attached hereto, made a part hereof, and marked Exhibit N.

s) That the Plaintiff, Thomas Land Holdings, L.P., is the owner of the real property described in the deed attached hereto, made a part hereof, and collectively marked Exhibit O.

t) That the Plaintiff, Travis Farms, Inc., is the owner of the real property described in the deed attached hereto, made a part hereof, and marked Exhibit P.

u) That the Plaintiff, Greenwell Brothers Farm, a farming partnership operated by Thomas Randy Greenwell and James Neal Greenwell, is the owner of the real property described in the deed attached hereto, made a part hereof, and marked Exhibit Q.

v) That the Plaintiff, The Estate of Gerald R Elder, by and through its Executrix, Debra Elder, is the owner of the real property described in the deed attached hereto, made a part hereof, and collectively marked Exhibit H.

3. River View Coal is a foreign limited liability company with its principal place of business located in Wilmington, Delaware. At all times relevant, most or all of River View Coal's work, land, buildings, inventory, employees, equipment and machinery was located in Union County, Kentucky. At all times relevant, River View Coal and its predecessors in interest ceased performing coal mining operations in Union County, Kentucky underlying the Plaintiffs'

properties. The Registered Agent to receive service of process for River View Coal is National Corporate Research, LTD, 828 Lane Allen Road, Suite 219, Lexington, KY 40504.

JURISDICTION AND VENUE

4. This Court has jurisdiction over the parties and this action pursuant to KRS §§ 452.400 and 452.450.

5. Venue is appropriate in this Court pursuant to KRS §452.400 because the injury or damage to real property sustained by Plaintiffs is located in Union County, Kentucky.

FACTUAL BACKGROUND

6. Upon information and belief, River View Coal is the successor-in-interest to West Kentucky Coal Company, and/or its successor-in-interest is Island Creek Coal Company and/or Consol of Kentucky, Inc. One or more of these companies operated the Ohio #11 Mine for underground mining purposes in the Morganfield, Union County area for many years beginning in the 1980s. The primary business operation of the Ohio #11 Mine was the excavation of coal.

7. In order to excavate coal, the majority of mining operations throughout Kentucky, including the Ohio #11 Mine, use the "room and pillar" technique. The room and pillar method requires a shaft to be driven or dug into the layer or seam of coal, which is often located at depths of 200 feet or more. Then, passageways or haulage ways are excavated in the coal seams, and openings or "rooms" of coal are dug and the coal is hauled out of the mine. Between the rooms, "pillars" of coal are left in place to support the roof of the mine.

8. The rooms and pillars form a grid-like pattern over time as mining advances. This type of mining requires care and precision to ensure that the pillars left behind are of the correct size to enable miners to safely extract enough coal while still providing support for the

surface6. It is important that all of the pillars are supportive because a single falling pillar can result in a collapse.

9. Plaintiffs' property and buildings are located above, or in very close proximity to some of the passageways created by the room and pillar mining operations of the Ohio #11 Mine. Plaintiffs' buildings have been located at the above mentioned-site for many years and were firm, sound, serviceable, and substantial in all particulars.

10. Upon information and belief, operations ceased at the Ohio #11 Mine in the early 1990s. At all relevant times, Defendant and its predecessors-in-interest have had an absolute and continuing duty to support the surface property above the Ohio #11Mine, Plaintiffs' property, and surrounding property and not disturb the natural condition or state of the surface. Natural state is defined as the condition of the surface, including reasonable and foreseeable improvements thereon, at the time the coal was severed from the earth. Plaintiffs' buildings and improvements on their property were reasonable and foreseeable improvements at the time the coal was severed from the earth.

11. Once mining operations ceased, River View then on or about January 2015, without permission of the Plaintiffs herein entered onto Plaintiff's property and without authority, injected waste into voids owned by the Plaintiff herein without proper and adequate compensation to the Plaintiff herein. River View had been placed on notice that injection of waste into these voids was unlawful and without permission of the Plaintiffs.

12. This action by the Defendant is without permission or authority and constitutes willful trespass by the Defendant herein.

13. This unauthorized action by the Defendant herein has caused compensatory damages to the Plaintiff in an amount in excess of the minimum jurisdictional amount of this court.

14. Upon information and belief, Defendant did not obtain proper administrative approval before beginning the aforementioned activity.

15. In addition, Defendant's acts are in reckless disregard to the rights of Plaintiffs. Defendant's acts also demonstrate a wantonness, recklessness, or maliciousness in that Defendant knew, or should have known, that it's acts and trespass are not lawful under Kentucky law.

COUNT I—TRESSPASS

16. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 17 as though fully set forth herein.

17. River View's conduct constitutes a trespass against Plaintiffs' properties and is unlawful and actionable as a willful trespass under Kentucky law as noted herein.

18. As a result of the willful trespass as noted herein. River View is liable to the Plaintiffs for compensatory, statutory, and punitive damages.

COUNT II-INJUNCTIVE RELIEF

19. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 20 as though fully set forth herein.

20. Pursuant to 405 KAR 18:210 Subsidence Control. Section 4. Buffer Zones. which provides in pertinent part that:

> (1) Underground mining activities shall not be conducted beneath or adjacent to public buildings and facilities. churches. schools. and hospitals; or impoundments with a storage capacity of twenty (20) acre-feet or more or bodies of water with a volume of twenty (20) acre-feet or more, unless the subsidence control plan demonstrates that subsidence will not cause material damage to. or reduce the reasonably foreseeable use of, the features or facilities.
>
> (2) If subsidence causes material damage to any of the features or facilities covered by subsection (1) of this section. the cabinet may suspend mining under or adjacent to the features or facilities until

the subsidence control plan is modified to ensure prevention of further material damage to the features or facilities.

21. Upon information and belief, Defendant's subsidence control plan was deficient, and inadequate in that it did not prevent the damage to Plaintiffs, as set forth and described herein. Accordingly, Defendant's operations should be immediately suspended until Defendant's subsidence control plan is modified to ensure prevention of further material damage to said Plaintiff.

22. In addition, pursuant to Kentucky Revised Statute 350.250(3), Plaintiffs are entitled to injunctive relief as a result of Defendant's numerous violations as set forth herein.

JURY DEMAND

Plaintiffs hereby demand a trial by Jury on all issues so properly triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that the Court:

1. Order that judgment is entered for each of the Plaintiffs on their claims against Defendant on Counts I and II above;

2. Award Plaintiffs damages, as determined at trial, with interest;

3. Award costs of suit, including reasonable attorney and expert witness fees pursuant to Kentucky Revised Statutes § 350.250 and as further allowed by law;

4. Award punitive damages;

5. Pursuant to Count II, enter an injunction ordering Defendant to cease its operations and barring Defendant from continuing to inject water in the voids underneath Plaintiffs'; and

6. Award prejudgment interest and such other and further relief as this Court may deem just and proper.

Respectfully submitted this the 18th day of November, 2015.

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