# IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

**AT BECKLEY**

**JAMES SURRATT and ROSE SURRATT, et**

**al. (consolidated),**

**Plaintiffs,**

1. **CIVIL ACTION NO. 5:15-CV-15444**

**(consolidated)**

**PINNACLE MINING COMPANY LLC**

**Defendant.**

**DEFENDANT’S MOTION IN LIMINE TO EXCLUDE EVIDENCE REGARDING OTHER, UNRELATED EVENTS**

Now comes the defendant, Pinnacle Mining Company, LLC (“Defendant”), by counsel, and moves *in limine* to preclude Plaintiffs from offering evidence, in whatever form, of other mine related accidents or any history of accidents in the coal mining industry in the State of West Virginia or elsewhere. For cause, Defendant states that any reference to such topics is irrelevant, inadmissible, and unfairly prejudicial, and amounts to nothing more than a transparent attempt to wrongly associate Defendant with unrelated events.

# BASIC BACGROUND

As this Court is aware from the Complaint and briefing before it, this case involves Defendants’ allegedly negligent mining near Plaintiffs’ residences and the damages that Plaintiffs claim were caused to their properties by said mining. Plaintiffs, during the course of their depositions, testified that they believe that damages to their homes and surrounding lands were caused by Defendant’s mining operations on or near their properties. During the course of testimony, both Plaintiffs and their experts have discussed other completely unrelated mining accidents, including, but not limited to, Upper Big Brach (“UBB”), Sago, Aracoma, and Buffalo

Creek and unrelated and old incidents elsewhere in the Pinnacle Mine. The first of these accidents involved the deaths of miners while working underground in different coal mines and another involved the failure of an impoundment which resulted in numerous deaths, all of which are prejudicial and not probative.

# ANALYSIS

None of the aforementioned accidents had anything to do with Defendant or the allegations in this case. The UBB accident happened in 2010 at a mine in Raleigh County, West Virginia, operated by Performance Coal Company, a subsidiary of Massey Energy Company, and involved a massive coal dust explosion that started as a methane ignition underground. The mine, its operator and the parent company are completely unrelated to Defendant.

The Sago accident occurred in 2006 at the Sago Mine in Upshur County, and involved an underground mine explosion, the cause of which is still under debate. The Sago Mine was operated by Anker West Virginia Mining, which was a subsidiary of Hunter Ridge Mining Co., which, in turn, was a subsidiary of International Coal Group. The mine, its operator, and the various parent corporations are completely unrelated to Defendant.

The Aracoma accident occurred in 2006 when a conveyor belt in the Aracoma Alma Mine No. 1 at Melville in Logan County, [West Virginia,](https://en.wikipedia.org/wiki/West_Virginia) caught fire. The mine was owned by Aracoma Coal Company, Inc., which was a Massey Energy affiliated company. Again, the mine, its operator, and the parent corporations were completely unrelated to Defendant.

The Buffalo Creek accident occurred in February 1972 (over 43 years before the Complaint was filed), when the Pittston Coal Company's coal slurry impoundment [dam](https://en.wikipedia.org/wiki/Dam), located in Logan County, [West Virginia,](https://en.wikipedia.org/wiki/West_Virginia) burst, four days after having been declared “satisfactory” by a federal mine inspector. The impoundment and the operator were unrelated to Defendant.

Finally, in depositions Plaintiffs’ counsel repeatedly requested information regarding explosions and other incidents at the Pinnacle Mine that occurred many decades before the alleged mining near plaintiffs, by different owners and operators. These other incidents at Pinnacle Mine are entirely irrelevant to the alleged undermining at Woosley.

Any reference to these completely unrelated incidents, or other unrelated incidents (or even a history of mining accidents in this state or elsewhere) - even ones that stop short of an explicit comparison - would be irrelevant and could only serve to inflame the jury. Plaintiffs have no need to discuss these topics or refer to them in the guise of “background,” or expert “qualifications,” or any other means to provide “context” for the events at issue in this case.

Federal Rule of Evidence 401 provides that relevant evidence is “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Fed. R. Evid. 401. Rule 402, in turn, provides that relevant evidence is generally admissible and irrelevant evidence is inadmissible. Fed. R. Evid. 402. The above-mentioned events are simply irrelevant to the facts of this case and are not admissible.

Moreover, any evidence, argument, suggestions, or references to the above-mentioned events would be inadmissible under Rule 403. That rule precludes evidence if its probative value is substantially outweighed by the risk of prejudice, confusion of the issues, or misleading the jury. *See* Fed. R. Evid. 403. The only issue in this case is whether a Pinnacle’s mining operations caused damages to Plaintiffs’ residences. Any reference to these (or other unrelated) incidents would appeal to the jury’s sympathies, arouse its sense of horror and provoke the jury’s instinct to punish Pinnacle based on events for which it had no involvement. It would invite inappropriate comparisons, despite material differences in the mines, the operators and the

causes of any such accidents, and such an invitation to base decisions on emotions, rather than the evidence presented, would be improper. F. Cleckley, *Handbook on Evidence for West Virginia Lawyers §* 4-3(B)(1) at 4-38, 4-39 (2000 4th Ed.) (“‘Evidence that appeals to the jury’s sympathies, arouses its sense of horror, provokes its instinct to punish, or triggers other mainsprings of human action may cause a jury to base its decision on something other than the established propositions in the case.’”) (*quoting* 1 Weinstein & Berger, *Weinstein’s Evidence ¶* 403[03], at 403-33-39 (1985) (footnotes omitted)).

* 1. **CONCLUSION**

This Court should grant Defendant’s motion and hold that Plaintiffs cannot offer any evidence, testimonial or otherwise, of other, unrelated coal mining accidents.

# PINNACLE MINING COMPANY, LLC

**By Counsel**

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**CERTIFICATE OF SERVICE**

I hereby affirm that on this date, April 17, 2017, I caused the foregoing

# *“*DEFENDANT’S MOTION IN LIMINE DEFENDANT’S MOTION IN LIMINE TO EXCLUDE EVIDENCE REGARDING OTHER, UNRELATED EVENTS*”* to be filed via

the CM/ECF electronic filing system and, by virtue of the same, electronic notification will be served as follows:

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 */s/ John J. Meadows*