# 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 OF DAMAGES TO CHAFIN RESIDENCE**

Now comes the defendant, Pinnacle Mining Company, LLC (“Defendant”), by counsel, and states as follows in support of its motion *in limine* to preclude evidence of damages to Gregory Chafin’s (“Mr. Chafin”) home that contradicts his own sworn testimony:

# BASIC BACGROUND

As this Court is well-aware from the voluminous 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. During the course if his deposition on February 10, 2017, Mr. Chafin testified quite clearly that his home had only suffered “minimal” damages in the form of some small cracks in the sidewalk and that he was simply worried about future damages that might result from ongoing mining. See Chafin Depo at 24-25, attached hereto as Exhibit A. Yet, less than two weeks later, as part of expert disclosures based on inspections that occurred many months earlier, Plaintiffs’ experts concluded that various other damages existed at Mr. Chafin’s home.

In other words, somehow Plaintiffs experts managed to claim that Mr. Chafin’s home has suffered damages that Mr. Chafin insists do not exist. Mr. Chafin cannot recover for damages when he himself admits that the damages are not present. To hold otherwise would open the door to absurd consequences.

**III. CONCLUSION**

This Court should grant Defendant’s motion and hold that Mr. Chafin cannot claim the existence of damages in direct contradiction to his own testimony.

Respectfully submitted,

# 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 TO EXCLUDE EVIDENCE OF DAMAGES TO

**CHAFIN RESIDENCE*”*** 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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