# 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 TESTIMONY ABOUT FEAR OF METHANE OR EXPLOSIONS**

Now comes the defendant, Pinnacle Mining Company, LLC (“Defendant”), by counsel, and states as follows in support of its motion *in limine* to preclude any plaintiff from offering testimony or opinions about their fear of methane or explosions:

# 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.

One incident that has been a part of this litigation is an alleged explosion that occurred on November 15, 2015, at the Surratt Rental Home, which is next door to the residence of James and Rose Surratt. Plaintiffs contend that the explosion was due to a methane release caused by Defendant’s mining activities. Defendant (by and through its experts) contend that there is no evidence to support this claim and furthermore that cause of the alleged explosion was a result of a water well that was not in any way vented. This failure to vent the water well, along with other violations associated with the construction and maintenance of the water well, in turn caused a

dangerous buildup of methane that was naturally present in the ground, as is common in Southern West Virginia (and, in particular, Wyoming County, where the Surratt residence and rental homes are located).

Each and every plaintiff in this case has testified about the explosion at the Surratt Rental Home and their fears of methane and other explosions. However, the testimony from all Plaintiffs in this case and the record are clear on at least two points relevant to this motion. First, not a single plaintiff was at or near the Surratt Rental Home when the explosion occurred, including Mr. and Mrs. Surratt – who did not live at the home. Second, not a single plaintiff – other than Rose or James Surratt – has ever had any methane at all detected at their residences or on their property, whether at a dangerous level or not.1

As addressed in Defendant’s contemporaneously filed motion in limine to preclude Plaintiffs from offering expert witness testimony themselves, Plaintiffs cannot opine on why there was an explosion or the cause of any explosion. Likewise, they cannot testify about the source of any methane that was detected at either of the two Surratt properties. And, they certainly cannot testify as lay witnesses that they believe that methane will be a problem in the future or that there will be explosions in the future.

Any testimony that they attempt to offer would be purely speculative and not based in science. Moreover, while it certainly lacks any scientific foundation (or any foundation for that matter) it would be unduly prejudicial. Finally, to the extent that Plaintiffs claim that they are scared or otherwise emotionally traumatized, they have made no such claims in their Complaint. Moroever, to permit such testimony on that basis would, again, lack any foundation, be

1 Nearly twenty thousand tests for methane – as directed by the West Virginia Department of Environmental Protection (“WVDEP”) - were conducted in the months following the alleged explosion. Moreover, each and every plaintiff was provided with a methane detector for their residences. No methane has been detected at either Surratt residence since [date]. There have been no other “explosions” either. The methane levels detected at the Surratt’s actual residence were at minimal levels that were not combustible or otherwise considered dangerous.

irrelevant, and, regardless, any relevancy (if there were any – there is not) would be substantially outweighed by the prejudicial impact that such testimony would have on any jurors in this case. Creating a sense of fear and panic may be a goal of Plaintiffs in an attempt to sway a jury, but that is not a basis for allowing evidence that lacks any foundation.

**III. CONCLUSION**

This Court should grant Defendant’s motion and hold that Plaintiffs cannot themselves offer any testimony or opinions regarding methane or explosions.

Respectfully submitted,

# PINNACLE MINING COMPANY, LLC

By Counsel

*/s/ John J. Meadows*

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**PINNACLE MINING COMPANY LLC**

**Defendant.**

**CERTIFICATE OF SERVICE**

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

# *“*DEFENDANT’S MOTION IN LIMINE TO EXCLUDE TESTIMONY ABOUT

**FEAR OF METHANE OR EXPLOSIONS*”*** 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*