# 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 FROM RICHARD HICKS**

Now comes the defendant, Pinnacle Mining Company, LLC (“Defendant”), by counsel, and states as follows in support of its motion *in limine* to preclude testimony from Richard Hicks:

# 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.

Plaintiffs have retained Richard Hicks, a retired general contractor, to testify as to how much it would cost to repair their properties. Mr. Hicks submitted reports regarding the estimated costs to repair Plaintiffs’ properties. *See* Hicks Reports, attached hereto as **Exhibit A**.

However, another of Plaintiffs’ purported experts, Jack Spadaro, testified during the course of his deposition that the residences at issue in this case can expect to see new and/or additional damages over the course of the next 15-20 years and, until that period of time comes,

we will not know the extent of the damages suffered by Plaintiffs’ residences. See Spadaro Depo., pp. 246-47, attached hereto as **Exhibit B**.

Assuming for a moment that Mr. Spadaro is correct in his aforementioned opinion, Mr. Hicks’ estimates do not reflect what will be the costs to repair Plaintiffs’ residences. In fact, according to Mr. Spadaro, we will not know what those costs will actually be for some time. As such, it can hardly be said that Mr. Hicks’ reports represent the ultimate costs to repair Plaintiffs’ residences with the type of certainly required of expert witnesses. His reports are premature, incomplete, and do not accurately reflect costs of repairs, as testified to by Mr. Spadaro. They can hardly be said to represent the accurate costs of repairs to these properties with any degree of certainly.

**III. CONCLUSION**

This Court should grant Defendant’s motion and hold that Mr. Hicks should be excluded as an expert witness.

Respectfully submitted,

# PINNACLE MINING COMPANY, LLC

By Counsel

*/s/ John J. Meadows*

John J. Meadows (WV State Bar ID No. 9442) Peter J. Raupp (WV State Bar ID No.

10564) 707 Virginia Street, East

**STEPTOE & JOHNSON PLLC** Chase Tower, Seventeenth Floor

**Of Counsel** Post Office Box 1588 Charleston, WV 25326-1588

Telephone: (304) 353-8154

Facsimile: (304) 353-8180 John.Meadows@steptoe-johnson.com

Peter.Raupp@steptoe-johnson.com

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

**AT BECKLEY**

**JAMES SURRATT and ROSE SURRATT, et**

**al. (consolidated),**

**Plaintiffs,**

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

**(consolidated)**

**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 FROM

**RICHARD HICKS*”*** to be filed via the CM/ECF electronic filing system and, by virtue of the same, electronic notification will be served as follows:

Roger A. Decanio, Esquire The Masters Law Firm 181 Summers Street

Charleston, WV 25301

 rad@themasterslawfirm.com

*Counsel for Plaintiffs*

 */s/ John J. Meadows*