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

BECKLEY DIVISION

JAMES SURRATT and ROSE SURRATT, et al.

Plaintiffs,

v. Civil Action No. 5:15-cv-15444

(Consolidated Nos. 5:15-cv-15444, 5:15-cv-15527, 5:15-cv-15534, 5:15- cv-15525, 5:15-cv-15533, 5:15-cv- 15532, 5:15-cv-15530, 5:15-cv-

15529, 5:15-cv-15528, and 5:15-cv-

15526)

PINNACLE MINING COMPANY, LLC;

A Delaware corporation, Defendant.

# PLAINTIFFS’ MOTION IN LIMINE TO EXCLUDE FROM TRIAL ANTICIPATED PREJUDICIAL MATTERS REGARDING JACK SPADARO

Comes now the Plaintiffs, by counsel, Roger A. Decanio and The Masters Law Firm, lc, and respectfully move the Court to exclude Defendants from questioning their expert, Jack Spadaro, on matters pertaining to a statement he allegedly gave to an environmental publication. Plaintiffs further move to preclude Defendant from introducing this alleged statement through any witness or any other means.

During the deposition of Jack Spoadaro, he was asked if he was an advocate against coal mining industry and later whether he compared the coal industry to “Nazis.” See **Exhibit A**. Deposition of Jack Spadaro p. 143-157.

The Defendant should be prohibited from mentioning or eliciting testimony regarding the alleged statement through Plaintiffs’ Expert or by any means. Even if this evidence is admissible for impeachment purposes, Federal Rule of Evidence 403 precludes its admission because its

probative value will be substantially outweighed by its prejudicial effect. The Defendant’s intent is to poison the jury pool against Plaintiffs’ expert in the heart of a coal producing state.

Jack Spadaro testified that all he has ever advocated for was that the coal industry complies with the laws and industry standards. Then, without showing Mr. Spadaro a copy of an environmental publication (despite repeated requests from Plaintiffs’ counsel to let the witness see the source) the following examination went as follows:

Q And you said the coal industry - - it doesn’t - - “You don’t get much darker than the coal industry” Do you stand by that statement”

A Well I think I - - that’s an accurate description of some of the experiences with, for instance the Buffalo Creek disaster.

Q Okay

A Okay

Q And did you said, “They are just like Nazis.”

A I don’t remember saying that, but I did - - I do remember saying something about the wedding of corporate power and the government, and that’s what I was accusing the Bush administration of.

*Id.* at 144-145

Jack Spadaro again denies any recollection of the statements attributed to him. *Id.* at 146. Defense counsel refused Plaintiffs’ counsel’s request that he show the witness what he was relying on from *Id.* at 150 – 151. Consequently, it lacks circumstantial guarantees of trustworthiness in its accuracy of its statement of Jack Spadaro.

Applying the Rule 403 balancing test to the facts of this case, evidence regarding the alleged statement must be excluded. First, it has no probative value with regard to Jack

Spadaro’s knowledge of mine regulations or industry standards to which Pinnacle must comply with. Its only intent is to attack his credibility and character. Even if the evidence is admissible, on the other side of the scale, the danger of unfair prejudice, confusion of the issues, or misleading the jury is high.

The Defendant is focusing much of their attention, and accordingly much of the jury’s attention, on the emotions regarding the coal industry that will unfairly prejudice, confuse and mislead the jury. This statement is meant to cloud the testimony of Jack Spadaro and divert attention away from the actions of Defendant and how they have harmed Plaintiffs. Even if the statement by Mr. Spadaro is truly his, which Plaintiffs vociferously denies, arguing in the alternative, the prejudicial impact would far outweigh any probative value.

For these reasons the plaintiffs request that the Court grant their motion and exclude any anticipated prejudicial questioning of Jack Spadaro or the entry of such statements he allegedly made of the mining industry through any other means.

JAMES SURRATT and ROSE SURRATT, et al.

By Counsel

/s/ Roger A. Decanio Marvin W. Masters

West Virginia State Bar No. 2359 Roger A. Decanio

West Virginia State Bar No. 8146 The Masters Law Firm, lc

181 Summers Street

Charleston, West Virginia 25301

***Counsel for Plaintiff***

(304) 342-3106

F:\5\986\MOL007.docx

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

**BECKLEY DIVISION**

**JAMES SURRATT and ROSE SURRATT, et al.**

**Plaintiffs,**

**v. Civil Action No. 5:15-cv-15444**

**(Consolidated Nos. 5:15-CV-15444, 5:15-cv-15527, 5:15-cv-15534, 5:15- cv-15525, 5:15-cv-15533, 5:15-cv- 15532, 5:15-cv-15530, 5:15-cv-15529,**

**5:15-cv-15528, and 5:15-cv-15526)**

# PINNACLE MINING COMPANY, LLC;

**A Delaware corporation,**

**Defendant.**

**CERTIFICATE OF SERVICE**

I, Roger A. Decanio, counsel for plaintiffs, do hereby certify that on the 17th day of April, 2017, I electronically filed “Plaintiffs’ Motion In Limine To Exclude From Trial Anticipated Prejudicial Matters Regarding Jack Spadaro” and a Certificate reflecting service of same with the Clerk of the Court using CM/ECF system, which will send notification of such filing to the following CM/ECF participant:

John J. Meadows (W.Va. Bar No. 9442) Peter J. Raupp (W.Va. Bar No. 10546) Steptoe & Johnson PLLC

707 Virginia Street East 8th Floor Post Office Box 1588

Charleston, West Virginia 25326-1588

*Counsel for Defendant*

/s/ Roger A, Decanio, Esquire Marvin W. Masters

West Virginia State Bar No. 2359 Roger A. Decanio

West Virginia State Bar No. 8176 The Masters Law Firm lc

181 Summers Street

Charleston, West Virginia 25301 (304) 342-3106/(304) 342-3189 fax

RAD@themasterslawfirm.com

F:\5\986\MOL007.docx