

## Judge Denies Coal Companies' Motions to Dismiss Prenter Water Case

October 15, 2009/Coalvalleynews.com/ While workers diligently dig and construct a waterline extension to the residents in the community of Prenter, the battle to bring emergency water to area residents continues in the county seat.

Boone County Circuit Court Judge Will Thompson denied two motions to dismiss the case, one by Peabody Coal Company and another by Republic Insurance Company.

The judge's decision came Thursday morning, at which time the judge also scheduled a hearing for Nov. 12.

"On Nov. 12, we should have a scheduling order entered so we can keep the case moving forward." Judge Thompson's Clerk Ryan Bell told the Coal Valley News.

Prenter residents filed the lawsuit, asking that the judge order the coal companies to provide an emergency supply of water within 24 hours, a temporary water supply within 72 hours, and a permanent water supply within 30 days, to all residents of Prenter and Seth.

Their motion states that mining and dumping activities have rendered their water supply unsafe, undrinkable, and unfit for human use and names 7 coal companies as responsible for the current water contamination. Water by the gallon are lined up in rows on the countertops in the homes of some residents, such as Maria Lambert, a community spokesperson for the civil lawsuit filed by approximately 39 families in Prenter.

Currently, 39 insurance companies added their names as third-party defendants in the lawsuit. Adding to the names of the coal companies listed in the motions – Massey Energy, Omar Mining, Independence Coal Co., Black Castle Coal Co., Peabody Energy Corp. and Pine Ridge Coal Co. – are 39 insurance companies who provide, or have provided insurance to these coal industry leaders through the years.

These 39 insurance companies as listed on the Civil Case Information Statement, are AIG Casualty Company f/k/a Birmingham Fire Insurance Company; AIU Insurance Company; Allianz Underwriters Insurance Company; Allstate Insurance Company as Successor in interest to Northbrook Excess and Surplus Company f/k/a Northbrook Insurance Company; American

Empire Surplus Lines Insurance Company f/k/a Great American Surplus Lines Insurance Company; Century Indemnity Company as Successor to CCI Insurance Company, successor to Insurance Company of North America; Certain Underwriters at Lloyd's, London and London Insurance Companies; CNA Insurance Companies; Continental Casualty Company.

Also listed are Employers Insurance of Wausau; Employers Mutual Casualty Company; Evanston Insurance Company; Everest Reinsurance Company p/k/a Prudential Reinsurance Company; Federal insurance Company; The Continental Insurance Company as successor by Merger to Fidelity Casualty Company of New York; Fireman's Fund Insurance Company; First State Insurance Company; General Star Indemnity Company; Government Employees Insurance Company; Granite State Insurance Company; Hartford Accident and Indemnity Company; Insurance Company of the State of Pennsylvania; Lexington Insurance Company; Midstates Reinsurance Corporation. Additionally, the Mt. MicKinley Insurance Company p/k/a/ Gibraltar Casualty Company; National Union Insurance Company of Pittsburgh Pennsylvania; Navigators Insurance Company as successor in interest to New York Marine Managers, Inc.; New England Insurance Company; North Start Reinsurance Corporation; Old Republic Insurance Company; Onebeacon American Insurance Company; Royal Indemnity Company; St. Paul Fire and Marine Insurance Company; TIG Insurance Company as successor in interest to International Insurance Company; Travelers Casualty and Surely Company as successor in interest to AETNA Casualty and Surely Company; Zurich American Insurance Company successor in interest to Zurich Insurance Company all are listed as third-party defendants in the civil action lawsuit.

According to Bell, there are now a total of 21 law firms involved in the Prenter water case. "Judge Thompson will most likely order a formal mediation session to be set up between all parties," Bell said.

"Discovery would be conducted before mediation can take place." Residents have provided the court with studies conducted by noted scientists at two universities in West Virginia – Marshall and Wheeling Jesuit.

Findings of high levels of arsenic and lead in their water, by Dr. D. Scott Simonton, an environmental engineer at Marshall University, is referenced in their motion. According to court documents, the findings of these studies indicate that the contaminants found in the water can lead to a number of health problems, including intestinal lesions, high blood pressure, kidney and liver damage, and gastrointestinal distress.

Many residents are still relying on well water to bathe, clean and wash their clothing and dishes and will continue to do so until clean water is piped into their homes.

The waterline extension that is currently being built, with the use of state and county monies, along with a \$1.5 small cities block gram, is slated for completion in three phases, the initial phase ending in March 2010. The motion filed by the Boone county residents cite Brown v. Rawl Sales, a case currently before the Mingo County Circuit Court, only an hour south of Boone County, where coal slurry water contaminated wells of various people in their community.

The court in that action ordered the coal companies to provide clean water available to the residents.