

IN THE CIRCUIT COURT OF LOGAN COUNTY, WEST VIRGINIA

JACK D. PARSLEY
and **VICKI L. PARSLEY,**

Plaintiffs,

v.

Civil Action No. 17C246 B

BLACKHAWK MINING, LLC,
a Kentucky limited liability company;

**VIRGINIA CONSERVATION
LEGACY FUND, INC.,**
a Virginia corporation;

ERP COMPLIANT FUELS, LLC,
a Virginia limited liability company;

LAUREL COAL CORPORATION,
a West Virginia corporation; and

DENNIS WELLMAN,

Defendants.



COMPLAINT

GENERAL ALLEGATIONS

1. Jack D. Parsley [hereinafter sometimes referred to as “Parsley” and/or “plaintiff”] is a citizen and resident of Logan, Logan County, West Virginia.

2. Vicki L. Parsley, at all times relevant hereto the wife of Jack D. Parsley, is a citizen and resident of Logan, Logan County, West Virginia.

3. Defendant, Blackhawk Mining, LLC [hereinafter sometimes referred to as “defendant” or “Blackhawk”] is a Kentucky limited liability company, which has its principal place of business in Lexington, Kentucky, and which does business in Logan County, West Virginia.

4. Defendant, Virginia Conservation Legacy Fund, Inc. [hereinafter sometimes referred to as "defendant" or "VCLF"] is a Virginia corporation, which has its principal place of business in Natural Bridge, Virginia, and which does business in Logan County, West Virginia.

5. Defendant, ERP Compliant Fuels, LLC, [hereinafter sometimes referred to as "defendant" or "ERP"] is a Virginia limited liability company, which has its principal place of business in Natural Bridge, Virginia, and which does business in Logan County, West Virginia.

6. Defendant, Laurel Coal Corporation [hereinafter sometimes referred to as "defendant" or "Laurel"] is a West Virginia corporation, which has its principal place of business in Madison, West Virginia, and which operated the Winifred Deep Mine in Danville, West Virginia.

7. Defendant Dennis Wellman, is a citizen and resident of West Virginia, and was Safety Manager responsible for safety at the Ruffner Surface Mine and Guyan Surface Mine facilities referenced below.

8. Beginning in approximately 1998, Plaintiff Jack D. Parsley was employed by Environmental Excavating, Inc., and as such did reclamation work for several coal mining entities, including Patriot Coal, Arch of West Virginia, Laurel Coal Corporation, and Apogee Coal Company. Plaintiff's work with Environmental Excavating for the aforementioned entities was performed at the Guyan Surface Mine and Fanco Preparation Plant in Logan, West Virginia, the Ruffner Surface Mine in Yolyn, West Virginia, the Wylo Mine in Logan County, West Virginia, and the Winifred Deep Mine in Danville, West Virginia.

9. Plaintiff's work at the aforementioned coal facilities was directed and controlled by the coal operators' agents, servants, and employees and including among other things building

drainage systems, creating settling ponds, treating waste water ponds with flocculant, and excavation of dirt and soil – all of which involved work with and around coal dust and polyacrylamide and acrylamide containing waste water/recycled water. Plaintiff was exposed, on a daily basis, to polyacrylamide flocculant both as a raw product, and as a component of the water used in the preparation of the coal in the settling ponds and waste water treatment ponds. Plaintiff's clothes, skin, and boots would be soaked with the polyacrylamide flocculant and water containing the polyacrylamide flocculant. Plaintiff's excavation work involved moving and disturbing the soils around the various water treatment impounds and working on roads to and from the same. Parsley was therefore engaged in employment which involved working in, around, and near polyacrylamide flocculant, acrylamide, and coal dust.

10. In approximately 2015, defendants Blackhawk and/or VCLF/ERP acquired certain assets and liabilities of Patriot Coal Corporation and its former subsidiaries. Upon information and belief, defendants acquired the assets and liabilities of the Guyan Surface Mine, Fanco Preparation Plant, Ruffner Surface Mine, and the Wylo Mine and as such are responsible for the actions and inactions of the operators of those facilities.

11. As a result Wellman's and the defendants' predecessors' actions and inactions, Parsley was exposed to said polyacrylamide flocculant, acrylamide, and coal dust by means of dermal contact, inhalation, and ingestion. Parsley's aforementioned exposures, were a proximate cause of his developing skin cancer on his neck, face, chest and arms where his skin was in contact with the flocculent residue and water as well as his chronic interstitial fibrotic lung disease resulting in shortness of breath, and excessive daytime sleepiness, fatigue and weakness which has progressed to a point that he requires supplemental oxygen.

12. As a direct and proximate result of plaintiff's exposure, he has been severely injured, disabled, and damaged as is set forth more fully below.

13. Plaintiff files this action within two (2) years of learning of the connection between his exposures and the development of his skin cancer and respiratory injuries.

14. Venue is proper before this Court to the extent Parsley's injuries occurred as a result of the exposures he sustained while working in Logan County, West Virginia.

COUNT ONE

(Premises Liability)

15. The plaintiffs incorporate by reference, as if pleaded herein verbatim, the allegations of all preceding paragraphs of the Complaint where appropriate.

16. At all relevant times through the course of his employment, Parsley entered defendants' predecessors' premises.

17. During the time period when Parsley worked at the premises, defendant Wellman and Blackhawk's and VCLF's/ERP's predecessors had responsibility for the safety of those located on the aforementioned premises.

18. Through his work at the aforementioned facilities, plaintiff was exposed to hazardous conditions, specifically the risk of injury from polyacrylamide flocculant exposures as well acrylamide and coal dust exposures.

19. At all times relevant herein, plaintiff was exposed to the hazards described above in the ordinary and regular course of his employment with Environmental Excavating on Blackhawk's and VCLF's/ERP's predecessors' premises.

20. Blackhawk's and VCLF's/ERP's predecessors, as the owners and operators of the

facilities described herein, owed Parsley the duty to provide a reasonably safe place to work and a duty to exercise reasonable care in protecting him from work place hazards.

21. Defendant Wellman, as the Safety Manager of the Ruffner Surface Mine and Guyan Surface Mine facility, owed Parsley the duty to provide a reasonably safe place to work and a duty to exercise reasonable care in protecting him from work place hazards.

22. Blackhawk's and VCLF's/ERP's predecessors, as well as defendant Wellman, breached their duties in the following manners:

- a.** Blackhawk's and VCLF's/ERP's predecessors, as well as defendant Wellman, knew, or with the exercise of reasonable care should have known, of the dangers associated with the uncontrolled release of polyacrylamide flocculant, acrylamide, and coal dust;
- b.** Blackhawk's and VCLF's/ERP's predecessors, as well as defendant Wellman, failed to take reasonable precautions and/or exercise due care to warn Mr. Parsley of the danger and harm to which he was exposed as a result of his working in, around and on the aforementioned facilities where exposure to polyacrylamide flocculant, acrylamide, and coal dust occurred;
- c.** Blackhawk's and VCLF's/ERP's predecessors, as well as defendant Wellman, failed to render harmless the waste water and spillage of polyacrylamide flocculant in the facilities, and created an unreasonable risk of harm to Mr. Parsley as a result of his work on the aforementioned premises;
- d.** Blackhawk's and VCLF's/ERP's predecessors, as well as defendant Wellman, failed to provide adequate inspection and supervision with regard to the exposure to polyacrylamide flocculant, and the associated activities of its employees and the construction of its waste water and settling ponds as well as its ditching construction, and soil excavation, so that employees of contractors and subcontractors involved with working on the facilities would have a reasonably safe place to work;
- e.** Blackhawk's and VCLF's/ERP's predecessors, as well as defendant Wellman, required Mr. Parsley to perform his job duties in areas where he would be exposed to the hazards of polyacrylamide flocculant, acrylamide, and coal dust, without being warned of those hazards or properly trained to

- protect himself therefrom;
- f. Blackhawk's and VCLF's/ERP's predecessors, as well as defendant Wellman, failed to provide Parsley with proper protective equipment and clothing sufficient to protect him from the dermal, inhalation, and ingestion exposure;
- g. Blackhawk's and VCLF's/ERP's predecessors, as well as defendant Wellman, failed to make a reasonable inquiry to assure that Environmental Excavating was adequately warning and protecting individuals, such as Parsley, against the hazards posed by polyacrylamide flocculant, acrylamide, and coal dust exposures; and
- h. Blackhawk's and VCLF's/ERP's predecessors, as well as defendant Wellman, were generally negligent, careless, and reckless in breaching its duty of providing a reasonably safe place to work and its duty of reasonable care as it related to outside contractors' employees such as plaintiff.

23. Plaintiff did not know or have reason to know of the hazardous nature of the acrylamide, polyacrylamide flocculant or coal dust.

24. As a direct and proximate result of the breaches of duty, carelessness, negligence, and recklessness, plaintiff suffered serious skin cancer and chronic interstitial fibrotic lung disease resulting in shortness of breath, and excessive daytime sleepiness, fatigue and weakness, severe and permanent physical injuries, as a consequence of which he has and will in the future endured great pain and suffering and mental anguish, incurred medical expenses, and lost earning capacity as is set forth more fully below.

25. As a result of his development of cancer and lung disease, Parsley suffered and sustained and will continue to suffer and sustain in the future severe illness and injury to his person which has forced and will force him to obtain medical treatment, and to incur medical expenses by way of doctor, hospital, and drug bills.

26. Parsley has further suffered great pain, extreme nervousness and mental anguish as a direct result of his aforesaid cancer and lung disease and other physical injuries, and will continue to suffer the same in the future.

27. As a direct and proximate result of his aforesaid cancer and lung disease and other physical injuries, Parsley's ability to work and earn a living was greatly impaired and will continue to be impaired in the future.

28. As a direct and proximate result of his aforesaid cancer and lung disease and other physical injuries, Parsley's enjoyment of life has been greatly impaired, and will continue to be impaired in the future.

29. As a direct and proximate result of his aforesaid cancer and lung disease and other physical injuries, Parsley's life expectancy has been greatly reduced.

COUNT TWO

(Loss of Consortium)

30. The plaintiffs incorporate by reference all of the foregoing allegations of the Complaint, as if repeated herein verbatim.

31. At all times material hereto, plaintiff Vicki L. Parsley was the wife of Jack D. Parsley.

32. At all times material hereto, Mr. Parsley was a financial supporter and provider for plaintiff Vicki L. Parsley, and as a result of Mr. Parsley's illness and disease, heretofore described, plaintiff Vicki L. Parsley has lost and will continue to lose in the future the financial support of her husband.

33. As a further result of Mr. Parsley's illness, plaintiff Vicki L. Parsley has lost and

will continue to lose in the future the general services, companionship and society of her husband.

WHEREFORE, plaintiffs demand compensatory damages from the defendant in an amount to be determined by the trier of fact. Plaintiffs further demand prejudgment and post-judgment interest, as well as such other relief as a judge or jury shall find fair and just.

PLAINTIFFS DEMAND A TRIAL BY JURY.

DATED: August 31, 2017.

JACK D. PARSLEY, and VICKI L. PARSLEY,
Plaintiffs

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