



West Virginia E-Filing Notice

CC-35-2022-C-55

Judge: David J. Sims

To: E. Harvit
bharvit@hartleylawgrp.com

NOTICE OF FILING

IN THE CIRCUIT COURT OF OHIO COUNTY, WEST VIRGINIA
John Doe v. TUNNEL RIDGE, LLC
CC-35-2022-C-55

The following complaint was FILED on 4/7/2022 2:43:03 PM

Notice Date: 4/7/2022 2:43:03 PM

Brenda L. Miller
CLERK OF THE CIRCUIT COURT
Ohio County
1500 Chapline Street
WHEELING, WV 26003

(304) 234-3611
Brenda.Miller@courtsww.gov

COVER SHEET

E-FILED | 4/7/2022 2:43 PM
CC-35-2022-C-55
Ohio County Circuit Clerk
Brenda L. Miller

GENERAL INFORMATION

IN THE CIRCUIT COURT OF OHIO COUNTY WEST VIRGINIA

John Doe v. TUNNEL RIDGE, LLC

First Plaintiff: Business Individual Government Other

First Defendant: Business Individual Government Other

Judge: David J. Sims

COMPLAINT INFORMATION

Case Type: Civil

Complaint Type: Other

Origin: Initial Filing Appeal from Municipal Court Appeal from Magistrate Court

Jury Trial Requested: Yes No **Case will be ready for trial by:** _____

Mediation Requested: Yes No

Substantial Hardship Requested: Yes No

Do you or any of your clients or witnesses in this case require special accommodations due to a disability?

- Wheelchair accessible hearing room and other facilities
- Interpreter or other auxiliary aid for the hearing impaired
- Reader or other auxiliary aid for the visually impaired
- Spokesperson or other auxiliary aid for the speech impaired
- Other: _____

I am proceeding without an attorney

I have an attorney: E. Harvit, 500 VIRGINIA ST E STE 500, CHARLESTON, WV 25301

SERVED PARTIES

Name: TUNNEL RIDGE, LLC
Address: c/o Cogency Global, Inc. 128 Capitol Street, Charleston WV 25301
Days to Answer: 30 **Type of Service:** Secretary of State - Certified - Including Copy Fee

Name: Eric K. Anderson
Address: 14 Stone Gate Drive, Wheeling WV 26003
Days to Answer: 20 **Type of Service:** Sheriff - Including Copy Fee

Name: Charles W. Stalnaker
Address: 1405 Earl L. Core Road, Morgantown WV 26505
Days to Answer: 20 **Type of Service:** Circuit Clerk - Certified Mail - Including Copy Fee

Name: Joshua Duncan
Address: 45161 Belmont Warnock Rd., Belmont OH 43718
Days to Answer: 30 **Type of Service:** Circuit Clerk - Certified Mail - Including Copy Fee

CIVIL CASE INFORMATION SHEET
CIVIL CASES
(Other than Domestic Relations)

IN THE CIRCUIT COURT OF OHIO COUNTY, WEST VIRGINIA

I. CASE STYLE:

Plaintiff(s)

**JOHN DOE; and
JANE DOE, his wife ***

Case: _____

Judge: _____

vs.

Defendant(s)

**Days to
Answer**

Type of Service

TUNNEL RIDGE, LLC
c/o Cogency Global, Inc.
128 Capitol Street
Charleston, WV 25301

30

WV Secretary State

ERIC K. ANDERSON
14 Stone Gate Drive
Wheeling, WV 26003

30

Personal – Sheriff

CHARLES W. STALNAKER
1405 Earl L. Core Road
Morgantown, WV 26505

30

Clerk – Certified Mail

JOSHUA DUNCAN
45161 Belmont Warnock Road
Belmont, OH 43718

30

Clerk – Certified Mail

Original and ____ copy of complaint enclosed/attached.

PLAINTIFFS: JOHN DOE, and JANE DOE his wife
DEFENDANTS: TUNNEL RIDGE, LLC, et. al.

CASE NUMBER: _____

II. TYPE OF CASE

General Civil

Mass Litigation
(As defined in T.C.R. Rule XIX (c))

- Asbestos
- Carpal Tunnel Syndrome
- Diet Drugs
- Environmental
- Industrial Hearing Loss
- Silicone Implants
- Other: _____

- Habeus Corpus/Other Extraordinary Writ
- Adoption
- Administrative Agency Appeal
- Civil Appeal from Magistrate Court
- Miscellaneous Civil Petition
- Mental Hygiene
- Guardianship
- Medical Malpractice
- Other: _____

III. JURY DEMAND: Yes No

CASE WILL BE READY FOR TRIAL BY (MONTH/YEAR):

IV. DO YOU OR ANY OF YOUR CLIENTS OR WITNESSES IN THIS CASE REQUIRE SPECIAL ACCOMMODATIONS DUE TO A DISABILITY?

YES NO

IF YES, PLEASE SPECIFY:

- Wheelchair accessible hearing room and other facilities
- Interpreter or other auxiliary aid for the hearing impaired
- Reader or other auxiliary aid for the visually impaired
- Spokesperson or other auxiliary aid for the speech impaired
- Other: _____

Attorney Name: R. DEAN HARTLEY, Esq.; E. WILLIAM HARVIT, Esq.

Representing:

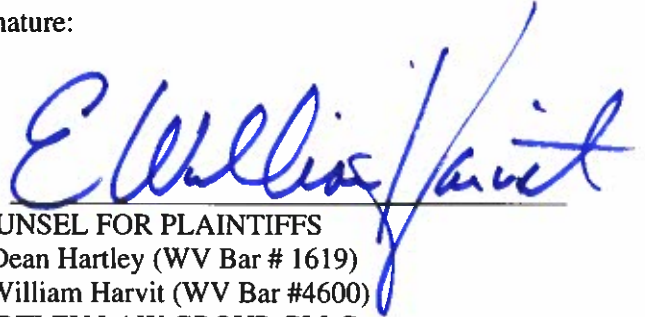
Firm: Hartley Law Group, PLLC
 Address: 7 Pine Avenue
 Wheeling, WV 26003
 Telephone: 304-233-0777

Plaintiffs Defendant
 Cross-Complaint Cross-Defendant

Dated: APRIL 7, 2022

Proceeding Without an Attorney

Signature:



By:
COUNSEL FOR PLAINTIFFS
R. Dean Hartley (WV Bar # 1619)
E. William Harvit (WV Bar #4600)
HARTLEY LAW GROUP, PLLC
7 Pine Avenue
Wheeling, WV 26003
Phone: (304) 233-0777/Fax: (304) 233-0774

*In accord with West Virginia practice, see *S. R. v. City of Fairmont*, 167 W.Va. 880, 891, 280 S.E. 2d 712, 718, n.1 (1981), citing, *Markey v. Wachtel*, 164 W. Va. 45, 264 S.E. 2d 437, 439 n. 2 (1979); *J. B. v. A. B.*, 161 W. Va. 332, 242 S.E. 2d 248, 250 n. 1 (1978). See also *Cleckley, F., et. al., Litigation Handbook on West Virginia Rules of Civil Procedure*, Rule 10, §10(a)[2][a], pp. 285-86 (4th Ed. 2012).

IN THE CIRCUIT COURT OF OHIO COUNTY, WEST VIRGINIA

**JOHN DOE; and
JANE DOE, his wife,***

Plaintiffs,

vs.

Civil Action No.:

TUNNEL RIDGE, LLC;
a Delaware corporation,
ERIC K. ANDERSON,
CHARLES W. STALNAKER, and
JOSH DUNCAN;
West Virginia residents,

Defendants.

COMPLAINT

GENERAL ALLEGATIONS

1. At all times relevant to this action, Plaintiff John Doe (“Plaintiff”) was a citizen and resident of Bethlehem, Ohio County, West Virginia. Plaintiff was severely and permanently injured when a one and one-half inch (1.5”) supply line valve opened thereby allowing the pressurized emulsion fluid to forcibly discharge from the end of the supply bypass line during a long wall mining retreating and re-plumbing process. Plaintiff brings this action to recover the damages incurred as a result of his injuries.

2. At all times relevant to this action, Plaintiff Jane Doe was a citizen and resident of Bethlehem, Ohio County, West Virginia. Jane Doe is the spouse of Plaintiff, John Doe.

*In accord with West Virginia practice, *see S. R. v. City of Fairmont*, 167 W.Va. 880, 891, 280 S.E. 2d 712, 718, n.1 (1981), *citing, Markey v. Wachtel*, 164 W. Va. 45, 264 S.E. 2d 437, 439 n. 2 (1979); *J. B. v. A. B.*, 161 W. Va. 332, 242 S.E. 2d 248, 250 n. 1 (1978). *See also* Cleckley, F., *et. al.*, *Litigation Handbook on West Virginia Rules of Civil Procedure*, Rule 10, §10(a)[2][a], pp. 285-86 (4th Ed. 2012).

3. Defendant Tunnel Ridge, LLC (hereinafter sometimes referred to as “Tunnel Ridge” or collectively included as “Defendants”), is a Delaware limited liability company licensed to conduct business in West Virginia with its principal place of business at 2596 Battle Run Road, Triadelphia, Ohio County, West Virginia, and its registered agent for service of process as Cogency Global, Inc., 128 Capital Street, Charleston, West Virginia. Based on information and belief, Defendant Tunnel Ridge is comprised of general partners that are residents and citizens of the State of West Virginia. At all times relevant hereto, Tunnel Ridge was engaged exclusively in the business of mining coal, by utilizing longwall mining techniques to produce medium/high-sulfur coal, in Triadelphia, Ohio County, West Virginia.

4. In committing the acts and omissions alleged herein, each and every managing agent, agent, representative, and/or employee of Defendant Tunnel Ridge, including Defendants Eric Anderson, Josh Duncan and Chuck Stalnaker (hereinafter sometimes included in the term “mine management”), was working within the course and scope of said agency, representation and/or employment, and said acts were authorized, ordered, done and/or ratified by Defendant Tunnel Ridge’s directors, officers, agents, employees, or representatives while engaged in the management, direction, control or transaction of Defendants’ business affairs.

5. Upon information and belief, the Defendant Eric K. Anderson (hereinafter sometimes referred to as “Anderson” or collectively as “Defendants” or “mine management defendants” or included in the term “mine management”) is a citizen and resident of Ohio County, West Virginia and, at all times relevant, was employed as a general manager by Tunnel Ridge, LLC.

6. Upon information and belief, the Defendant Charles W. Stalnaker (hereinafter

sometimes referred to as “Stalnaker” or collectively as “Defendants” or “mine management defendants” or included in the term “mine management”) is a citizen and resident of Ohio County, West Virginia and, at all times relevant, was employed as Safety Coordinator by Tunnel Ridge LLC.

7. Upon information and belief, the defendant Josh Duncan (hereinafter sometimes referred to as “Duncan” or collectively as “Defendants” or “mine management defendants” or included in the term “mine management”) is a citizen and resident of Belmont County, Ohio and, at all times relevant, was employed as long wall production coordinator at Tunnel Ridge Mine.

8. At all times material herein, Defendant Tunnel Ridge was engaged in the mining of coal at 2596 Battle Run Road, Triadelphia, Ohio County, West Virginia (hereinafter sometimes the “Tunnel Ridge Mine”) and was operating under MSHA Mine ID Number 46-08864 and West Virgin Mining Permit No. U-00018183. As such, Defendant is, and was at all times material herein, responsible for compliance with all applicable coal mining safety statutes, rules, and/or regulations; commonly accepted and well-known safety standards within the coal mining industry; safety warnings set forth by applicable equipment manufacturers; and its own safety rules and regulations.

9. At all times material herein, Defendants Anderson, Stalnaker and Duncan were members of mine management in supervisory capacities at the Tunnel Ridge Mine with the responsibility to comply with all applicable coal mining safety statutes, rules, and/or regulations; commonly accepted and well-known safety standards within the coal mining industry; safety warnings set forth by applicable equipment manufacturers; and Defendant Tunnel Ridge’s own safety rules and regulations. These duties included compliance with standards relating to longwall

mining; employee task training; safe use of machinery, equipment, and tools; employee safety training; and other safeguards.

10. Plaintiff John Doe was initially employed by Defendant Tunnel Ridge ten (10) months prior to the incident which is the subject of this Complaint and was a miner side bolter at the time of this incident.

11. At no time during his employment by Defendant Tunnel Ridge did Plaintiff receive any training on the longwall tear-down process or for handling pressurized hydraulic hose assemblies.

A. The Subject Unsafe Operation

12. On August 30, 2020, at approximately 5:40 p.m., Plaintiff's crew was advancing hydraulic whip lines on the 5 Left longwall section as part of their longwall tear down process (sometimes hereinafter "the subject unsafe operation") as instructed by mine management. The valves were shut off before the pumps which allowed pressure to build up in the lines. As the lines were being pulled back to reduce slack in the supply and return hoses, a valve opened on a bypass line causing the pressurized emulsion fluid to forcibly discharge from the one and one-half inch end of the bypass hose which struck Plaintiff and knocked him down. This subject unsafe operation was being conducted under the direct supervision of defendant's agents, servants, and/or employees including, but not limited to, Defendants Anderson, Stalnaker and Duncan.

13. The accepted and well-known safe practice during a long-wall mining machine move from one section of the mine to another section of the mine (which has been historically used at the Tunnel Ridge mine as well as at other mines in the area) requires that all pressure be released or bled from the lines prior to disconnecting the pressurized hydraulic lines in order to

prevent an inadvertent discharge of pressurized fluid.

14. Whenever pressurized hydraulic lines must be moved, it is well-known and a required safe practice that all miners are specifically trained to stay at a safe distance.

15. It is a well-known and a required safety practice to protect the valves and connections from accidental activation or damage which could cause a sudden and forceful release of fluid.

16. Well-known safety warnings from the technical manual of the manufacturer of the hydraulic lines, used in the subject unsafe operation, provide, insofar as herein pertinent:

- a. Never underestimate the power of a blown hydraulic assembly. Serious injury death and destruction of property can result from rupture or blow-off of a hydraulic hose assembly.
- b. Be aware of the dangers connected with hydraulic pressurized systems/components. Hydraulic fluid under pressure is dangerous and can cause serious injury.
- c. If pressurized hose ends or end fittings come apart, the loose hose ends can flail or whip with great force and fittings can be thrown off at high speed.
- d. Hydraulic systems sometimes use accumulators to store potential energy or absorb shock. This energy can create pressure that keeps the system's components moving. Charged accumulators can be lethal. Always open the accumulator's valve to release pressure. Stay out of hazardous areas while testing hoses under pressure. Use proper safety protection.
- e. Due to the serious criticalities of hydraulic applications, it is important to

select and install assemblies with proper criteria:

- (1) Hose assembly routing must not create an injury hazard or damage to the hose.
- (2) Hoses must not be stretched, kinked, crushed or twisted during installation or use.

17. Prior to the subject unsafe operation, each Defendant named herein had actual knowledge that conducting the subject unsafe operation with pressurized equipment created a specific unsafe working condition which presented a high degree of risk and a strong probability of serious injury or death.

18. Prior to the subject unsafe operation, each Defendant named herein had actual knowledge that conducting the subject unsafe operation with pressurized equipment without providing specific safety training to the miners created a specific unsafe working condition which presented a high degree of risk and a strong probability of serious injury or death.

19. Prior to the subject unsafe operation, each Defendant named herein had actual knowledge that conducting the subject unsafe operation with pressurized equipment created an unsafe working condition that was a violation of a state or federal safety statute, rule and/or regulations; commonly accepted and well-known safety standard within the coal mining industry; safety warnings set forth by applicable equipment manufacturers; and its own safety rules and regulations.

20. Prior to the subject unsafe operation, each Defendant named herein had actual knowledge that conducting the subject unsafe operation with untrained miners created an unsafe

working condition that was a violation of a state or federal safety statute, rule and/or regulations; commonly accepted and well-known safety standard within the coal mining industry; safety warnings set forth by applicable equipment manufacturers; and its own safety rules and regulations.

B. Prior Unsafe Operation in 2013

21. Prior to the subject unsafe operation and on December 17, 2013 (sometimes hereinafter “prior unsafe operation in 2013”), Defendants and each of them were involved in a serious accident which occurred on the 4 Left longwall teardown area of the Tunnel Ridge Mine. During the teardown, five hundred feet (500’) of a two-inch (2”) pressurized hydraulic return hose was being removed by pulling it with a scoop when a makeshift strap failed thereby releasing the built-up pressure in the hose causing it to “whip” and strike an employee, flipping him into the air, causing him to suffer serious and permanent injuries.

22. The prior unsafe operation in 2013 was investigated by the United States Department of Labor, Mine Safety and Health Administration, and Defendant Tunnel Ridge was cited for, among other things, an unsafe working condition that allowed miners to be in close proximity to a pressurized hose.

23. At the time of the prior unsafe operation in 2013, Defendant Anderson was general manager, Defendant Stalnaker was the longwall production coordinator and Defendant Duncan was the longwall coordinator.

24. As a result of the prior unsafe operation in 2013, Defendant Tunnel Ridge issued an “Accident Gram” on December 19, 2013, which stated, among other things: “Position workers

out of 'Line of Fire' when pulling materials capable of sudden energy release” and “Utilize energy dampening devices & minimize length of pull to help avoid recoil.”

25. Fully aware of the failure of the prior unsafe operation in 2013, and the substantial risks associated therewith, Defendants Anderson, Stalnaker, Duncan and other mine management nevertheless utilized the same procedure during the subject unsafe operation on August 30, 2020, in an attempt to complete the hose recovery task quickly in order to meet production or other economic quota requirements.

26. As a result of the subject unsafe operation, Plaintiff has suffered and continues to suffer the following physical injuries which required multiple surgeries, wiring his jaw shut, extraction of teeth and other dental procedures as well as other medical procedures: A shattered orbit of the right eye and right cheekbone and other facial fractures; traumatic brain injury with concussion; brain swelling; a broken jaw; multiple chipped and broken teeth, one below the gum line; strained ligaments of the back and left shoulder; and lacerations of the face, forehead and left arm which required twenty-two (22) stiches around his eye, eighteen (18) stitches on his forehead and other stitches and sutures from surgical procedures. Plaintiff has also suffered mental injuries, as more fully set forth below, as a direct and proximate result of the physical injuries he received from the subject unsafe operation.

27. Defendants' directives to utilize the subject unsafe operation was in violation of W. Va. Code § 23-4-2 and was a direct and proximate cause of the injuries sustained by Plaintiffs.

28. As a direct and proximate result of Defendants' directives to utilize the subject unsafe operation, Plaintiff has suffered a combination of physical and psychological injuries which are at a total whole person impairment level of at least thirteen percent (13%) and have caused

significant impairment of physical and psychological function.

JURISDICTION AND VENUE

29. Plaintiffs incorporate by reference, as if pleaded herein verbatim, the allegations of all preceding paragraphs of the Complaint where appropriate.

30. The Defendants are amenable to jurisdiction before the courts of West Virginia by virtue of the fact that they are citizens and residents of West Virginia, and/or to the extent they maintain minimum contacts with and/or conduct systematic business in West Virginia such that jurisdiction over the Defendants is consistent with traditional notions of fair play and substantial justice, and/or to the extent they are otherwise amenable to jurisdiction in accordance with West Virginia's Long Arm Statutes.

31. There is no federal question at issue pursuant to 28 U.S.C. § 1441(b). Plaintiffs are not asserting any claim against any defendant who was acting under any officer of the United States or any agency thereof, or person acting under him or her, for any act under color of such office, or against defendant during any time period when its facility was a federal enclave.

32. Pursuant to W. Va. Code § 23-4-2(e), venue is proper before this Court to the extent Plaintiff's injuries were sustained while working in Ohio County, West Virginia. Further, West Virginia follows the venue-giving defendant principle, whereby, once venue is proper for one defendant, it is proper for all other defendants subject to process.

33. Defendants Tunnel Ridge, Eric K. Anderson** and Josh Duncan are amenable to jurisdiction before the courts of West Virginia in general and this Court in particular by virtue of

** Defendant Eric K. Anderson also defended a whistle-blower /retaliation discharge case in the Circuit Court of Ohio County, West Virginia bearing civil action number 17-C-263.

the fact each of them defended the case involving the prior unsafe operation in 2013 in the Circuit Court of Ohio County, West Virginia bearing civil action number 15-C-123.

34. Defendant Charles W. Stalnaker is amenable to jurisdiction before the courts of West Virginia in general and this Court in particular by virtue of the fact that he previously prosecuted a discrimination case against Tunnel Ridge, LLC in the Circuit Court of Ohio County, West Virginia bearing civil action number 17-C-287.

COUNT ONE
(W.Va. Code §23-4-2(d)(2)(B) Claim)

35. Plaintiffs incorporate by reference, as if pleaded herein verbatim, the allegations of all preceding paragraphs of the Complaint where appropriate.

36. At all times material hereto, a specific unsafe working condition existed in the work place which presented a high degree of risk and a strong probability of serious injury or death, and Defendants, having actual knowledge of the existence of same, required Plaintiff to perform his job duties without adequate training, without being warned of the hazards posed by the same, and without being provided adequate safety equipment, controls and/or procedures when so performing his job duties.

37. Despite such actual knowledge and appreciation, Defendants violated, disregarded, circumvented, and by-passed the applicable state and federal safety statutes, rules, regulations, and standards and commonly accepted and well-known safety standards and customs of the Defendants' industry (including its own "Accident Gram" safety rules instituted as a result of the 2013 prior unsafe operation) concerning proper mining procedures, training, the warnings which must be given, and other precautions which must be taken when an employee, such as Plaintiff, an untrained miner, is required to perform mining operations. These include, but are not limited to,

violating 30 CFR 48.7(c) (task training), 30 CFR 75.362(a)(1) (on-shift examination), W. Va. Code § 22A-2-14 (safety inspections (on-shift)), 30 CFR 56.14205 (machinery, equipment, and tools), 36 CSR 18 (responsibility for care and maintenance of equipment) and 30 CFR 75.1403 (other safeguards) when requiring Plaintiff, an untrained miner, to perform long wall hose recovery operations using unsafe and inappropriate procedures, and otherwise failing to provide, institute, observe, obey and enforce reasonable, adequate, proper and acceptable safety rules, laws, and standards accepted and acceptable in the defendants' industry in order to make safe the areas in, and conditions under which plaintiff worked.

38. Investigation by mining authorities revealed that the subject unsafe operation occurred because Defendants did not follow the equipment manufacturers safety recommendations, the pressurized line was not equipped with safety restraints to prevent hose whip, the pressurized line was not properly equipped with a quick disconnect coupling or other secondary safety mechanism to prevent accidental activation, and Plaintiff was not properly trained with regard to pressurized hydraulic hose assemblies.

39. The subject unsafe operation described herein resulted in the Tunnel Ridge Mine being cited for violating Standard 36 CSR 18.4. – responsibility for care and maintenance of equipment.

40. The Violation Assessment Evaluation, issued from the investigation by mining authorities, rated Defendants' negligence as "high" - the highest and worst rating recognized.

41. In the prior unsafe operation in 2013, Defendant Tunnel Ridge Mine was cited for violating Standard 75.1403 (30 CFR 75.1403) – a standard it violated sixty (60) times in the two (2) years prior to the injuries suffered by Plaintiff in that case.

42. Defendants had actual and direct knowledge of the unsafe working conditions described herein, together with their attendant risks and harm, yet intentionally and purposely exposed Plaintiff to these unsafe working conditions on August 30, 2020, by requiring him to work under these conditions and failing to abate and/or permit the existence of these known unsafe working conditions.

43. All such actions and inactions by Defendants, as set forth above, constitute, establish, and demonstrate a deliberate intention on the part of Defendants to expose employees in general, and Plaintiff in particular, to the unsafe working conditions set forth above as defined by W. Va. Code § 23-4-2(d)(2)(B).

44. Defendants deliberate and intentional acts and omissions were a direct and proximate cause of Plaintiff's injuries, which resulted in a combination of physical and psychological injuries which are at a total whole person impairment level of at least thirteen percent (13%) and have caused significant impairment of physical and psychological function.

45. Pursuant to W. Va. Code § 23-4-2 (2015), Plaintiffs attach (i) a "verified statement" from a person with knowledge and expertise which outlines the applicable workplace safety rules and/or regulations that were violated, pursuant to W. Va. Code §23-4-2(d)(2)(c); (ii) the worker's compensation claim form filed in relation to the occupational injury as required by W. Va. Code § 23-4-2(c); and (iii) a certification supporting the allegation of a serious compensable injury as required by W. Va. Code §23-4-2(d)(2)(B)(v). *See* Exhibits A, B and C attached hereto respectively.

COUNT TWO
(W.Va. Code §23-4-2(d)(2)(A) Claim)

46. Plaintiffs incorporate by reference, as if pleaded herein verbatim, the allegations of

all preceding paragraphs of the Complaint where appropriate.

47. As a result of the prior unsafe operation in 2013 which caused serious injuries to a miner - and to abate a safety violation and penalty from state and/or federal investigative authorities - Defendant Tunnel Ridge issued an “Accident Gram” on December 19, 2013, which required, among other things to “[p]osition workers out of ‘Line of Fire’ when pulling materials capable of sudden energy release” and to “[u]tilize energy dampening devices & minimize length of pull to help avoid recoil.”

48. As a result of the prior unsafe operation in 2013, each Defendant named herein, as well as mine management who were directly responsible for the health and safety of Plaintiff, had actual and direct knowledge that conducting the subject unsafe operation with pressurized equipment and with untrained miners was a violation of a state or federal safety statute, rule and/or regulations; commonly accepted and well-known safety standard within the coal mining industry; safety warnings set forth by applicable equipment manufacturers; and its own safety rules and regulations. but - in order to meet production or other economic quota requirements - intentionally disregarded, ignored, and circumvented all of these safety measures which would have adequately protected the workers therein, including Plaintiff.

49. Despite actual and direct knowledge of the hazards associated with the subject unsafe operation and their obvious risks and dangers - and in order to meet production or other economic quota requirements - Defendants and mine management failed to abate these known hazards and permitted them to exist in the workplace, thereby making the conscious, subjective and deliberately formed intention to instruct and require Plaintiff to engage in the subject unsafe operation.

50. By intentionally instructing and requiring Plaintiff to carry out his work directives on August 30, 2020, with the actual and direct knowledge of the persistent, regular, and systemic pattern of unsafe operations, as described herein, together with actual and direct knowledge of the "hazard[s]" associated with these unsafe practices and operations and that injury would inevitably result from their actions and omissions, Defendants engaged in conduct with the desire to bring about harm to Plaintiff and acted with a consciously, subjectively and deliberately formed intention to produce the specific result of injury to Plaintiff.

51. With full knowledge of the consequences and dangers, Defendants did by design, resolve, and determination, conceal information concerning safe work practices from Plaintiff thereby depriving him of the ability to make an informed decision as to whether to perform his required job duties. Said concealment by Defendants evidences a consciously, subjectively, and deliberately formed intent to produce the specific result of injury to Plaintiff.

52. The acts, omissions, and conduct of Defendants, as described in this Count, were committed with the specific intent to injure Plaintiff and with the belief that injury was substantially certain to occur.

53. The conduct, actions, and omissions of defendants, as described in this Count, constitute a violation of W. Va. Code § 23-4-2(d)(2)(A).

54. As a direct and proximate result of the actions, omissions, and/or conduct of Defendants, as set forth herein, Plaintiff has suffered a combination of physical and psychological injuries which are at a total whole person impairment level of at least thirteen percent (13%) and/or have caused significant impairment of physical and psychological function.

PUNITIVE DAMAGES - W.VA. CODE §23-4-2(d)(2)(A) CLAIM

55. Plaintiffs incorporate by reference, as if pleaded herein verbatim, the allegations of all preceding paragraphs of the Complaint where appropriate.

56. The acts, omissions, and conduct of Defendants with regard to the subject unsafe operation, as described herein, were willful, wanton, malicious and/or reckless and/or done with criminal indifference to the civil rights of others solely for the purpose of meeting production or other economic quota requirements.

57. The same acts, omissions, and conduct of Defendants with regard to the prior unsafe operation in 2013, as described herein, were willful, wanton, malicious and/or reckless and/or done with criminal indifference to the civil rights of others solely for the purpose of meeting production or other economic quota requirements.

58. The acts, omissions, and conduct of Defendants with regard to both the subject unsafe operation and the prior unsafe operation in 2013, as described herein, show a pattern which is willful, wanton, malicious and/or reckless and/or done with criminal indifference to the civil rights of others, including Plaintiff, and warrant the assessment of punitive damages.

59. The acts, omissions, and conduct of Defendants, as described in Count Two, were carried out with actual malice towards Plaintiff and/or were done with a conscious, reckless, and outrageous indifference to the health, safety, and welfare of others.

60. Punitive damages are justified to punish Defendants for their pattern of willful, wanton, malicious, and/or reckless behavior which caused and/or contributed to the injuries of Plaintiff.

61. Punitive damages will serve to deter these Defendants and other reckless companies/individuals from conducting business in West Virginia in this manner and profiting

from such reprehensible conduct.

**COUNT THREE
(Loss of Consortium)**

62. Plaintiff Jane Doe incorporates by reference, as if pleaded herein verbatim, the allegations of all preceding paragraphs of the Complaint where appropriate.

63. At all times material hereto, Jane Doe is/was the wife of Plaintiff John Doe.

64. At all times material hereto, Plaintiff was a financial supporter and provider for Jane Doe, and as a result of Plaintiff's severe and permanent injury, heretofore described, Jane Doe has suffered a diminution of the financial support of her husband from the date of his injury in perpetuity, and she further suffered a diminution of the general services, companionship, consortium, and society of her husband in perpetuity.

DAMAGES RELATED TO COUNTS ONE, TWO AND THREE

65. As a result of the defendants' conduct, Plaintiff has suffered the following injuries and damages which required multiple surgeries, wiring his jaw shut and other procedures:

- a. A shattered orbit of the right eye and right cheekbone and other facial fractures.
- b. Traumatic brain injury with concussion.
- c. Swelling of the brain.
- d. A broken jaw.
- e. Multiple chipped and broken teeth, one below the gum line.
- f. Broken ribs.
- g. Strained ligaments of the back and left shoulder.
- h. Lacerations of the face, forehead and left arm which required twenty-two

(22) stiches around his eye, eighteen (18) stiches on his forehead and other stiches and sutures from surgical procedures.

- i. Other cuts and bruises.
- j. Physical pain and suffering and mental anguish, past and future.
- k. Post-traumatic stress syndrome, adjustment disorder and depression.
- l. Loss of wages and employment benefits, past and future.
- m. Physical impairment, past and future.
- n. Medical and dental expenses, past and future.
- o. Other injuries and damages which are not presently know and which may arise in the future.

66. As a result of the injuries sustained by Plaintiff, he has been caused to undergo extensive medical and dental treatment and therapy. Plaintiff has suffered, and because such injuries are permanent in nature, will continue in the future to suffer physical and emotional pain, nervousness, and mental anguish, and his enjoyment of life has been greatly reduced.

67. Plaintiff further alleges that as a result of his health problems, he has been forced to incur medical and dental expenses by way of doctor, dentist, hospital and drug bills in an effort to treat his condition and will be required to incur such additional expenses in the future.

68. The aforementioned medical and dental expenses were incurred for necessary care and treatment of the injuries resulting from the acts and/or omissions complained of. The charges were reasonable, and they were the customary charges made for such services in the area in which they were rendered.

69. Plaintiff was a strong and able-bodied man capable of gainful employment at the

time of his injury, and as a direct and proximate result, in whole or in part, of the acts and omissions on the part of the Defendants, Plaintiff suffers a severe loss of earnings and/or impairment of earning capacity and/or earning power and Plaintiff may continue to suffer such loss of earnings and/or impairment of earning capacity for an indefinite time in the future.

70. As a result of the injuries sustained by Plaintiff, Jane Doe has suffered loss of consortium as set forth above.

COUNT FOUR
(Misrepresentation and Outrageous Conduct - Tunnel Ridge, LLC)

71. Plaintiffs incorporate by reference, as if pleaded herein verbatim, the allegations of all preceding paragraphs of the Complaint where appropriate.

72. Defendant Tunnel Ridge was self-insured for workers compensation and has administered and directly controlled Plaintiff John Doe's workers compensation claim itself rather than through a third-party administrator or insurance company.

73. In defending itself in and directly controlling Plaintiff's workers compensation claim, Defendant Tunnel Ridge has fraudulently misrepresented Plaintiff's condition with the intention of depriving him of benefits rightfully due him and his family. Specifically, and as more fully set forth below, Defendant Tunnel Ridge, by and through its agents, servants and/or employees, have labeled Plaintiff a "malingeringer" while, during the same time, its counsel in the workers compensation claim expressed in writing concern for Plaintiff's increase in suicidal ideation, acknowledged that Plaintiffs psychological condition was worsening, and even considered contacting the local police to check on Plaintiff's welfare.

74. In defending itself in and directly controlling Plaintiff's workers compensation claim, Defendant Tunnel Ridge has fraudulently misrepresented Plaintiff's condition in order to

use the workers compensation claim as a shield to protect it from civil liability for deliberating causing Plaintiffs physical and mental injuries in the subject unsafe operation on August 30, 2020, even though it had actual knowledge of the unsafe condition from the prior unsafe operation in 2013, as set forth above. Specifically, and as more fully set forth below, Defendant Tunnel Ridge, by and through its agents, servants and/or employees, asserts that Plaintiff has no permanent impairment from the physical and mental injuries sustained from the subject unsafe operation on August 30, 2020, cannot meet the statutory impairment requirements, and therefore cannot pursue a deliberate intent cause of action.

75. In defending itself in and directly controlling Plaintiff's workers compensation claim, Defendant Tunnel Ridge harassed Plaintiff and his family. As more fully set forth below, Defendant Tunnel Ridge hired a private investigator to spy on Plaintiff, his wife and their four small children (ages five, six, seven and ten) over the course of eight months during which Defendant Tunnel Ridge had direct knowledge that Plaintiff was being treated for significant psychological issues directly attributable to the injuries he received from subject unsafe operation and allowed the spying to continue even after its counsel in the workers compensation claim acknowledged that Plaintiffs psychological condition was worsening.

76. After Plaintiff sustained serious injuries from the subject unsafe operation on August 30, 2020, Plaintiff, John Doe, properly, timely and legally filed a OIC-WV-1 Claim Form for workers' compensation seeking medical benefits for himself and indemnity benefits to support his spouse and four children, ages five, six, seven and ten.

77. Defendant Tunnel Ridge filed a OIC-WV-2 Form on September 1, 2020, acknowledging the incident and stating that it had no "reason to question the injury."

78. Defendant Tunnel Ridge accepted Plaintiffs claim in an Initial Claim Decision dated September 14, 2020, with the following medical conditions: flail chest (defined as two or more contiguous rib fractures with two or more breaks per rib); unspecified injury of the face; concussion, without loss of consciousness; unspecified fracture of facial bones; laceration without foreign body of other part of head; fracture of right-side maxilla; fracture of medial wall of right orbit; fracture, mandible; left shoulder strain; sprain of ligaments, cervical spine; sprain of ligaments, lumbar spine.

79. On September 17, 2020, Defendant Tunnel Ridge accepted six more injury classifications: fracture of right-side maxilla; fracture of medial wall of right orbit; fracture, mandible; left shoulder strain; sprain of ligaments, cervical spine; sprain of ligaments, lumbar spine.

80. A few days after his urgent physical injuries were medically addressed, Plaintiff John Doe was evaluated and began treatment with the West Virginia University Concussion Clinic. Also, soon after his traumatic injuries, he began experiencing psychological issues and, on October 14, 2020, Defendant Tunnel Ridge approved a request from Plaintiff's treating physician for a psychiatry referral. Shortly thereafter, Plaintiff began psychological treatment for issues directly and proximately caused from the subject unsafe operation.

81. While Plaintiff was still being treated for both his physical and mental injuries, Defendant Tunnel Ridge retained Dr. James L. Cosgrove, from Wexford, Pennsylvania, and required Plaintiff to undergo an evaluation by him on January 29, 2021. At that time, Dr. Cosgrove opined that none of Plaintiffs conditions were ratable because he had not reached maximum medical improvement. He acknowledged that Plaintiff was under psychiatric care with

psychological counsel and stated that “a formal psychiatric diagnosis is beyond the scope of this evaluation, behavioral health records are not available for review.” Despite these limitations, Dr. Cosgrove stated that Plaintiff “does not meet the typical presentation of post-concussion syndrome or traumatic brain injury. His presentation is more suggestive of vegetative signs of depression or possible simple presentation style.”

82. On March 1, 2021 - six months after Plaintiff sustained the serious and permanent injuries described herein and while he was still being treated for both physical and mental injuries - Defendant Tunnel Ridge terminated Plaintiff’s employment and terminated his benefits under Defendant Tunnel Ridge’s health insurance plan for both he and his family.

83. While Plaintiff was still being treated for both his physical and mental injuries, Defendant Tunnel Ridge retained Eric Fishman, Ph.D., and required Plaintiff to undergo a neuropsychological evaluation by him on March 24, 2021. At that time, Eric Fishman, Ph.D. opined, among other things, that Plaintiff “shows a high rate of validity test failure and symptom exaggeration” and diagnosed Plaintiff as a “malingerer.”

84. In responding to Eric Fishman, Ph.D., Dr. Franklin Curry, who had twenty-two therapeutic sessions with Plaintiff between January 12, 2021 and June 25, 2021, stated in a letter dated June 25, 2021: “I do not believe that this [malingerer] description fits [Plaintiff]. Nor do I believe he is experiencing a Factitious Disorder Imposed on Self in that [Plaintiff] does not appear deceptive or delusional in his presentation, and he clearly did not willfully cause his injury.”

85. While Plaintiff was still being treated for both his physical and mental injuries, Defendant Tunnel Ridge required Plaintiff to undergo as second evaluation by Dr. James L. Cosgrove on May 27, 2021. Despite acknowledging that Plaintiffs psychiatric condition, his

dental injuries and the facial fractures were beyond his area of specialty and that Plaintiff may need additional treatment, Dr. Cosgrove opined that Plaintiff had no whole person impairment from the injuries he sustained on August 30, 2020.

86. On June 7, 2021, based upon Dr. Cosgrove's second report, Defendant Tunnel Ridge terminated Plaintiffs temporary disability benefits - which provided support to Plaintiff and his family - without regard to his physical and/or ongoing mental injuries.

87. On November 18, 2021, Plaintiff participated in a follow-up visit with WVU Medicine for his psychological injuries and reported a worsening in mood and anxiety, hypervigilance with loud noises and bright lights, and an increase in suicidal thoughts. The medical records documenting this follow-up visit were provided to Defendant Tunnel Ridge on or about November 19, 2021.

88. While Plaintiff was still being treated for both his physical and mental injuries - and about eleven days after Defendant Tunnel Ridge had been advised of Plaintiffs worsening mental condition and that Plaintiff expressed "an increase in suicidal thoughts" - Defendant Tunnel Ridge retained Ivan I. Mazzorana, Jr., M.D., from Fort Myers, Florida, and required Plaintiff to undergo a psychiatric evaluation by him on December 1, 2021. Dr. Mazzorana opined that Plaintiff was a "malingerer." Further, he stated: "I believe [Plaintiff] has already had psychiatric and behavioral care and I am not certain what further care would have to offer other than the ability to vent." Further, if additional treatment is authorized, then measurable goals are recommended, "[o]therwise, everything will continue to hinge on [Plaintiff] feeling 'just right' to be able to return to gainful employment." Finally, Dr. Mazzorana opined that Plaintiff has "zero percent ratable impairment rating" from the injuries he sustained on August 30, 2020.

89. Despite being advised of Plaintiff's worsening mental condition, including his increase in suicidal thoughts, Defendant Tunnel Ridge failed and/or refused to act - between November 19, 2021 and December 7, 2021 - other than retaining Dr. Mazzorana to evaluate Plaintiff and label him a "malingerer."

90. Six days after Dr. Mazzorana opined that Plaintiff was a "malingerer" and made other flippant remarks about Plaintiff, counsel for Defendant Tunnel Ridge, in electronic mail to Plaintiff's counsel dated December 7, 2021, expressed concern for Plaintiff's "increase in suicidal ideation with reported possession of a gun" and stated "this seems to be a significant worsening of this issue. . . ." Counsel for Tunnel Ridge further states: "My client [Defendant Tunnel Ridge] is considering calling the local police . . . to conduct a welfare check on [Plaintiff]."

91. Plaintiff was evaluated by Dr. Patricia Bailey in Wheeling, West Virginia. Dr. Bailey found Plaintiff to be the opposite of a "malingerer" and her findings too found Plaintiff to be suffering from mental injuries directly caused from the subject unsafe operation. Specifically, Bailey opined, among other things, that Plaintiff "is experiencing significant anxiety, depression, and trauma related symptoms," that Plaintiff's "symptoms have caused significant impairment in multiple areas of functioning including cognitive, affective, behavioral, interpersonal, and occupational domains," and that he has "psychological conditions of PTSD [Post Traumatic Stress Disorder] and comorbid depression are a direct result of his traumatic accident and injury which occurred on August 30, 2020." Further, Dr. Bailey opined that Plaintiff's overall level of permanent partial impairment of the whole person to be in the moderate to severe range of 55%, that Plaintiff has not reached maximum medical improvement, should continue with psychological treatment in conjunction with psychiatric services, and should continue to be assessed for suicidal

ideation.

92. Defendant Tunnel Ridge was so concerned about liability as a result of creating the subject unsafe operation which caused significant damage to Plaintiff, Defendant Tunnel Ridge retained a private investigator, from Columbia, Maryland, to spy on Plaintiff in an attempt to show that he did not have any physical or mental impairment from his injuries. Defendant caused the spying on Plaintiff and his family even though it was aware, since at least October 14, 2020, that Plaintiff had been struggling with psychological issues. Further, and even more disturbing is that Defendant Tunnel Ridge allowed the spying to continue even after its counsel expressed in writing concern for Plaintiffs increase in suicidal ideation, acknowledged that Plaintiffs psychological condition was worsening, and even considered contacting the local police to check on Plaintiff's welfare.

93. Between May 7, 2021 and December 10, 2021, Defendant Tunnel Ridge's private investigator conducted secret reconnaissance of Plaintiff, his wife and his four children - in both West Virginia and Florida - which included stalking Plaintiff for the purpose of taking photographs and videotapes. Defendant's investigator hid out of sight; peered into the windows of the home of Plaintiff, his wife and four small children; followed Plaintiff to medical appointments, the grocery store and other necessary trips; followed Plaintiff's wife, Jane Doe, to and from her place of employment; followed Plaintiffs' children (ages five, six, seven and ten) to and from school and church; monitored the vehicles of both Plaintiffs; monitored the residence of relatives of Plaintiffs; monitored the social media pages of both Plaintiff, John Doe and Plaintiff Jane Doe; and conducted other snooping into Plaintiffs' private affairs all for the purpose of trying to protect Defendant Tunnel Ridge from civil liability and to defeat Plaintiffs claim for workers compensation benefits

to support Plaintiff's family.

94. Defendant Tunnel Ridge's conduct to fraudulently misrepresent, directly and through its agents, servants and employees, Plaintiff's physical and mental condition has been atrocious, intolerable, and so extreme and outrageous as to exceed the bounds of decency.

95. By and through its atrocious, intolerable, extreme and outrageous conduct, Defendant Tunnel Ridge intended to shield itself from civil liability for exposing Plaintiff to the subject unsafe operation after having actual knowledge, as set forth above, that it was an unsafe working condition, in order to protect its own economic interest.

96. By and through its atrocious, intolerable, extreme and outrageous conduct, Defendant Tunnel Ridge intended to deprive Plaintiff and his family of the benefits rightfully due them in order to protect its own economic interest.

97. By and through its atrocious, intolerable, extreme and outrageous conduct, Defendant Tunnel Ridge intended to harass Plaintiff, his wife and their four children in order to protect its own economic interest.

98. As a result of the atrocious, intolerable, extreme and outrageous conduct of Defendant Tunnel Ridge, Plaintiffs have been deprived of benefits to which they are rightly entitled and have suffered and will continue to suffer emotional distress from such conduct.

99. As set forth above, Plaintiff was evaluated by Dr. Patricia Bailey in Wheeling, West Virginia. In her twenty-one-page report - issued before Plaintiff was advised that he and his family had been spied upon for months - she opined that Plaintiff has "limited psychological resilience" and stated: "It is my professional opinion that [Plaintiff] would be at risk of further emotional decompensation if faced with additional work related stressors."

100. After Defendant Tunnel Ridge submitted the reports of its private investigator in the workers compensation claim and Plaintiff became aware of the extended surveillance of himself, his wife and his four small children, Plaintiff's mental and psychological issues have worsened. Specifically, and to his consternation, Plaintiff has become more depressed and anxious about leaving the house, unless absolutely necessary, and about he and his family being stalked, all of which has affected his daily living activities, social functioning, and adaptation and which may continue in the future.

WHEREFORE, the Plaintiffs, John Doe and Jane Doe, demand judgment against defendants, jointly and severally as permitted by law, for compensatory damages and punitive damages; prejudgment and post-judgment interest by law; attorney's fees; and any and all further fair, just, and proper relief.

Dated: 4/7/2022

JOHN DOE and JANE DOE, his wife
Plaintiffs

By: 

R. Dean Hartley (WV Bar # 1619)
E. William Harvit (WV Bar # 4600)
HARTLEY LAW GROUP, PLLC
7 Pine Avenue
Wheeling, West Virginia 26003
Telephone (304) 233-0777
Telecopier (304) 233-0774
dhartley@hartleylawgrp.com
bharvit@hartleylawgrp.com
Counsel for Plaintiffs

E-FILED | 4/7/2022 2:43 PM
CC-35-2022-C-55
Ohio County Circuit Clerk
Brenda L. Miller



State of West Virginia

WV Office of Miners' Health, Safety & Training Eugene White, Director

#7 Players Club Drive, Suite 2 • Charleston, West Virginia • 25311-1626
Telephone 304-558-1425 • Fax 304-558-1282
Minesafety.wv.gov

E. William Harvit
Hartley Law Group, PLLC
7 Pine Avenue
Wheeling, WV 26003

RE: "Certified Copy" of Notice of Violation issued by Arthur Wood

Dear Mr. Harvit:

Please find attached certified copies of the two-page Notice of Violation in case number 336-0043-2020. The certification and affidavit of Eugene White, Director of the WV Office of Miners' Health, Safety and Training are on the back of each page.

Sincerely,

A handwritten signature in blue ink that reads "John H. Boothroyd".

John H. Boothroyd, Bar ID 6769
Assistant Attorney General, West Virginia
Counsel for the West Virginia Office of Miners' Health, Safety and Training

cc: file
enc.

STATE OF WEST VIRGINIA
OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING

Copies: Company
Inspector
Assessment
Regional Office
Post
Rep of Miners

Region ONE
Case No. 336-0043-2020
Violation No. 1

NOTICE OF VIOLATION - CONTINUATION PAGE NUMBER 2

Company / Operator TUNNEL RIDGE, LLC Contractor: Yes No
Permit Number U00018183
Date of Issue 9/4 20 20 Time 12:00 A.M. P.M.

Reasonable care requires operators to follow manufacturer's recommendations in the operation and use of the equipment entrusted to them. The manufacturer of the hydraulic line, Manull Rubber Industries, writes in their technical manual that "The hose assembly routing must not create an injury hazard", and recommends that "operating personnel must receive training on the use of hoses, couplings, and assembly equipment and hose installation practices" It also states that "if there are risks impacting safety requirements, install proper protective shields and / or restraint systems (whinchek) to protect the personnel from potential failures of the pressurized hydraulic components." Consideration was given that these recommendations weren't followed. That the victim had received no training regarding hydraulic hose assemblies, or the hazards specific to longwall tear down or pulling shields. That this hydraulic hose assembly involved a pressurized line equipped with no safety restraints (whinchek) to prevent hose whip, no quick disconnect coupling, or other secondary safety mechanism on the hose or super-stecko type ball valve itself so as to prevent accidental activation. Reasonable care requires that, prior to disconnecting hydraulic or other fluid power system lines, all pressure is released (bled) from the lines. In the event that hydraulic lines must be moved, valves and connections must be protected against any force which may cause damage to the assembly, or cause an inadvertant discharge of pressurized fluid. The high-pressure discharge of emulsion fluid caused the hose to whip, which resulted in serious injuries to the employee. He was life-flighted, underwent surgery, had his jaw wired shut, and suffered multiple facial fractures.


Company/Operator Agent Served: Chuck Stalnaker

Authorized Representative: /s/ Arthur Wood Inspector Number 336

Certified Copy

I, Eugene White, Director of the West Virginia Office of Miners' Health, Safety and Training, certify under oath that this document is a certified, correct copy of the notice of violation, case no. 336-0043-2020, issued and maintained by the West Virginia Office of Miners' Health, Safety and Training.

Executed this 22ND day of March, 2022 at Charleston, West Virginia.


Eugene White, Director

Sworn to and subscribed before me this 22nd day of March 2022.

My commission expires June 21, 2026.



Notary Public



**STATE OF WEST VIRGINIA
OFFICE OF
MINERS' HEALTH, SAFETY AND TRAINING**

Copies: Company
Inspector
Assessment
Regional Office
Post
Rep of Miners

Region ONE

Case No 336-0043-2020

NOTICE OF VIOLATION

Vio. No 1

Company/Operator TUNNEL RIDGE, LLC

Contractor: Yes No

Permit Number U00018183

Mine Name TUNNEL RIDGE MINE

Date of Issue 9/4/2020

Time 12:00 AM PM

Notice is hereby given that the undersigned authorized representative of the Director of the Office of Miners' Health, Safety and Training, upon making an inspection of this mine finds that the violation referred to in West Virginia Code,

Chapter Article Section and/or West Virginia Administrative Regulation:
Title 36 Series 18 Section 4.1 exists as follows:

"Equipment operators shall exercise reasonable care in the operation of the equipment entrusted to them" On 8-30-20 at approximately 5:40 pm, the operator was advancing hydraulic whip lines on the 5 left longwall section as part of their longwall tear down process. The victim was assigned a longwall move utility job by the operator. The operator directed that the whiplines be moved outby from the walker shields toward the stageloader. The victim was holding the 1.5" end of the bypass line as he and other employees were pulling the slack of the supply and return hoses back alongside the stageloader, the valve was shut off before the pumps were knocked allowing pressure to be stored in the lines between the monorail and the valve. As the lines were being pulled back, the valve opened by being dropped, dragged on the ground or inadvertently opened, which caused the pressurized emulsion fluid to forcibly discharge from the end of the bypass line that the victim was holding. The bypass line struck the victim, knocking him face first into a pile of metal stageloader chain that was on the ground. Investigation has determined that reasonable care was not exercised in the operation of the equipment. (Continued on page 2)

Type of Issuance: N.O.V Order

Area or equipment (if order is issued):

The foregoing violation shall be totally abated by 8:00 A.M. P.M. on 9/14/2020

The foregoing violation was totally abated by A.M. P.M. on

Action taken to abate violation:

Company / Operator Agent Served: Chuck Stalnaker

Authorized Representative: /s/ Arthur Wood

Inspector No: 336

VIOLATION ASSESSMENT EVALUATION

S and S Violation: <u>NO</u>	Recommend Special Assessment: <u>NO</u>
Likelihood of Occurrence: Unlikely (0), Reasonably likely (10), Occurred (20)	<u>20</u>
Severity of Injury Expected: None (0), No lost work days (6), Lost or restricted days (11), Permanently Disabling (15), Fatal (20)	<u>11</u>
No. of Persons Potentially Affected: 0 persons (0), 1 person (1), 2 persons (2), 3 persons (4), 4-5 persons (6), 6-9 persons (8), 9+ persons (10)	<u>1</u>
Negligence: None (0), Low (10), Moderate (15), High (20)	<u>20</u>
Knowing Violation: No Yes	<u>No</u>
Good Faith in Abatement: Lack of good faith (+ 15%)	
No compliance (extenuating circumstances) (0%), Extra effort (-15%)	<u>0</u>

Certified Copy

I, Eugene White, Director of the West Virginia Office of Miners' Health, Safety and Training, certify under oath that this document is a certified, correct copy of the notice of violation, case no. 336-0043-2020, issued and maintained by the West Virginia Office of Miners' Health, Safety and Training.

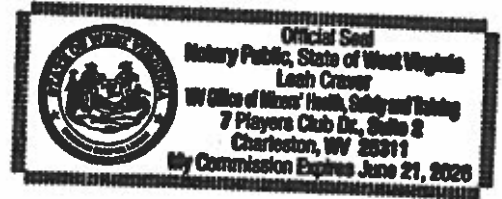
Executed this 22nd day of March, 2022 at Charleston, West Virginia.

Eugene White
Eugene White, Director

Sworn to and subscribed before me this 22nd day of March 2022.

My commission expires June 21, 2026

[Signature]
Notary Public



E-FILED | 4/7/2022 2:43 PM
 CC-35-2022-C-55
 Ohio County Circuit Clerk
 Brenda L. Miller

Form OIC-WC-1

West Virginia Workers' Compensation
 Employees' and Physicians' Report of Occupational Injury or Disease
 PLEASE PRINT OR TYPE

Insurer:		Third-Party Administrator:	
1. Name (Last):	(First):	(M.I.):	
2. Address:		3. Telephone:	
City:	State:	Zip:	4. Social Security No.:
5. Date of Birth:	6. Sex: <input checked="" type="checkbox"/> M <input type="checkbox"/> F	7. Marital Status: <u>Married</u>	
8. Date of Injury or Last Exposure: <u>08/20/2020</u> Time: <u>6</u> <input type="checkbox"/> a.m. <input checked="" type="checkbox"/> p.m.		9. Time You Began Work on Date of Injury: <u>3</u> <input type="checkbox"/> a.m. <input checked="" type="checkbox"/> p.m.	
10. Date You Stopped Working Due to Injury: <u>09/10/2020</u>			
11. Have You Retired? <input type="checkbox"/> yes <input checked="" type="checkbox"/> no		If "yes," what was the date you retired: <u>1/1/</u>	
12. Employer's Name: <u>Alliance Coal Co - LLC</u>		Supervisor's Name:	
Address: <u>184 Schoolhouse Rd Lane</u>			
City: <u>Valley Grove</u>	State: <u>WV</u>	Zip: <u>26160</u>	Telephone: <u>304 647-4026</u>
13. Job Title/Description: <u>Roof bolter coal miner</u>			
14. Body Part(s) Injured: <u>head, face, arms, leg, mouth</u>			
15. Describe How Your Injury Occurred (Specify the cause, what you were doing, and equipment/objects involved): <u>Recip Sinc longitudinal pipe struck me throwing me into a pile of metal other equipment. My supervisor asked me to move the hole through the other equipment.</u>			
16. Did Injury Occur on Employer's Property? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Address where injury occurred: <u>listed in witness section</u>			

17. Please Identify Any Witnesses to Your Injury:

I certify that the above is true and correct to the best of my knowledge. A false statement may be cause for severe penalties if I knowingly and with fraudulent intent withhold facts or make false statements in order to obtain or increase benefits to which I am not entitled. By signing this application, I hereby authorize any physician, chiropractor, surgeon, practitioner or other healthcare provider, any hospital, including Veterans' Administration or governmental hospital, and medical service organization, any insurance company, any law enforcement or military agency, any government benefit agency including the Social Security Administration, or any other institution or organization to release to each other, any medical or other information, including benefits paid or payable, pertinent to this injury or disease, except information relative to the diagnosis, treatment and/or prognosis for HIV/AIDS, psychological conditions, and/or alcohol or substance abuse, for which I must give specific authorization. A photocopy of this authorization is required.

Employee's Signature: _____ Date: 09/01/2020

1. Name of Physician/Hospital: <u>Joseph Hasnoff / Ruby Memorial</u>	2. PRN/Social Security No.: <u>55-064-3304</u>
3. Address: <u>1 Medical Center Dr.</u>	
City: <u>Martinsburg</u>	State: <u>WV</u> Zip: <u>26508</u> Telephone: <u>(304) 578-4172</u>
4. Date of Initial Treatment: <u>8/130/20</u>	5. Date Patient May Return to Work: <u>9/14/20 when cleared</u>

6. Have you advised the patient to remain off work 4 or more days?
 Yes. Indicate dates: from 8/13 to 9/4
 No. If "no," is the patient capable of Full Duty Modified Duty If the patient is capable of returning to modified duty, specify any limitations/restrictions:

7. Condition is a direct result of: Occupational Injury? Occupational Disease? Non-Occupational Condition?

8. Did this injury aggravate a prior injury/disease? Yes No. If Yes, explain:

9. Description of injury or occupational disease: High pressure hose injuries

10. Body part(s) injured: face/lac, face/bx

11. ICD9-CM Diagnosis Code(s) in order of severity: 802.4 / 873.40 / 850.9

12. Name of physician referred to: Knight Davis If the patient was hospitalized, where? Ruby

I certify the statements and answers set forth in this section are true and correct to the best of my knowledge. I am aware the law provides for severe penalties if I knowingly certify a false report or statement, withhold material fact or statement or knowingly aid or abet anyone attempting to secure benefits to which he or she is not entitled. In signing this form, I acknowledge I have been informed of my responsibilities under West Virginia's Workers' Compensation Law and agree to abide by such in the administration of services provided hereunder. I understand the submission of false statements or billing may result in prosecution under state and federal law. I further agree to release any and all medical records immediately to the employer or their representative.

Signature: _____ Date: 9/14/20

Patient admitted to trauma team. Please send further correspondence to Ruby Memorial Hospital Trauma Team.

BAILEY BEHAVIORAL HEALTH, INC.

Patricia M. Bailey, Ph.D., L.P.C., N.C.C.

**Board of Trade Building
80 - 12th Street, Suite 206
Wheeling, WV 26003
Telephone: (304) 242-6988
FAX: (304) 242-6951**

CONFIDENTIAL

January 27, 2022

Mr. E. William Harvit, Esquire
Hartley Law
7 Pine Avenue
Wheeling, WV 26003

RE: John Doe

Dear Mr. Harvit:

I have reviewed the medical records for John Doe , and it is my professional opinion that Mr. Doe 's psychological impairment exceeds 13%. My professional opinion is made with a reasonable degree of psychological probability.

Sincerely,



Patricia M. Bailey, Ph.D., LPC, NCC
WV Licensed Psychologist #802