

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF BUCHANAN

YUKON POCAHONTAS COAL COMPANY, LP, RLLP,
a Virginia Limited Partnership and LLP

BUCHANAN COAL COMPANY, LP, RLLP,
a Virginia Limited Partnership and LLP

SAYERS-POCAHONTAS COAL COMPANY, LP, RLLP
a Virginia Limited Partnership and LLP

Plaintiffs,

v.

CONSOLIDATION COAL COMPANY,
a Delaware Corporation,

ISLAND CREEK COAL COMPANY,
a Delaware Corporation,

**Serve: CT Corporation System
4701 Cox Road
Suite 301
Glen Allen, VA 23060**

CNX GAS COMPANY, LLC
a Virginia Limited Liability Company,

**Serve: CT Corporation System
4701 Cox Road
Suite 301
Glen Allen, VA 23060**

CONSOL ENERGY, INC.,
a Delaware Corporation,

**Serve: CT Corporation System
4701 Cox Road
Suite 301
Glen Allen, VA 23060**

Defendants.

) Case No. CL04-91

) **FIRST**
) **AMENDED**
) **COMPLAINT**

FIRST AMENDED COMPLAINT

The Plaintiffs, Yukon Pocahontas Coal Company, LP, RLLP, Buchanan Coal Company, LP, RLLP, and Sayers-Pocahontas Coal Company, LP, RLLP (collectively, “Plaintiffs” or “Big Vein” parties), file the following First Amended Complaint against the Defendants, Consolidation Coal Company (“Consolidation”), Island Creek Coal Company (“Island Creek”), CNX Gas Company, LLC (“CNX Gas”), and Consol Energy, Inc. (“Consol”), and state as follows:

Parties

1. Plaintiffs are limited partnerships and registered limited liability partnerships. Each is organized under the laws of the Commonwealth of Virginia and has its principal place of business in Tazewell, Virginia. Originally organized as limited partnerships, the Plaintiffs in February 1998 also became registered as registered limited liability partnerships with the Virginia State Corporation Commission. Each Plaintiff is a validly existing entity under the laws of the Commonwealth of Virginia. The expiration date of each Plaintiff is November 1, 2025. This action and all previous pleadings in this matter have been and are filed with the full authority of the general partners of each of the Plaintiffs. All actions by the managing partner in bringing this action and prosecuting it have been ratified by the general partners of each of the Plaintiffs.

2. Consolidation is an entity engaged in the business of, among other things, mining, processing, and transporting coal. It is incorporated under the laws of the State of Delaware and has its principal place of business in Pennsylvania.

3. Island Creek is an entity engaged in the business of, among other things, mining, processing, and transporting coal and gas (including coal bed methane). It is

incorporated under the laws of the State of Delaware and has its principal place of business in Pennsylvania. Plaintiffs entered into Coalbed Methane Gas Leases (the "Big Vein Gas Leases") with Island Creek on February 20, 21, 22, and 23, 1989.

4. CNX Gas is an entity engaged in the business of, among other things, mining, processing, and transporting gas (including coal bed methane). CNX Gas is a Virginia limited liability company whose sole member is CNX Gas Corporation, a Delaware corporation having its principal place of business in the State of Pennsylvania.

5. The Big Vein Gas Leases have been assigned to CNX Gas, but without releasing Island Creek from any liability in connection therewith. CNX Gas, as the successor in interest to Island Creek as the lessee of the Big Vein Gas Leases, has assumed all obligations under such leases even for time periods prior to the assignment by which it became successor in interest.

6. Consol Energy is an entity engaged in the business of, among other things, mining, processing, and transporting coal and gas (including coal bed methane). It is incorporated under the laws of the State of Delaware and has its principal place of business in Pennsylvania.

Jurisdiction and Venue

7. Jurisdiction and venue are proper in this Court. This Court may exercise personal jurisdiction over the defendants pursuant to the Virginia Long-Arm statute.

Facts

8. Plaintiffs are the owners of minerals as well as some surface interests on a collection of tracts of land (hereinafter, "the Subject Property") which contains approximately twenty-seven thousand (27,000) acres, more or less, and is situated on the

Levisa Fork of the Big Sandy River and tributaries thereof in Buchanan County, Virginia. The Plaintiffs' ownership interest includes gas (including coal bed methane), coal, and other minerals. The Plaintiffs' Subject Property includes multiple mines including the Beatrice Mine, the VP 1 Mine, as described below, and surrounding mine areas.

9. The Subject Property was conveyed to Plaintiffs' predecessors in interest by deeds of record in the Buchanan County Circuit Court Clerk's Office, as recorded at the following deed books ("DB") and pages ("Pg"): DB 58, Pg. 536; DB 72, Pg. 390; DB 72, Pg. 403; DB 72, Pg. 408; DB 75, Pg. 251; DB 79, Pg. 242; DB 87, Pg. 300; DB 111, Pg. 302; DB 117, Pg. 587; DB 118, Pg. 451; DB 121, Pg. 220. Said deeds are incorporated herein and referenced hereby for a more particular description of the Subject Property.

10. Pursuant to a 1961 lease agreement between the Plaintiffs' predecessors in interest and Island Creek (the "1961 Coal Lease"), the latter undertook to mine coal from the Subject Property. A true and accurate copy of the 1961 Coal Lease is attached hereto and incorporated herein as **EXHIBIT A**. Island Creek designated different areas of the Subject Property into mining assignments or separate mines which, on information and belief, it then developed with different joint venture partners in order to produce the coal in such assignments.

11. The Beatrice Mine is such an area of mining operations previously operated by Island Creek or its designees. It includes areas of previous active mining, passageways, voids, mined coal, shafts, access ways and unmined coal that have been treated as a sealed gob unit with the Virginia Gas and Oil Board of the Virginia Department of Mines, Minerals and Energy as shown on the attached **EXHIBIT B**

(Report and Order of the Virginia Gas and Oil Board dated November 6, 1996) and on **EXHIBIT C**. The larger assignment of the Subject Property that Island Creek designated as part of the Beatrice Mine is also shown on the attached **EXHIBIT D** (boundary highlighted in yellow). This includes areas above the Beatrice Mine that never have been mined and which are designated herein as the "Beatrice Unmined Area." Active mining stopped on the Beatrice Mine in 1986. However, there is still a substantial amount of unmined and marketable coal in the Beatrice Mine and in the Beatrice Unmined Area. Plaintiffs own an interest in substantially all of the coal as well as the coal bed methane and other gases on the property designated as the Beatrice Mine and the Beatrice Unmined Area. The Plaintiffs' ownership in these areas is reflected (more or less) on the attached **EXHIBIT E** in the areas shaded in green.

12. The VP 1 Mine is another such assignment or area of mining operations previously operated by Island Creek or its designees. It includes areas of previous active mining, passageways, voids, mined coal, shafts, access ways and unmined coal. It is more specifically shown on the attached **EXHIBIT D** (boundary highlighted in blue) as well as in the attached **EXHIBIT F**, which also reflects the Plaintiffs' ownership (more or less) in the areas shaded in green. Active mining stopped on the VP1 Mine in December 1998, but there is still a substantial amount of unmined and marketable coal in the VP1 Mine. Plaintiffs own coal and coal bed methane and other gases in the VP1 Mine which is part of the Subject Property.

13. Plaintiffs, as lessors, entered into the Big Vein Gas Leases with Island Creek, as lessee, on February 20, 21, 22, and 23, 1989. True and accurate copies of these Big Vein Gas Leases are attached hereto collectively as **EXHIBIT G**. Under the Big

Vein Gas Leases, Island Creek acted as operator of the methane gas removal process on Plaintiffs' Subject Property. As lessee and operator, Island Creek was to investigate, explore, prospect, drill and produce coalbed methane gas from the Plaintiffs' Subject Property and pay Plaintiffs certain royalties from the methane produced and sold.

14. Without being released from any liability, Island Creek subsequently assigned all or a portion of Big Vein Gas Leases to Oxy USA, Inc. Oxy USA, Inc. then assigned all or a portion of these Big Vein Gas Leases to Appalachian Methane, Inc. and Appalachian Operators, Inc. Appalachian Methane, Inc. and Appalachian Operators, Inc. then assigned all or a portion of these Big Vein Gas Leases to Buchanan Production Company, which in turn assigned a smaller portion of the CBM Leases to Pocahontas Gas Partnership. In 1993, Consol Energy purchased a beneficial ownership in Island Creek and the gas assets that had been developed as Buchanan Production Company and related entities. Thereafter, Consol Energy acted as operator of the gas production under the Big Vein Gas Leases. Buchanan Production Company and Pocahontas Gas Partnership were thereafter merged into CNX Gas with CNX Gas assuming the liabilities of both of these companies. CNX Gas succeeded Consol Energy as the operator of the gas production under the Big Vein Gas Leases.

15. Since before 1993, Consolidation has conducted mining operations at its Buchanan No. 1 Mine on real property located adjacent to, or nearby, the Beatrice Mine and the VP1 Mine in Buchanan County, Virginia.

16. During the course of its mining operations, and in furtherance thereof, Consolidation realized, around 1993, the need to evacuate substantial quantities of pollutants, contaminants or hazardous substances from its mine operations. These

pollutants, contaminants and hazardous substances were contained within a mixture of untreated water produced from the mining operations for the Buchanan No. 1 Mine. This mixture is hereinafter referenced as the "Contaminants." The Contaminants were elements, substances, compounds or mixtures, which, after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, would cause or may be reasonably anticipated to cause death, disease, behavior abnormalities, cancer, genetic mutation, physiological malfunctions or physical deformations in such organisms or their offspring, and/or were "hazardous substances" as defined in CERCLA, 42 U.S.C. § 9601(14). Such Contaminants contained and contain extremely high levels of total suspended solids, total dissolved solids, chlorides, sodium and other pollutants and contaminants as defined under 42 U.S.C. § 9601 (33) and/or hazardous substances as defined in 42 U.S.C. § 9601 (14) and regulations promulgated thereunder.

17. Because the Contaminants contained a mixture that could not be safely or legally released into the waterways or onto the surface lands of Virginia, Consolidation determined that it would secretly place the Contaminants into the open spaces underground on Plaintiffs' Beatrice Mine property. Consolidation dumped the Contaminants on the Plaintiffs' Beatrice Mine property only because they contained pollutants, contaminants or hazardous substances. The coal from this property was still under lease to Island Creek pursuant to the 1961 Lease. However, the 1961 Lease did not authorize or allow the lessee (Island Creek) or its related companies to place water or Contaminants in the Beatrice Mine. Likewise, the 1989 Big Vein Gas Leases do not authorize Island Creek, or any subsequent assignee or successor operator, to place water

or Contaminants in the Beatrice Mine. To the contrary, the Big Vein Gas Leases expressly provide that any salt water disposal be conducted in such a manner as to protect the leased property's coal seams.

18. In 1993, Consolidation's parent company, Consol Energy, purchased a beneficial ownership interest in Island Creek. Thereafter, Consolidation dumped the Contaminants into Plaintiffs' Beatrice Mine property without objection from Island Creek and without Plaintiffs' knowledge or permission. Consolidation affirmatively concealed its actions in dumping the Contaminants onto Plaintiffs' Beatrice Mine property.

19. Beginning in late 1993 or early 1994, and continuing from time to time until the present in three (3) discrete, interrupted, and periodic intervals, Consolidation dumped or otherwise caused large quantities of Contaminants from its mining operations at Buchanan No. 1 mine to be placed directly into the underground passageways, shafts, chambers and voids of the Plaintiffs' Beatrice Mine on the Subject Property. As a result, the Plaintiffs' Beatrice Mine has now been flooded with billions of gallons of Contaminants.

20. At or about the time that the Beatrice Mine reached its capacity to hold the Contaminants (i.e., within the last five (5) years), Consolidation began dumping or otherwise placing large quantities of the Contaminants from its mining operations at Buchanan No. 1 Mine directly into the underground passageways, shafts, chambers and voids of the Plaintiffs' VP1 Mine on the Subject Property. These actions are ongoing.

21. Defendant's actions in placing Contaminants in the Plaintiffs' property constitute a willful trespass, and have been committed in bad faith, with actual and

implied knowledge that defendant had no right, title or interest in Plaintiffs' property which would allow it to do so, or with gross negligence thereof.

22. Consolidation asserts that it has acted pursuant to its rights as a tenant on the Beatrice Mine and VP1 Mine portions of Plaintiffs' Subject Property through subleases with Island Creek Coal Company and affiliates. As such, Consolidation claims to have acted as Plaintiffs' tenant. However, the 1961 Coal Lease and the subleases executed under such lease do not allow Consolidation or Island Creek to place water or the Contaminants on Plaintiffs' Beatrice Mine property, VP1 property, or any portion of the Subject Property. Likewise, the 1989 Big Vein Gas Leases do not authorize Island Creek or any subsequent assignee or successor operator, to place water or Contaminants in the Beatrice Mine or VP1 Mine. To the contrary, the Big Vein Gas Leases expressly provide that any salt water disposal be conducted in such a manner as to protect the leased property's coal seams.

23. Consolidation has used pumps and pipes to transport the Contaminants and to place them onto Plaintiffs' Beatrice Mine Property and VP1 Mine Property. By these actions, Consolidation has released hazardous substances and/or pollutants or contaminants into the environment from a facility as those terms are defined in 42 U.S.C. § 9601. Plaintiffs have not undertaken any cleanup of the resulting damage nor have they incurred any cleanup costs individually or pursuant to a governmental order or directive. The Plaintiffs have suffered property damages that have been caused or contributed to by Consolidation's actions in releasing the Contaminants, resulting in the claims set forth herein under Virginia law. As such, any cause of action for property damages associated with Consolidation's actions did not accrue until the Plaintiffs knew or reasonably should

have known of the property damages caused by Consolidation's actions. 42 U.S.C. § 9658. Plaintiffs did not know or have reason to know of Consolidation's actions until 2004.

24. As a result of Consolidation's actions in dumping or causing the Contaminants to be placed on and in Plaintiffs' Beatrice Mine property and VP1 Mine property, Consolidation has destroyed or substantially reduced the value of the Plaintiffs' interest in such property, including the property's mineral interests, coal reserves, and gas (including coal bed methane). As to coal bed methane, some portion of the methane has dissolved in the Contaminants Consolidation pumped into Plaintiffs' mines thereby making removal of the Contaminants impossible without a significant and permanent loss of Plaintiffs' methane. Consolidation's actions have caused injury to the remaining coal in the Beatrice Mine, the Beatrice Unmined Area, and the VP1 Mine in that Consolidation has vastly increased the costs that will be required in order to mine the coal in the future, effectively making it unminable. Consolidation has also caused the coal to be exposed to extremely high levels of total suspended solids, total dissolved solids, sodium, chloride, and other pollutants, contaminants and/or hazardous substances, thus causing damage to the coal itself.

25. As a result of Consolidation's actions, the Plaintiffs' gas (including coal bed methane) has been severely injured and the production of such has been destroyed in the area of the Beatrice Mine and VP1 Mine.

26. The Beatrice Mine sealed gob unit contains approximately eighty gas units, each of which contains on average between 400,000,000 cubic feet (400,000 mcf) and 500,000,000 cubic feet (500,000 mcf) of coal bed methane and associated natural

gases. In 1995, the coal bed methane reserves for the Beatrice sealed gob unit were between 30,900,000,000 cubic feet and 38,625,000,000 cubic feet. As of December 31, 2005, a total of only 2,841,366,000 cubic feet of gas had been produced from the Beatrice sealed gob unit, leaving between 28,058,634,000 cubic feet and 35,783,634,000 cubic feet unproduced. As Consolidation has flooded the Beatrice Mine with the Contaminants, the coal bed methane gas production from the Beatrice Mine has declined significantly and is now proceeding at a greatly reduced rate. Many of the wells on the Beatrice Mine sealed gob unit have stopped producing entirely. The vast majority of the Plaintiffs' coal bed methane gas in the Beatrice Mine cannot be produced because of the presence of the Contaminants. Consolidation's actions have damaged the Plaintiffs' coal bed methane gas in the Beatrice Mine sealed gob unit in the amount of \$167,000,000 to \$213,000,000 in lost, damaged or unrecoverable gas reserves. The royalty to Plaintiffs on such lost reserves is at least \$21,000,000 to \$27,000,000.

27. The VP 1 Mine contains many eighty-acre coal bed methane gas production units, with approximately 95 of these eighty-acre units located within the gob (or mined area) of VP1. Each of these units contains on average between 400,000,000 cubic feet (400,000 mcf) and 500,000,000 cubic feet (500,000 mcf) of coal bed methane and associated natural gases, totaling between 38,000,000,000 cubic feet and 47,500,000,000 cubic feet of gas. Of this, only 5,127,849,000 cubic feet had actually been produced as of December 31, 2005, leaving between 32,872,151,000 cubic feet and 42,372,151,000 cubic feet of unproduced gas. As Consolidation has flooded the VP1 Mine with the Contaminants, the coal bed methane gas production from the VP1 Mine has declined significantly and is now proceeding at a greatly reduced rate. The vast

majority of the Plaintiffs' coal bed methane gas in the VP1 Mine cannot be produced because of the presence of the Contaminants. Consolidation's actions have damaged the Plaintiffs' coal bed methane gas in the VP1 Mine gob units in the amount of \$141,021,527 to \$182,000,000 in lost, damaged or unrecoverable gas reserves. The royalty to Plaintiffs on their share of such lost reserves is at least \$17,627,000 to \$23,000,000.

28. In or about late 2004, Consolidation purchased the coal interests of one of Plaintiffs' co-owners in the Subject Property, thus becoming a co-tenant with all of the duties and liabilities associated with such under Virginia law. Rather than ceasing to place the Contaminants into the Plaintiffs' VP 1 Mine property or removing them, Consolidation has continued its actions of wrongfully placing the Contaminants into the VP1 Mine. Consolidation has also failed to remove any of the Contaminants from the Plaintiffs' Beatrice Mine property and/or Plaintiffs' VP1 Mine property.

29. From the time Consolidation began dumping or causing the Contaminants to be placed in the Plaintiffs' Beatrice Mine property and then in its VP1 Mine property, Consolidation, Island Creek, Consol Energy and CNX Gas have intentionally concealed and suppressed this dumping from Plaintiffs, notwithstanding their duty to disclose such material facts.

30. Consolidation, Island Creek, Consol Energy and CNX Gas have concealed and suppressed such facts when they knew or should have known that Plaintiffs were acting upon the assumption that Consolidation was not flooding Plaintiffs' Beatrice Mine property and VP1 mine property (all being a part of the Subject Property) with Contaminants.

31. Such concealment and suppression by Consolidation, Island Creek, Consol Energy and CNX Gas amounts to a false representation of material fact, made intentionally and knowingly, with the intent to mislead. Alternatively, such concealment and suppression amounts to a false representation of material fact, made innocently or negligently.

32. Plaintiffs relied to their detriment on such concealment and suppression by Consolidation, Island Creek, Consol Energy and CNX Gas by, among other things, not acting to protect their coal and gas interests because they continued to assume that Consolidation was not illegally flooding Plaintiffs' property with Contaminants. As to the Plaintiffs' Beatrice Mine property, there was no way for Plaintiffs to actually access the mine since it was sealed as a gob unit for gas production. Plaintiffs did not learn of Consolidation's actions until 2004 in connection with another proceeding involving Island Creek. Upon learning of such, Plaintiffs responded immediately.

33. Upon information and belief, Consolidation knew that its actions in dumping or otherwise placing the Contaminants in the Beatrice Mine and the VP1 Mine would cause great injury to Plaintiffs' coal bed methane property interests and to Plaintiffs' coal interests. Consolidation chose to place the Contaminants onto Plaintiffs' property (thus damaging their property interests) because the cost of properly treating and disposing of the Contaminants was high. Consolidation also knew that it had no legal right to place the Contaminants onto Plaintiffs' property, but chose to do so anyway. Consolidation's actions have been wanton and in complete willful disregard for the Plaintiffs' property rights and interests. Consolidation has benefited from its tortious trespass to Plaintiffs' property by saving the costs it would have otherwise incurred for

the proper disposal of the Contaminants and by the profits realized from the ongoing operations at its Buchanan mine, profits which are estimated to exceed \$30,000,000 per year.

34. As a direct and proximate result thereof, the Plaintiffs' real property interests have been permanently damaged (such permanent damage occurring, upon information and belief, after May 1999); Consolidation's conduct has caused and/or contributed to rendering the Plaintiffs' coal reserves under the Subject Property economically unminable despite increases in coal prices. Consolidation's actions have caused damage to the Plaintiffs' coal property interests in excess of \$2,857,000,000.00, the royalty value of which is approximately \$100,000,000. Consolidation's conduct has caused and/or contributed to the damage to Plaintiffs' property interests in coal bed methane and associated natural gas reserves in an amount of \$394,000,000 on which Plaintiffs have lost royalties of \$50,000,000.

COUNT I – TRESPASS

35. Plaintiffs restate the preceding paragraphs' allegations and incorporate the same herein by reference and allege the following grounds of relief:

36. Consolidation has purposefully, intentionally, willfully, wantonly, maliciously, and in bad faith, trespassed on Plaintiffs' property by placing the Contaminants thereon, causing the damages alleged above. Consolidation has acted without authority to do so, and in direct interference with the Plaintiffs' possessory interests in and to the Plaintiffs' property.

WHEREFORE, the Plaintiffs ask for judgment against Consolidation in the amount of \$3,252,000,000 in damages together with punitive damages in the amount of \$350,000, together with costs, pre-judgment interest, post-judgment interest, attorneys' fees, and such other relief as the Court shall deem proper.

COUNT II—WASTE

37. Plaintiffs restate the preceding paragraphs' allegations and incorporate the same herein by reference and allege the following grounds of relief in the alternative to Count I.

38. Consolidation contends that it has taken the actions complained of herein as a tenant or co-tenant on the Plaintiffs' property. During its possession of the property at issue, Consolidation committed waste on that property by flooding the Beatrice Mine and the VP1 Mine with the Contaminants from Consolidation's Buchanan No. 1 Mine operations without authority or any right to do so.

39. As a direct and proximate result, the Plaintiffs' real property interests (including coal and gas estates) have been permanently damaged (such permanent damage occurring, upon information and belief, since May of 1999). Such actual damages are in excess of \$150,000,000.

40. Such waste was committed wantonly by Consolidation entitling Plaintiffs to double the amount of damages assessed therefor pursuant to Virginia Code Ann. § 55-214.

WHEREFORE, in the alternative to the relief requested in Count I, the Plaintiffs ask for judgment against Consolidation in the amount of \$150,000,000 with such award

to be doubled to \$300,000,000 upon a finding that Consolidation acted wantonly, together with costs, pre-judgment interest, post-judgment interest, attorneys' fees, and such other relief as the Court shall deem proper.

COUNT III –ASSUMPSIT

41. Plaintiffs restate the preceding paragraphs' allegations and incorporate the same herein by reference and allege the following grounds of relief in the alternative to Count I.

42. Consolidation has been unjustly enriched by unlawfully placing the Contaminants onto and in Plaintiffs' property. Plaintiffs' property is uniquely situated so as to be valuable to Consolidation for such purposes, lying adjacent to the Buchanan No. 1 Mine. By dumping or otherwise causing the Contaminants to be placed onto or in Plaintiffs' property rather than properly disposing of the same, Consolidation has been unjustly enriched by the amount of money that Consolidation would have otherwise paid for the proper disposal of the Contaminants and/or by its profits from the continued operation of the Buchanan Mine. On information and belief, the proper disposal of the Contaminants would have cost Consolidation in excess of \$200,000,000. In the alternative, Consolidation has profited from its continuing operations of Buchanan Mine in excess of \$300,000,000.

43. Therefore, Consolidation has profited unlawfully in the amount of \$200,000,000 to \$300,000,000 through its actions.

44. Consolidation's actions are not merely a naked trespass, but one that has caused substantial damages to the Plaintiffs' property interests and produced substantial benefits to Consolidation.

45. Under these facts, the law of Virginia implies a contract on the part of Consolidation to pay such value to the Plaintiffs.

WHEREFORE, in the alternative to the relief requested in Count I, the Plaintiffs ask for judgment against Consolidation in the amount of \$300,000,000, together with costs, pre-judgment interest, post-judgment interest, attorneys' fees, and such other relief as the Court shall deem proper.

COUNT IV-NEGLIGENCE and/or GROSS NEGLIGENCE

46. Plaintiffs restate the preceding paragraphs' allegations and incorporate the same herein by reference and allege the following grounds of relief in the alternative to Count I.

47. Consolidation had and has a duty to use reasonable care in conducting its mining operations so as not to harm the real property, mineral and business interests of others, including the Plaintiffs.

48. Consolidation has breached its duty by conducting its operations in such a way that the Contaminants have been dumped or otherwise placed onto Plaintiffs' property.

49. As a direct and proximate result thereof, the Plaintiffs' property interests have been permanently damaged as alleged above.

50. Consolidation has been negligent and is liable to the Plaintiffs for compensatory damages and costs.

51. The negligence of Consolidation was willful, wanton, intentional and reckless, and evinced a conscious disregard for the rights of the Plaintiffs.

WHEREFORE, in the alternative to the relief requested in Count I, the Plaintiffs ask for judgment against Consolidation in the amount of \$150,000,000, either alone or, if the Court finds that Consolidation acted in a manner that was willful, wanton, intentional and reckless, and evinced a conscious disregard for the rights of the Plaintiffs, then together with punitive damages in the amount of \$350,000, with costs, pre-judgment interest, post-judgment interest, attorneys' fees, and such other relief as the Court shall deem proper.

COUNT V - NUISANCE

52. Plaintiffs restate the preceding paragraphs' allegations and incorporate the same herein by reference and allege the following grounds of relief in the alternative to Count I.

53. The manner in which Consolidation has conducted, and continues to conduct, its business operations obstructs and interferes with Plaintiffs' reasonable use of the Subject Property, particularly such property as is included within the Beatrice and VP1 Mines.

54. The actions of Consolidation constitute a nuisance.

55. Consolidation is liable to the Plaintiffs for compensatory damages, exemplary damages, reasonable attorneys' fees, and costs.

WHEREFORE, in the alternative to the relief requested in Count I, the Plaintiffs ask for judgment against Consolidation in the amount of \$150,000,000, together with

costs, pre-judgment interest, post-judgment interest, attorneys' fees, and such other relief as the Court shall deem proper.

COUNT VI—ACTUAL OR CONSTRUCTIVE FRAUD

56. Plaintiffs restate the preceding paragraphs' allegations and incorporate the same by herein reference and allege the following grounds of relief in the alternative to Count I.

57. As alleged above, Consolidation has committed fraud (either actual or constructive) by hiding its actions and failing to disclose them notwithstanding its duty to do so and its knowledge that Plaintiffs were ignorant of Consolidation's placement of the Contaminants onto the Plaintiffs' property.

WHEREFORE, in the alternative to the relief requested in Count I, the Plaintiffs ask for judgment against Consolidation in the amount of \$150,000,000, \$350,000 in punitive damages, together with costs, pre-judgment interest, post-judgment interest, attorneys' fees, and such other relief as the Court shall deem proper.

COUNT VII - REQUEST FOR INJUNCTIVE RELIEF

58. Plaintiffs restate the preceding paragraphs' allegations and incorporate the same herein by reference and allege the following grounds of relief in the alternative to Count I.

59. Unless and until the Contaminants are removed by Consolidation from the Plaintiffs' property, the Plaintiffs will have suffered an irreparable injury for which there is no adequate remedy at law. This is particularly true in the event that Consolidation lacks the resources to pay a judgment for the substantial amount of damages that it has caused to the Plaintiffs' property interests or in the event that all or any part of the

Plaintiffs' claim is barred by applicable statutes of limitation (which Plaintiffs do not believe to be the case).

60. In the alternative to the relief requested in Count 1, the Plaintiffs request the entry of an Order compelling Consolidation to remove the Contaminants from the Subject Property, and to take such steps as would ensure that Consolidation's Contaminants do not, once again, return to the Plaintiffs' property.

WHEREFORE, Plaintiffs demand judgment against Consolidation, as follows:

1. Entry of a Order enjoining and compelling Consolidation to remove the Contaminants from the Subject Property in such a way as to not cause the Plaintiffs' coal bed methane property interests to be dissipated or wasted and in such a way as to remove any residual Contaminants from the Plaintiffs' coal and other property interests and to take such steps as would ensure that Consolidation's Contaminants do not, once again, return to the Subject Property; and
2. Awarding attorneys' fees and costs expended in this action; and
3. Awarding damages for the injury to and lost use of the coal and coal bed methane in such amount as may be determined by the court; and
4. Such other and further relief as the nature of this case may require, and as justice would mandate.

**COUNT VIII—BREACH OF BIG VEIN LEASES AND RELATED
DUTIES BY ISLAND CREEK, CNX GAS AND CONSOL ENERGY**

61. Plaintiffs restate the preceding paragraphs' allegations and incorporate the same herein by reference.

62. Island Creek, CNX Gas and Consol Energy breached the Big Vein Gas Leases by permitting Consolidation to flood the Beatrice Mine and the VP1 Mine with

the Contaminants from Consolidation's Buchanan No. 1 Mine operations without authority or any right to do so. In addition to the Big Vein Leases, the Plaintiffs entered into an additional gas and coal bed methane lease dated August 28, 2001 with Buchanan Production Company. CNX Gas is the successor lessee under this lease (hereinafter the "2001 Lease").

63. As lessees and operators under the Big Vein Gas Leases and the 2001 Lease, Island Creek, CNX Gas and Consol Energy owed a duty to Plaintiffs to act as "reasonably prudent operators" and to perform their duties under the Big Vein Gas Leases in good faith, fairly and for the mutual benefit of themselves and Plaintiffs, as lessors.

64. As lessees and operators under the Big Vein Gas Leases and the 2001 Lease, Island Creek, CNX Gas and Consol Energy owed a duty to Plaintiffs not to allow others (including their affiliated entities such as Consolidation) to injure or impede the gas interests covered by the Big Vein Gas Leases and the gas operations entrusted to them under such leases. They also owed a duty not to cause or allow injury to the coal interests on such property.

65. Island Creek, CNX Gas and Consol Energy, by permitting Consolidation to flood the Beatrice Mine and the VP1 Mine with the Contaminants from Consolidation's Buchanan No. 1 mine operations and/or by hiding and concealing such activity from Plaintiffs, breached their duties under the Big Vein Gas Leases and the 2001 Lease and their duties as operators generally. Rather than acting as reasonable and prudent operators in developing, operating and protecting the property interests leased under the Big Vein Gas Leases and the 2001 Lease with due regard for the interests of

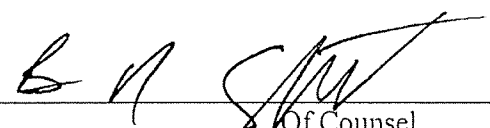
both the lessors and the lessees, Island Creek, CNX Gas and Consol Energy permitted the Contaminants to be pumped into Plaintiffs' Subject Property and/or failed to inform Plaintiffs of such activity, which damaged Plaintiffs' property interests.

66. Plaintiffs have been damaged as a direct and proximate result of Island Creek's, CNX Gas', and Consol Energy's breaches of the Big Vein Gas Leases and the 2001 Lease and associated duties.

WHEREFORE, the Plaintiffs ask for judgment against Island Creek Coal Company, CNX Gas Company, LLC and Consol Energy, Inc. in the amount of \$150,000,000, together with costs, pre-judgment interest, post-judgment interest, attorneys' fees, and such other relief as the Court shall deem proper.

PLAINTIFFS REQUEST TRIAL BY JURY ON ALL ISSUES SO TRIABLE.

**YUKON POCAHONTAS COAL COMPANY, LP, RLLP,
BUCHANAN COAL COMPANY, LP, RLLP and
SAYERS-POCAHONTAS COAL COMPANY, LP, RLLP**

By:  _____
Of Counsel

J. Scott Sexton (VSB No. 29284)
Kevin W. Holt (VSB No. 42866)
James J. O'Keeffe (VSB No. 48620)
GENTRY LOCKE RAKES & MOORE LLP
10 Franklin Road, S.E.
P.O. Box 40013
Roanoke, VA 24022-0013
Telephone: (540) 983-9379
Facsimile: (540) 983-9400

Benjamin A. Street (VSB No. 41118)
STREET LAW FIRM, LLP
P.O. Box 2100
Grundy, VA 24614
Telephone: (276) 935-2128
Facsimile: (276) 935-4162
Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on October 2, 2006, a true and accurate copy of the foregoing was mailed by United States Postal Service to James Robert Creekmore, Esq., The Creekmore Law Firm, PLC, 149 Medallion Court, Daleville, VA 24083, Gregory N. Stillman, Esq., Hunton & Williams, P. O. Box 3889, Norfolk, VA 23510 and to Everette G. Allen, Jr., Esq., LeClair Ryan, P. O. Box 2499, Richmond, VA 22218, counsel for defendants.