

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

MANVILLE PERSONAL INJURY TRUST,  
derivatively on behalf of MASSEY ENERGY  
COMPANY,

Plaintiff,

vs.

DON L. BLANKENSHIP; BAXTER  
PHILLIPS, JR.; DAN MOORE; GORDON  
GEE; RICHARD M. GABRYS; JAMES  
CRAWFORD; BOBBY R. INMAN; ROBERT  
H. FOGLESONG; H. DREXEL SHORT, JR.; J.  
CHRISTOPHER ADKINS; JEFFREY M.  
JAROSINSKI; JAMES L. GARDNER; JOHN  
C. BALDWIN; MARTHA R. SEGER; and  
JAMES H. HARLESS,

Defendants,

MASSEY ENERGY COMPANY, a Delaware  
Corporation,

Nominal Defendant.

Case No. 07-C-1333

Honorable Irene Berger

(Derivative Action)

2008 JUN 30 PM 3:44  
CATHY S. GARDNER, CLERK  
KANAWHA CO. CIRCUIT COURT

FILED

**AGREED ORDER AND FINAL JUDGMENT**

Defendants, Don L. Blankenship, Baxter Phillips, Jr., Dan Moore, Gordon Gee, Richard M. Gabrys, James Crawford, Bobby R. Inman, Robert H. Foglesong, H. Drexel Short, Jr., J. Christopher Adkins, Jeffrey M. Jarosinski, James L. Gardner, John C. Baldwin, Martha R. Seger and James H. Harless and Plaintiff, Manville Personal Injury Trust, individually, and derivatively on behalf of Massey Energy Company, having presented, and filed herewith the Stipulation of Settlement; Motion for Approval of

Settlement and Application for an Award of Attorneys' Fees; Plaintiff's Memorandum of Law in Support of Final Approval of Settlement and Application for an Award of Attorneys' Fees and Expenses; Accompanying Declarations in Support of the Settlement by Ann K. Ritter and Ronald S. Rolfe;

**NOW THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED**

**THAT:**

1. The Stipulation of Settlement filed herewith is incorporated by reference herein as if it is set forth in its entirety herein, as operative terms and provisions of this Judgment, including the Massey Energy Company Corporate Governance Agreement appended thereto;
2. The Court's findings and fact and conclusions of law as set forth on the record at the June 25, 2008 hearing on the final approval of the settlement stipulation are incorporated by reference herein as if set forth in their entirety herein;
3. All shareholders of Massey Energy Company are bound by this Judgment;
4. The Released Claims, and this matter in its entirety, are dismissed, with prejudice, each party to pay her, his or its own costs, except as set forth in the Stipulation of Settlement;
5. The objections of Vernon Mercier are preserved;
6. The Court finds that the terms of the Settlement as reached by the parties and the Stipulation of Settlement filed with the Court are fair, reasonable and adequate as to each of the Settling Parties, and hereby finally approves the Stipulation and Settlement in all respects, and orders the Settling Parties to perform its terms to the extent the Settling Parties have not already done so;

7. Upon the Effective Date, Plaintiff, on its own behalf, individually and derivatively on behalf of Massey Energy Company shall have, and by operation of this Judgment shall be deemed to have fully, finally and forever released, relinquished and discharged all Released Claims and any and all claims arising out of, relating to, or in connection with the settlement or resolution of the Litigation against the Released Persons;

8. Upon the Effective Date, each of the Released Persons shall be deemed to have, and by operation of this Judgment shall have, fully, finally, and forever released, relinquished and discharged Plaintiff and counsel to Plaintiff from all claims (including Unknown Claims), arising out of, relating to, or in connection with the institution, prosecution, assertion, settlement or resolution of the Litigation or the Released Claims;

9. Plaintiff's Counsel are awarded attorneys' fees and expenses in the amount of \$2,700,000, which sum the Court finds to be fair and reasonable, to be paid by Defendants in accordance with the terms of the Stipulation;

10. This Order and Final Judgment shall not constitute any evidence or admission by any of the Defendants hereto or any other person that any act of negligence or wrongdoing of any nature has been committed and shall not be deemed to create any inference that there is any liability therefore;

11. The effectiveness of the provisions of this Order and Final Judgment and the obligations of Plaintiff and Defendants under the Settlement shall not be conditioned upon or subject to the resolution of any appeal from this Order and Final Judgment that relates solely to the issue of Plaintiff's Counsel's application for an award of attorneys' fees and expenses;

12. Without affecting the finality of this Judgment in any way, this Court hereby retains continuing jurisdiction over: (a) implementation and enforcement of the terms of the Settlement and this Judgment; and (b) the Settling Parties for the purposes of implementing and enforcing the Stipulation and Judgment.

IT IS SO ADJUDGED.

DATED: June 30 2008

Irene C Berger  
HON. IRENE BERGER  
JUDGE, KANAWHA CIRCUIT COURT

APPROVE:

/s/ Ann K. Ritter  
Ann K. Ritter *by Subpoena*  
Counsel for Plaintiff

STATE OF WEST VIRGINIA  
COUNTY OF KANAWHA, SS  
I, CATHY S. GATSON, CLERK OF CIRCUIT COURT OF SAID COUNTY  
AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING  
IS A TRUE COPY FROM THE RECORDS OF SAID COURT.  
GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS 1  
DAY OF July 2008  
Cathy S. Gatson CLERK  
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA ca

Jon L. Anderson  
A.L. Emch  
Jon L. Anderson  
Counsel for Defendants Dan Moore,  
Gordon Gee, Richard M. Gabrys, James  
Crawford, Bobby R. Inman, Robert H.  
Foglesong, James L. Gardner, John C.  
Baldwin, Martha R. Seger and James H.  
Harless and Nominal Defendant Massey  
Energy Company

Thomas V. Flaherty  
Thomas V. Flaherty  
Tammy R. Harvey  
Counsel for Don L. Blankenship, Baxter  
Phillips, Jr., H. Drexel Short, Jr., J.  
Christopher Adkins and Jeffrey M.  
Jarosinski