

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Richmond
~~ALEXANDRIA~~ DIVISION**

BENJAMIN MOSTAED, on behalf of
himself and all others similarly situated,

Plaintiffs,

v.

JAMES B. CRAWFORD, ROBERT H.
FOGLESONG, RICHARD M. GABRYS,
ROBERT B. HOLLAND, BOBBY R.
INMAN, DAN R. MOORE, BAXTER F.
PHILLIPS, JR., STANLEY C.
SUBOLESKI, LINDA J. WELTY,
MASSEY ENERGY COMPANY, and
ALPHA NATURAL RESOURCES, INC.,

Defendants.

Civil Action No.: 3: 11 cv 079

CLASS ACTION

**COMPLAINT FOR BREACH OF
FIDUCIARY DUTY**

DEMAND FOR JURY beTRIAL

Plaintiff Benjamin Mostaed ("Plaintiff"), individually and on behalf of all others similarly situated, by and through his attorneys, alleges the following upon information and belief, except as to the allegations which pertain to Plaintiff, which allegations are based upon personal knowledge, as follows:

SUMMARY OF THE ACTION

1. This is a stockholder class action brought by Plaintiff on behalf of the holders of Massey Energy Company ("Massey" or the "Company") common stock against certain of the Company's officers and/or directors (the "Board"). The action arises out of defendants' efforts to sell Massey to Alpha Natural Resources, Inc. ("Alpha") in a cash and stock transaction in which Massey would survive as a wholly owned subsidiary of Alpha (the "Proposed Acquisition").

2. The Proposed Acquisition is the result of a flawed and unfair process and represents an unfair price of only 1.025 shares of Alpha common stock and \$10.00 in cash for each outstanding share of Massey's common stock. This Proposed Acquisition ratio constitutes just \$69.33 per Massey share (based upon the closing price of Alpha stock as of January 28, 2011, the last trading day preceding the announcement of the Proposed Acquisition), a mere 16% premium over Massey's closing share price on January 12, 2011, over \$22 per share *less* than the price at which Massey stock traded as recently as June 23, 2008.

3. The Board, acting out of self-interest as detailed below, was aided and abetted by the Company and Alpha in connection with its directors' breaches of fiduciary duty. Thus, the Company and Alpha are also named defendants in this action. In pursuing the unlawful Proposed Acquisition, each of the defendants violated applicable law by directly breaching and/or aiding the other defendants' breaches of their fiduciary duties of loyalty, due care, candor, independence, good faith and fair dealing.

4. In pursuing this unlawful plan to divest the Company's public stockholders of their stock in the Company at an unfair price and through a flawed process, defendants have breached their fiduciary duties of loyalty, due care, independence, candor, good faith and fair dealing, and/or have aided and abetted the other defendants' breaches of fiduciary duty. Instead of attempting to negotiate a transaction reflecting the highest price reasonably available for the Company's stockholders, defendants spent substantial effort tailoring the Proposed Acquisition to meet their own specific needs and those of Alpha. Indeed, the Proposed Acquisition extinguishes no fewer than eight derivative lawsuits currently pending against the Individual Defendants, and the Proposed Acquisition calls for Alpha to assume the liabilities of at least three other lawsuits currently pending against the Individual Defendants.

5. Moreover, defendants structured the Agreement and Plan of Merger (the "Merger Agreement") in such a manner as to all but ensure that Alpha's offer will not be credibly challenged. The Merger Agreement contains onerous deal protection devices that discourage, and effectively operate to preclude, competing bids, thus severely undermining the ability of the

Company to receive a superior proposal. Specifically, as part of the Merger Agreement with Alpha, defendants included an absolute “no solicitation” provision preventing the Individual Defendants from shopping the Company or soliciting competing bids in search of a superior proposal. Worse, in the event an unsolicited superior proposal surfaces, if those shareholders vote the Proposed Acquisition down and then Massey subsequently agrees to merge with the superior bidder, defendants agreed to pay Alpha a \$251 million termination fee. This termination fee will serve to chill the interest of any potential rival bidders, who likely will forego the time and expense of preparing a proposal that likely will not even be considered, given defendants’ likely reluctance to pay over a quarter billion dollar termination fee. Thus, in derogation of their fiduciary duties, defendants have agreed to severely discourage any superior offers for the Company. Accordingly, without intervention of the Court, the Proposed Acquisition is a *fait accompli*.

6. Because defendants dominate and control the business and corporate affairs of Massey and are in possession of private corporate information concerning the Company’s assets, business and future prospects, there exists an imbalance and disparity of knowledge and economic power between them and the public shareholders of Massey, which makes it inherently unfair for them to execute and pursue any proposed merger agreement under which they will reap disproportionate benefits to the exclusion of maximizing stockholder value.

7. In short, the Proposed Acquisition is designed to unlawfully divest the Company’s public stockholders of the valuable assets of the Company for grossly inadequate consideration. Defendants have acted to place their self-interests ahead of the interests of shareholders of Massey, and/or have aided and abetted therein.

8. Plaintiff seeks injunctive relief to prevent defendants from consummating the Proposed Acquisition unless and until the defendants’ breaches of fiduciary duty are rectified.

JURISDICTION AND VENUE

9. This Court has jurisdiction under Article III of the United States Constitution and 28 U.S.C. § 1332 because complete diversity exists between the parties and the amount in controversy exceeds \$75,000.

10. This Court has jurisdiction over each defendant named herein because each defendant is either a corporation that conducts business in and maintains operations in this District, or is an individual who has sufficient minimum contacts with this District so as to render the exercise of jurisdiction by the courts of this District permissible under traditional notions of fair play and substantial justice.

11. Venue is proper in this Court because one or more of the defendants either resides in or maintains executive offices in this District, a substantial portion of the transactions and wrongs complained of herein occurred in this District, and defendants have received substantial compensation in this District by doing business here and engaging in numerous activities that had an effect in this District.

PARTIES

12. Plaintiff Benjamin Mostaed ("Plaintiff") is, and at all relevant times was, a shareholder of Massey. Plaintiff is a citizen of Ohio.

13. Defendant Massey is a Delaware corporation with its headquarters and principal place of business in Richmond, Virginia. With operations in West Virginia, Kentucky and Virginia, Massey is the largest coal producer in Central Appalachia. Massey produces, processes and sells various steam and metallurgical grade coals through its 26 processing plants, docks and shipping centers and employs through its various subsidiaries more than 7,300 employees.

14. Defendant Alpha is a Delaware corporation with its headquarters and principal place of business in Abingdon, Virginia. Alpha is an American coal supplying and production company, with coal production capacity of greater than 90 million tons a year. The Company,

through its affiliates, employs approximately 6,400 people and operates approximately 60 mines and 14 coal preparation facilities in Appalachia and the Powder River Basin.

15. Defendant Baxter F. Phillips, Jr. ("Phillips") has been a director of Massey since May 22, 2007. He is a member of the Finance Committee, and has served as the Chief Executive Officer ("CEO") and President of Massey since December 2010. Phillips is a citizen of Virginia.

16. Defendant Bobby R. Inman ("Inman") has been a director of Massey since 1985. He was named Chairman of the Board in December 2010. Inman also serves as the Chairman of the Executive, Governance and Nominating, and Public Policy Committees and is a member of the Compensation Committee. Inman is a citizen of Texas.

17. Defendant James B. Crawford ("Crawford") has been a director of Massey since February 7, 2005. He is Chairman of the Safety and Environmental Committee and is a member of the Audit, Compensation and Executive Committees. Crawford is a citizen of Virginia.

18. Defendant Robert H. Foglesong ("Foglesong") has been a director of Massey since February 21, 2006. He is Chairman of the Compensation Committee and is a member of the Audit, Executive, Safety and Environmental and Public Policy Committees. Foglesong is a citizen of Mississippi.

19. Defendant Richard M. Gabrys ("Gabrys") has been a director of Massey since May 22, 2007. He is Chairman of the Finance Committee and is a member of the Executive, Governance and Nominating and Public Policy Committees. Gabrys is a citizen of Michigan.

20. Defendant Robert B. Holland ("Holland") has been a director of Massey since August 16, 2010. He is a member of the Governance and Nominating Committee and the Safety and Environmental Committee. Holland is a citizen of Texas.

21. Defendant Dan R. Moore ("Moore") has been a director of Massey since January 22, 2002. He is Chairman of the Audit Committee and a member of the Compensation, Executive, Finance and Public Policy Committees. Moore is a citizen of West Virginia.

22. Defendant Stanley C. Suboleski ("Suboleski") has been a director of Massey since May 13, 2008. He is a member of the Finance, Public Policy and Safety and Environmental Committees. Suboleski is a citizen of Virginia.

23. Defendant Linda J. Welty ("Welty") has been a director of Massey since August 16, 2010. She is a member of the Audit Committee and the Governance and Nominating Committee. Welty is a citizen of Georgia.

24. The defendants named above in ¶¶15-23 are sometimes collectively referred to herein as the "Individual Defendants."

DEFENDANTS' FIDUCIARY DUTIES

25. Under Delaware law, in any situation where the directors of a publicly traded corporation undertake a transaction that will result in either: (i) a change in corporate control; or (ii) a break up of the corporation's assets, the directors have an affirmative fiduciary obligation to obtain the highest value reasonably available for the corporation's shareholders, including a significant premium. To diligently comply with these duties, neither the directors nor the officers may take any action that:

- (a) adversely affects the value provided to the corporation's shareholders;
- (b) will discourage, inhibit or deter alternative offers to purchase control of the corporation or its assets;
- (c) contractually prohibits them from complying with their fiduciary duties;
- (d) will otherwise adversely affect their duty to secure the best value reasonably available under the circumstances for the corporation's shareholders; and/or
- (e) will provide the directors and/or officers with preferential treatment at the expense of, or separate from, the public shareholders.

26. In accordance with their duties of loyalty and good faith, the Individual Defendants, as directors and/or officers of Massey, are obligated under Delaware law to refrain from:

- (a) participating in any transaction where the directors' or officers' loyalties are divided;
- (b) participating in any transaction where the directors or officers receive, or are entitled to receive, a personal financial benefit not equally shared by the public shareholders of the corporation; and/or
- (c) unjustly enriching themselves at the expense or to the detriment of the public shareholders.

27. The defendants, separately and together, in connection with the Proposed Acquisition, are knowingly or recklessly violating their fiduciary duties and aiding and abetting such breaches, including their duties of loyalty, good faith and independence owed to Plaintiff and other public shareholders of Massey. The Individual Defendants are engaging in self-dealing and are obtaining for themselves personal benefits, including personal financial benefits, not shared equally by Plaintiff or the Class (as defined herein), in connection with the Proposed Acquisition. As a result of the Individual Defendants' self-dealing and divided loyalties, neither Plaintiff nor the Class will receive adequate or fair value for their Massey common stock in the Proposed Acquisition.

28. Because the Individual Defendants are knowingly or recklessly breaching their duties of loyalty, good faith and independence in connection with the Proposed Acquisition, the burden of proving the inherent or entire fairness of the Proposed Acquisition, including all aspects of its negotiation, structure, price and terms, is placed upon defendants as a matter of law.

BACKGROUND TO THE PROPOSED ACQUISITION

29. Defendant Massey is the fourth largest coal producer in the United States, with extensive coal mining operations in West Virginia, Kentucky and Virginia. By revenue, it is the largest – and lowest cost – coal producer in the Central Appalachian (“CAPP”) region. Since its founding in 1920, Massey’s location and substantial mining operations in the CAPP region has proved strategically advantageous over competitors, given the CAPP region’s enormous coal reserves and proximity to the densely populated end-user urban areas along the eastern seaboard.

30. Massey’s stock has benefitted greatly over the last decade from two major developments in the coal industry: (1) the dramatic rise of coal consumption by developing countries such as Brazil, India and China; and (2) the increased interest in and funding for the development of clean coal technology as a domestic source of alternative energy. Many industry analysts, such as Elliot Gue of The Energy Strategist investment service, have described coal as one of the leading investments for the coming decade:

Coal is far and away the world's most-important source of electric power and has been for decades. Coal has been the fastest growing fossil fuel over the past five years. And thanks to widespread use in developing countries, coal demand is projected to grow at nearly twice the pace of oil for the next two decades. Coal accounts for 70 percent of electricity generated in India and closer to 80 percent of China’s electricity. There are two good reasons for this: Coal is more abundant than oil or gas, and it's cheap.

Investing Daily, “King Coal,” available at <http://www.investingdaily.com/tes/16499/king-coal.html>, May 2, 2007.

31. Market analysts have also commented on Massey’s ability to capitalize on the growing strength of coal: “Massey is the largest – and lowest cost -- coal producer in the Central Appalachian (CAPP) region, which is ideally located near the heavily-populated East Coast population hubs. The closer coal is to end-user demand, the lower the transportation costs, which makes coal pricing more competitive.” Based in part on this strategic positioning, Massey stock rose 480% from \$19 per share on July 30, 2007 to an all-time high of \$91.19 on June 23, 2008.

32. Throughout much of 2008, Massey's stock traded substantially above the price being offered in the Proposed Acquisition. But like many other publicly traded companies, Massey saw its stock price temporarily drop when the deep global economic recession took hold in late 2008 and 2009. However, unlike many less strategically positioned companies, Massey's stock quickly rebounded more than 450% from its lows of two years ago, and reached a two-year high of \$58.04 only three weeks ago on January 12, 2011. Given its strong position in the coal industry, Massey is poised for further recovery.

THE PROPOSED ACQUISITION

33. In a January 29, 2011 press release entitled "Alpha Natural Resources and Massey Energy Agree to \$8.5 Billion Combination," Alpha and Massey announced, in pertinent part:

Alpha Natural Resources, Inc. (NYSE: ANR) ("Alpha") and Massey Energy Company (NYSE: MEE) ("Massey") announced today that they signed a definitive agreement under which Alpha will acquire all outstanding shares of Massey common stock, subject to customary closing conditions including stockholder approval of both companies. Under the terms of the agreement, Massey stockholders will receive, at the closing, 1.025 shares of Alpha common stock and \$10.00 in cash for each share of Massey common stock. Based on the closing share price of Alpha common stock as of January 28, 2011, the agreement placed a value of \$69.33 per share of Massey common stock (implying \$8.5 billion enterprise value for Massey) and represents a 21% premium to Massey's current share price. Upon completion of the transaction, Alpha and Massey stockholders will own approximately 54% and 46% of the combined company, respectively.

The merger will bring together Alpha's and Massey's highly complementary assets, which include more than 110 mines and combined coal reserves of approximately 5 billion tons, including one of the world's largest and highest-quality metallurgical coal reserve bases. Alpha and Massey believe the new entity will be well positioned to capitalize on strong global demand trends for coal including the metallurgical coal used in the steel manufacturing process. Further, the combination is expected to permit Alpha and Massey to benefit from geographical and asset diversification, including operations and reserves in Central and Northern Appalachia, the Illinois Basin and the Powder River Basin in Wyoming.

The resulting company will have an attractive financial profile with expected pro forma 2010 revenues of approximately \$6.9 billion and the highest free cash flow generation of any pureplay U.S. coal company, a responsible balance sheet, and

significantly enhanced scale with a combined enterprise value of approximately \$15 billion. Stockholders and customers of both companies will also benefit from synergies which are expected to exceed an annual run-rate of \$150 million within the second year of operations, as well as anticipated cash flow accretion in the first full year of combined operations.

“We’re very pleased that Massey has chosen to join forces with Alpha and commit to this truly transformational deal,” said Kevin Crutchfield, Alpha’s chief executive officer. “Together we will be America’s largest supplier of metallurgical coal for the world’s steel industry and a highly diversified supplier of thermal coal to electric utilities in the U.S. and overseas. The strategic and operational fit of our two companies is clear and compelling. Both companies’ stockholders will gain an opportunity to participate in the upside potential of a global industry leader with a robust production portfolio, attractive growth profile and substantial reserve base. Together, we are committed to creating a stronger company that has the scale to capitalize on further growth opportunities, succeed in a changing regulatory landscape and maintain the absolute highest standards in safety and environmental excellence.”

Baxter F. Phillips, Jr., Massey’s chief executive officer and president, stated, “This transaction represents a tremendous opportunity for Massey to partner with our Central Appalachian neighbor, Alpha, to create a new industry leader. After a careful review of a wide range of strategic opportunities, our board unanimously determined that this is the right course for our company. The merger with Alpha offers Massey stockholders an immediate and substantial premium, as well as the opportunity to participate in the significant value creation opportunities our combination presents. We have always respected Alpha’s passion for this business and we believe this is a natural and logical combination that has great upside for our members, communities, customers and other important constituents.”

Mr. Crutchfield added, “As we demonstrated in the Foundation transaction, we have a proven history of successful integrations since our inception in 2002, and we’ve built a strong track record of creating value through thoughtful strategic growth. We’re already prepared to launch a seamless integration process, which includes implementing our employee-driven Running Right philosophy of safety and environmental stewardship across the business. This is not just a combination of strong asset portfolios, but a transaction that will empower a combined group of almost 14,000 people and with a focus on continued investment in safety, the environment and our communities.”

Alpha’s chairman, Mike Quillen, commented, “We’ve always believed that the combination of Alpha and Massey makes for a great partnership, and we’re thrilled about the opportunities this will create for the employees of both organizations. Their talents, skills and ambition will be the foundation of a dynamic industry leader.”

The boards of directors of Alpha and Massey have each approved the terms of the definitive merger agreement and have recommended that their respective stockholders approve the transaction. The transaction is expected to close in mid-2011 and is subject to approval by each company's stockholders and customary regulatory approvals and closing conditions. Alpha has obtained \$3.3 billion in committed financing from Morgan Stanley and Citi which, in addition to existing cash balances, will be sufficient to finance cash consideration to Massey stockholders and to refinance certain existing Alpha and Massey debt.

34. Also on January 29, 2011, the Individual Defendants caused Massey to publish an "Agreement and Plan of Merger" with the United States Securities and Exchange Commission ("SEC") detailing the terms of the Proposed Acquisition.

THE PROPOSED ACQUISITION IS GROSSLY UNFAIR TO SHAREHOLDERS

35. The Individual Defendants, acting out of their own self-interest, negotiated and entered into an agreement with Alpha that is both procedurally and substantively grossly unfair to the Company's shareholders. Procedurally, the terms of the Proposed Acquisition virtually ensure that the Proposed Acquisition will be consummated because of onerous deal protection devices such as a full "no shop" provision and a \$251 million termination fee. Moreover, the deal is substantively inadequate because it ignores Massey's past strong performance and its projected growth potential relative to Alpha's relatively flat stock performance.

The Proposed Acquisition is Procedurally Flawed

36. The Merger Agreement contains a full "no shop" clause which absolutely prohibits the Individual Defendants from soliciting higher competitive bids for the Company, in violation of the Individual Defendants' fiduciary duties to take best reasonable steps to secure the highest value for Massey. Under Section 4.02 of the Merger Agreement, entitled "No Solicitation by the Company; Board of Directors of the Company Recommendation," the Company is absolutely prohibited from soliciting superior proposals or withdrawing its recommendation that the Company's shareholders approve the Proposed Acquisition:

(a) The Company shall not, nor shall it authorize or permit any of its Affiliates or any of its or their respective representatives to, (i) directly or indirectly solicit,

initiate, induce, knowingly facilitate or knowingly encourage (including by way of providing non-public information) any Company Takeover Proposal or any inquiry, proposal or request for discussion that may reasonably be expected to lead to a Company Takeover Proposal, or (ii) directly or indirectly participate in any discussions or negotiations with any person regarding or cooperate in any way with any person (whether or not a person making a Company Takeover Proposal) with respect to any Company Takeover Proposal or any inquiry, proposal or request for discussion that may reasonably be expected to lead to a Company Takeover Proposal

(c) Except as set forth below, neither the Board of Directors of the Company nor any committee thereof shall (i) (A) withdraw (or qualify or modify in any manner adverse to Parent), the Company Board Recommendation

37. In addition to the absolute “no shop” provision, the Merger Agreement also includes an onerous and prohibitive termination fee designed to ensure that the Merger is consummated. Section 5.06 of the Merger Agreement, entitled “Fees and Expenses,” states that:

In the event that (i) this Agreement is terminated by the Company pursuant to Section 7.01(g)(ii) . . . then the Company shall pay to the Buyer Entities an aggregate amount equal to \$251 million (the “Company Termination Fee”)

38. The “no shop” and “termination fee” provisions work in concert to prevent any competitive superior proposals from challenging Alpha’s inadequate offer, and thus reflect the Individual Defendants’ breaches of fiduciary duties by structuring and agreeing to a transaction ensuring that this grossly unfair transaction will be consummated. The “no shop” provision, by its terms, prevents the Company from soliciting any competitive proposals that could challenge Alpha’s original offer, and thus create a bidding incentive for Alpha or a third company to raise the sale price. Importantly, this provision absolutely prohibits Massey from soliciting superior proposals, or changing its recommendation that its shareholders accept this proposal, even if the Company’s stock price rises substantially above the Proposed Acquisition price in the future. Such restrictions deprive the Company’s shareholders of the opportunity to secure the highest possible value for their equity interest in Massey.

39. Moreover, the prohibitive early termination fee serves to chill other potential bidders from submitting unsolicited superior proposals to challenge the Proposed Acquisition.

Knowing that Massey likely will not pay such an enormous termination fee, other potential bidders likely will not bother with the time, expense and effort involved in preparing and making a futile takeover bid. Thus, Alpha is virtually assured to have no competition for Massey, allowing it to purchase the Company at a grossly unfair price.

40. The Merger Agreement also contains an indemnification clause demonstrating the self-interested motivations of the Individual Defendants in agreeing to such a procedurally flawed and substantively inadequate takeover. As part of the Proposed Acquisition, Alpha agrees to assume all of the liabilities of Massey's officers and directors – including the Individual Defendants – once the Proposed Acquisition is consummated. This provision no doubt is extremely important to the Individual Defendants, given the numerous pending lawsuits in which they are named defendants. According to the Company's November 8, 2010 Form 10-Q, some or all of the Individual Defendants have been named in no fewer than eight shareholder derivative lawsuits and other class action suits arising from their alleged wrongdoing in connection with the tragic mine explosion at the Upper Big Branch Mine in West Virginia on April 5, 2010 that killed 31 people. While defense of these lawsuits is certainly time consuming and costly for the Individual Defendants and subjects them to potential civil liability in the tens of millions of dollars, if the Individual Defendants are successful in pushing through the Proposed Acquisition all of this liability will be assumed by Alpha. This fact unquestionably provides the Individual Defendants incentive to agree to the Merger, notwithstanding its procedural and substantive inadequacy.

41. Moreover, the eight derivative lawsuits against the Individual Defendants will be extinguished entirely following the Merger, as Massey will become a wholly owned subsidiary of Alpha.

The Proposed Acquisition is Substantively Inadequate

42. The Proposed Acquisition is also substantively inadequate, given Massey's strong stock performance historically and in the last six months, its strong position in the bullish coal industry, and Alpha's comparatively flat stock performance.

43. Just before the global economic recession affected coal and other energy investments, Massey stock traded as high as \$91.19, a full 32% over Alpha's \$69.33 offer price. Though the stock significantly and temporarily dropped during the height of the recession, Massey's stock has rebounded over 450% to a high of \$58.04 just three weeks ago. This rebound includes a more than 300% stock climb in the last six months alone. Market and industry analysts further expect that Massey is poised to continue its strong growth, given increasing demands for coal in the developing world and Massey's unique position as the largest and lowest cost coal producer in the strategically advantageous CAPP region. Some analysts have projected that Massey's stock could easily climb over \$70 in 2011.

44. By contrast, Alpha's stock price has remained comparatively flat in the last six months while Massey's stock has more than tripled. While Alpha's stock has traded at slightly higher prices during this period, its growth rate has paled in comparison to Massey's reflecting Alpha's comparatively weaker growth position. Alpha's stock performance is obviously important in analyzing the substantive fairness of the Proposed Acquisition, because the majority of Alpha's \$69.33 asking price includes a stock transfer in which Massey's stockholders will receive Alpha stock in exchange for their Massey stock. Given Massey's demonstrated and projected growth compared to Alpha, this stock swap further indicates that the asking price is inadequate.

THE INDIVIDUAL DEFENDANTS' HAVE BREACHED THEIR FIDUCIARY DUTIES

45. Under Delaware law, defendants are obligated, as directors of the Company, to maximize value for the Company's shareholders in any change of control.

46. Due to their positions with Massey, the Individual Defendants possess non-public information concerning the financial condition and prospects of Massey, and especially the true value and expected increased future value of Massey and its assets, which defendants have not disclosed to the Company's public stockholders. Moreover, despite their duty to maximize shareholder value, the defendants have clear and material conflicts of interest and are acting to

further their own interests, and the interests of Alpha, at the expense of the Company's public shareholders.

47. The Proposed Acquisition is wrongful, unfair and harmful to the Company's public stockholders, and represents an effort by defendants to aggrandize their own financial position and interests at the expense of and to the detriment of the Class. Specifically, defendants are attempting to deny Plaintiff and the Class their shareholder rights via the sale of Massey on terms that do not adequately value the Company.

48. In light of the foregoing, the Individual Defendants must, as their fiduciary obligations require:

- withdraw their consent to the sale of Massey and allow the shares to trade freely – without impediments;
- act independently so that the interests of the Company's public stockholders will be protected;
- adequately ensure that no conflicts of interest exist between defendants' own interests and their fiduciary obligation to maximize stockholder value and, to the extent such conflicts exist, ensure that all conflicts be resolved in the best interests of the Company's public stockholders;
- solicit competing bids to Alpha's offer to assure that the Company's shareholders are receiving the maximum value for their shares; and
- fully and fairly disclose all material information to shareholders regarding the Proposed Acquisition and the true value of the Company.

49. Absent judicial intervention, Plaintiff and the Class will be irreparably injured.

CLASS ACTION ALLEGATIONS

50. Plaintiff brings this action individually and as a class action on behalf of all holders of Massey stock who are being and will be harmed by defendants' actions described herein (the "Class"). Excluded from the Class are defendants herein and any person, firm, trust, corporation, or other entity related to or affiliated with any defendants.

51. This action is properly maintainable as a class action.

52. The Class is so numerous that joinder of all members is impracticable. According to the Company's SEC filings, there were more than 102 million shares of Massey common stock outstanding as of November 8, 2010.

53. There are questions of law and fact which are common to the Class and which predominate over questions affecting any individual Class member. The common questions include, *inter alia*, the following:

(a) whether the Individual Defendants, aided and abetted by Massey and Alpha, have breached their fiduciary duties of undivided loyalty, independence or due care with respect to Plaintiff and the other members of the Class in connection with the Proposed Acquisition;

(b) whether the Individual Defendants are engaging in self-dealing in connection with the Proposed Acquisition;

(c) whether the Individual Defendants, aided and abetted by Massey and Alpha, have breached their fiduciary duties to secure and obtain the best price reasonable under the circumstances for the benefit of Plaintiff and the other members of the Class in connection with the Proposed Acquisition;

(d) whether the Individual Defendants are unjustly enriching themselves and other insiders or affiliates of Massey;

(e) whether the Individual Defendants have breached any of their other fiduciary duties to Plaintiff and the other members of the Class in connection with the Proposed Acquisition, including the duties of good faith, diligence, honesty and fair dealing;

(f) whether the Individual Defendants have breached their fiduciary duties of candor to Plaintiff and the other members of the Class in connection with the Proposed

Acquisition by soliciting shareholder votes in favor of the Proposed Acquisition based upon inadequate disclosures;

(g) whether the Individual Defendants, in bad faith and for improper motives, have impeded or erected barriers to discourage other offers for the Company or its assets; and

(h) whether Plaintiff and the other members of the Class would be irreparably harmed were the transactions complained of herein consummated.

54. Plaintiff's claims are typical of the claims of the other members of the Class and Plaintiff does not have any interests adverse to the Class.

55. Plaintiff is an adequate representative of the Class, has retained competent counsel experienced in litigation of this nature and will fairly and adequately protect the interests of the Class.

56. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class which would establish incompatible standards of conduct for the party opposing the Class.

57. Plaintiff anticipates that there will be no difficulty in the management of this litigation. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

58. Defendants have acted on grounds generally applicable to the Class with respect to the matters complained of herein, thereby making appropriate the relief sought herein with respect to the Class as a whole.

COUNT I

Claim for Breach of Fiduciary Duties Against the Individual Defendants

59. Plaintiff repeats and realleges each and every allegation set forth above.

60. The Individual Defendants have violated the fiduciary duties of care, loyalty, candor, good faith and independence owed to the public shareholders of Massey and have acted to put their personal interests ahead of the interests of the Company's public shareholders.

61. By the acts, transactions and courses of conduct alleged herein, defendants, individually and acting as a part of a common plan, are attempting to unfairly deprive Plaintiff and other members of the Class of the true value inherent in and arising from Massey.

62. The Individual Defendants have violated their fiduciary duties by causing Massey to enter into the Merger Agreement pursuant to an unfair process which has resulted in an unfair offer plagued by preclusive deal protection devices which inhibit superior proposals.

63. As demonstrated by the allegations above, the Individual Defendants failed to exercise the care required, and breached their duties of loyalty, good faith, candor and independence owed to the shareholders of Massey because, among other reasons:

(a) they failed to take steps to maximize the value of Massey to its public shareholders and they took steps to avoid competitive bidding, to cap the price of the Company's stock and to give the Individual Defendants an unfair advantage, by, among other things, failing to adequately solicit other potential acquirers or alternative transactions;

(b) they failed to properly value Massey and its various assets and operations;

(c) they ignored or did not protect against the numerous conflicts of interest resulting from the directors' own interrelationships or connection with the Proposed Acquisition; and

(d) they have failed to disclose all material information to the Company's shareholders necessary for them to make a fully informed decision with respect to the Proposed Acquisition.

64. Because the Individual Defendants dominate and control the business and corporate affairs of Massey, and are in possession of private corporate information concerning the Company's assets, business and future prospects, there exists an imbalance and disparity of knowledge and economic power between them and the public shareholders of Massey which makes it inherently unfair for them to pursue and recommend any proposed transaction wherein they will reap disproportionate benefits to the exclusion of maximizing stockholder value.

65. By reason of the foregoing acts, practices and course of conduct, the Individual Defendants have failed to exercise ordinary care and diligence in the exercise of their fiduciary obligations toward Plaintiff and the other members of the Class.

66. Unless enjoined by this Court, the Individual Defendants will continue to breach their fiduciary duties owed to Plaintiff and the Class, and may consummate the Proposed Acquisition which will exclude the Class from its fair share of the Company's valuable assets and operations, and/or benefit defendants in the unfair manner complained of herein, all to the irreparable harm of the Class.

67. The Individual Defendants are engaging in self-dealing, are not acting in good faith toward Plaintiff and the other members of the Class, and have breached and are breaching their fiduciary duties to the members of the Class.

68. As a result of the Individual Defendants' unlawful actions, Plaintiff and the other members of the Class will be irreparably harmed in that they will not receive their fair portion of the value of the Company's assets and operations. Unless the Proposed Acquisition is enjoined by the Court, the Individual Defendants will continue to breach their fiduciary duties owed to plaintiff and the members of the Class, will not engage in arm's-length negotiations on the Proposed Acquisition terms, and will not supply to the Company's minority stockholders sufficient information to enable them to cast informed votes regarding adoption of the Proposed Acquisition contract and may consummate the Proposed Acquisition, all to the irreparable harm of the members of the Class.

69. Plaintiff and the members of the Class have no adequate remedy at law. Only through the exercise of this Court's equitable powers can plaintiff and the Class be fully protected from the immediate and irreparable injury which defendants' actions threaten to inflict.

COUNT II

Aiding and Abetting the Individual Defendants' Breaches of Fiduciary Duty Against Defendants Massey and Alpha

70. Plaintiff repeats and realleges each and every allegation set forth above.

71. Defendants Massey and Alpha are sued herein as aiders and abettors of the breaches of fiduciary duties outlined above by the Individual Defendants as members of the Board of Massey.

72. As detailed above, the Individual Defendants breached their fiduciary duties of good faith, loyalty, and due care to the Massey shareholders.

73. Such breaches of fiduciary duties could not and would not have occurred but for the conduct of defendants Massey and Alpha, which, therefore, aided and abetted such breaches via entering into the Merger Agreement.

74. Defendants Massey and Alpha had knowledge that they were aiding and abetting the Individual Defendants' breaches of their fiduciary duties to the Massey shareholders.

75. Defendants Massey and Alpha rendered substantial assistance to the Individual Defendants in the breach of their fiduciary duties owed to the Massey shareholders.

76. As a result of Massey's and Alpha's conduct of aiding and abetting the Individual Defendants' breaches of fiduciary duties, plaintiff and the other members of the Class have been and will be injured in that they have been and will be prevented from obtaining a fair process or a fair price for their shares.

77. As a result of the unlawful actions of defendants Massey and Alpha, Plaintiff and the other members of the Class will be irreparably harmed in that they will be prevented from obtaining the real value of their equity ownership in the Company. Unless the actions of

defendants Massey and Alpha are enjoined by the Court, they will continue to aid and abet the Individual Defendants' breaches of the fiduciary duties owed to Plaintiff and the members of the Class, and will aid and abet a process that inhibits the maximization of shareholder value and the disclosure of material information.

78. Plaintiff and the other members of the Class have no adequate remedy at law. Only through the exercise of this Court's equitable powers can plaintiff and the Class be fully protected from the immediate and irreparable injury which defendants' actions threaten to inflict.

PRAYER FOR RELIEF

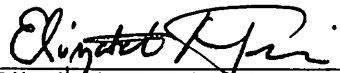
WHEREFORE, Plaintiff demands injunctive relief, in Plaintiff's favor and in favor of the Class and against defendants as follows:

- A. Declaring that this action is properly maintainable as a class action;
- B. Declaring and decreeing that the Merger Agreement was entered into in breach of the fiduciary duties of the Individual Defendants and that the Merger Agreement is therefore unlawful and unenforceable;
- C. Enjoining defendants, their agents, counsel, employees and all persons acting in concert with them from consummating the Proposed Acquisition, unless and until the Company adopts and implements a procedure or process to obtain the highest possible value for shareholders;
- D. Directing the Individual Defendants to exercise their fiduciary duties to obtain a transaction which is in the best interests of the Company's shareholders until the process for the sale or auction of the Company is completed and the best possible consideration is obtained for Massey;
- E. Rescinding, to the extent already implemented, the Proposed Acquisition agreement or any of the terms thereof, including the onerous and preclusive deal protection devices;

F. Awarding Plaintiff the costs and disbursements of this action, including reasonable attorneys' and experts' fees; and

G. Granting such other and further equitable relief as this Court may deem just and proper.

Dated: February 1, 2011



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Facsimile: (214) 706-9315

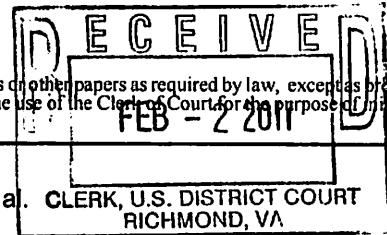
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Facsimile: (214) 239-8901

Of Counsel

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings on other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)



I. (a) PLAINTIFFS

Benjamin Mostaed, individually and on behalf of all others similarly situated

DEFENDANTS

James B. Crawford, et al. CLERK, U.S. DISTRICT COURT
RICHMOND, VA

(b) County of Residence of First Listed Plaintiff Montgomery, Ohio
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Elizabeth K. Tripodi; Finkelstein Thompson LLP, 1050 30th Street,
NW, Washington DC 20007; 202-337-8000

Attorneys (If Known)

n/a

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input checked="" type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY - Med. Malpractice <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL INJURY - LABOR <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General Habeas Corpus <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

- (Place an "X" in One Box Only)
- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 USC 1332

Brief description of cause:

Breach of fiduciary duty by board of directors

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

02/01/2011

SIGNATURE OF ATTORNEY OF RECORD

Elizabeth K. Tripodi

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

Court Name: UNITED STATES DISTRICT COURT
Division: 3
Receipt Number: 34683011573
Cashier ID: lgarrett
Transaction Date: 02/02/2011
Payer Name: FINKELSTEIN THOMPSON LLP

CIVIL FILING FEE
For: BENJAMIN MOSTAED
Amount: \$350.00

CHECK
Check/Money Order Num: 16626
Amt Tendered: \$350.00

Total Due: \$350.00
Total Tendered: \$350.00
Change Amt: \$0.00

3:11CV079