

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
Abingdon Division**

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|-----------------------------|---|--------------------------------|
| C.L. RITTER LUMBER COMPANY, |) | |
| INCORPORATED, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Civil Action No. 1:11-cv-00019 |
| |) | |
| CONSOLIDATION COAL COMPANY, |) | |
| ISLAND CREEK COAL COMPANY, |) | |
| CNX GAS COMPANY LLC, and |) | |
| CONSOL ENERGY INC., |) | |
| |) | |
| Defendants. |) | |

**DEFENDANTS’ ANSWER AND AFFIRMATIVE DEFENSES
TO PLAINTIFF’S COMPLAINT**

Defendants, Consolidation Coal Company (“Consolidation”), Island Creek Coal Company (“Island Creek”), CNX Gas Company LLC (“CNX Gas”) and CONSOL Energy, Inc. (“CONSOL”) (collectively “Defendants”), by counsel, for their Answer and Affirmative Defenses to the Complaint filed by C.L. Ritter Lumber Company, Inc. (“Plaintiff”), state as follows:

I. Answer

1. Defendants lack information sufficient to form a belief as to the truth of the allegations of Paragraph 1 of the Complaint and therefore deny the same.
2. Defendants admit the allegations of Paragraph 2.
3. Defendants admit that Island Creek was engaged in the business of mining, processing, and transporting coal and/or gas and further state that the referenced document speaks for itself and deny the allegations to the extent that they are inconsistent with the referenced document. Defendants admit the remaining allegations of Paragraph 3.

4. In response to Paragraph 4, Defendants admit that CNX Gas is engaged in the business of producing, processing and transporting gas (including coalbed methane). Defendants deny that CNX is engaged in the business of mining. Defendants admit the remaining allegations of Paragraph 4.

5. In response to Paragraph 5, Defendants admit only that any legal document pertaining to an assignment of interests in what Plaintiff refers to as the Ritter Gas Lease speaks for itself and deny any construction by Plaintiff inconsistent therewith.

6. In response to Paragraph 6, Defendants admit that CONSOL is incorporated under the laws of the State of Delaware and has its principal place of business in Pennsylvania but deny the remaining allegations.

7. In response to Paragraph 7, Defendants state that Paragraph 7 states a legal conclusion for which no response is required. To the extent Paragraph 7 contains any factual allegations, Defendants deny each and every allegation.

8. In response to Paragraph 8, Defendants admit that Plaintiff is the owner of certain mineral, surface and/or fee interests in certain lands in Buchanan County, Virginia and on which one or more mines have been located. Plaintiff's ownership or other interest to either the surface and/or fee interests or mineral interests are governed by multiple documents, including deeds, leases, etc., and Defendants deny any allegations inconsistent with those documents. Defendants do not have information to form a belief as to the truth of the remaining allegations in Paragraph 8 and therefore deny the same.

9. In response to Paragraph 9, Defendants state that the referenced deeds and leases speak for themselves and deny any allegations inconsistent therewith.

10. In response to Paragraph 10, Defendants state that the referenced deeds and leases speak for themselves and deny any allegations inconsistent therewith.

11. In Response to Paragraph 11, and upon information and belief, Defendants state that the referenced lease speaks for itself and deny any allegations inconsistent therewith. Defendants further admit that the Beatrice Mine is an area of mining operations previously operated by Island Creek; that it includes area of previous active mining, mined coal and unmined coal; and that active mining stopped in 1986. Defendants deny the remaining allegations in Paragraph 11. Defendants expressly deny that “substantial unmined and marketable coal remains in the Beatrice Mine.”

12. In Response to Paragraph 12, and upon information and belief, Defendants state that the referenced leases speak for themselves and deny any allegations inconsistent therewith. Defendants further admit that the VP1 Mine is an area of mining operations previously operated by Island Creek; that it includes area of previous active mining, mined coal and unmined coal; and that active mining stopped in 1998. Defendants deny the remaining allegations in Paragraph 12. Defendants expressly deny that “substantial unmined and marketable coal remains in the VP1 Mine.”

13. In response to Paragraph 13, Defendants state that the Lease attached as Exhibit 4 speaks for itself and deny any allegations inconsistent therewith.

14. In response to Paragraph 14, Defendants admit only that any legal document(s) pertaining to an assignment of interests in what Plaintiff refers to as the Ritter Gas Lease and any legal document(s) reflecting any change in ownership or corporate affiliations of the identified companies or their respective obligations thereunder speak for themselves and deny

any construction by Plaintiff inconsistent therewith. Defendants deny the remaining allegations in Paragraph 14.

15. Defendants admit the allegations of Paragraph 15.

16. Defendants deny the allegations of Paragraph 16.

17. In response to the third sentence of Paragraph 17, Defendants admit that the 1961 Lease was and remains in full force and effect. Defendants deny the remaining allegations in Paragraph 17.

18. In response to the first sentence of Paragraph 18, Defendants admit that CONSOL purchased an ownership interest in Island Creek in 1993. Defendants deny the remaining allegations in Paragraph 18.

19. In response to the third sentence of Paragraph 19, Defendants admit that the 1965 Lease and the 1967 Lease were and remain in full force and effect. Defendants deny the remaining allegations in Paragraph 19.

20. Defendants deny the allegations of Paragraph 20.

21. In response to the first sentence of Paragraph 21, Defendants are not required to respond to a hypothetical and/or non-factual statement; however, to the extent a response is required, Defendants admit that the referenced leases and any subleases and/or assignments thereto speak for themselves and deny any allegations inconsistent therewith. Defendants deny the remaining allegations in Paragraph 21.

22. In response to the third sentence of Paragraph 22, Defendants accept Plaintiff's representation that it has not undertaken any cleanup nor has it incurred any cleanup costs. Defendants deny the remaining allegations of Paragraph 22.

23. In response to Paragraph 23, Defendants admit that the referenced communications speak for themselves, and deny any allegations inconsistent therewith. Defendants deny the remaining allegations in Paragraph 23, and demand strict proof thereof.

24. Defendants deny the allegations in Paragraph 24.

25. Defendants deny the allegations in Paragraph 25.

26. Defendants deny the allegations in Paragraph 26.

27. In response to Paragraph 27, Defendants admit that the referenced communication and leases speak for themselves, and deny any allegations inconsistent therewith. Defendants deny the remaining allegations in Paragraph 27.

28. Defendants deny the allegations in Paragraph 28.

29. Defendants deny the allegations in Paragraph 29.

30. Defendants deny the allegations in Paragraph 30.

31. Defendants deny the allegations in Paragraph 31.

32. In response to Paragraph 32, Defendants incorporate their responses in Paragraphs 1-31 above as if fully set forth herein.

33. Defendants deny the allegations in Paragraph 33, and Defendants deny that Plaintiff is entitled to any recovery as set forth in the succeeding *ad damnum* and demand strict proof of any alleged damages.

34. In response to Paragraph 34, Defendants incorporate their responses in Paragraphs 1-33 above as if fully set forth herein.

35. In response to Paragraph 35, Defendants are not required to respond to a hypothetical and/or non-factual statement; however, to the extent a response is required,

Defendants admit only that Consolidation enjoys rights in the property and has acted consistent therewith. Defendants deny the remaining allegations in Paragraph 35.

36. Defendants deny the allegations in Paragraph 36.

37. Defendants deny the allegations in Paragraph 37, and Defendants deny that Plaintiff is entitled to any recovery as set forth in the succeeding *ad damnum* and demand strict proof of any alleged damages.

38. In response to Paragraph 38, Defendants incorporate their responses in Paragraphs 1-37 above as if fully set forth herein.

39. Defendants deny the allegations in Paragraph 39.

40. Defendants deny the allegations in Paragraph 40.

41. Defendants deny the allegations in Paragraph 41, and Defendants deny that Plaintiff is entitled to any recovery as set forth in the succeeding *ad damnum* and demand strict proof of any alleged damages.

42. In response to Paragraph 42, Defendants incorporate their responses in Paragraphs 1-41 above as if fully set forth herein.

43. In response to Paragraph 43, Defendants are not obligated to respond to the legal conclusions in Paragraph 43 but, to the extent that a response is required, Defendants deny the allegations in Paragraph 43 and further state that Consolidation has acted in accordance with its rights in the property and in accordance with law.

44. Defendants deny the allegations in Paragraph 44.

45. Defendants deny the allegations in Paragraph 45.

46. Defendants deny the allegations in Paragraph 46.

47. Defendants deny the allegations in Paragraph 47, and Defendants deny that Plaintiff is entitled to any recovery as set forth in the succeeding *ad damnum* and demand strict proof of any alleged damages.

48. In response to Paragraph 48, Defendants incorporate their responses in Paragraphs 1-47 above as if fully set forth herein.

49. Defendants deny the allegations in Paragraph 49.

50. Defendants deny the allegations in Paragraph 50.

51. Defendants deny the allegations in Paragraph 51, and Defendants deny that Plaintiff is entitled to any recovery as set forth in the succeeding *ad damnum* and demand strict proof of any alleged damages.

52. In response to Paragraph 52, Defendants incorporate their responses in Paragraphs 1-51 above as if fully set forth herein. Defendants further state that they are not required to respond to a hypothetical and/or non-factual statement. To the extent Paragraph 52 contains any factual allegations, Defendants deny each and every such allegation.

53. In response to Paragraph 53, Defendants state that the referenced lease speaks for itself and deny any allegations inconsistent therewith. Defendants deny the remaining allegations in Paragraph 53.

54. Defendants deny the allegations in Paragraph 54.

55. In response to Paragraph 55, Defendants state that the referenced leases speak for themselves and deny any allegations inconsistent therewith. Defendants deny the remaining allegations in Paragraph 55.

54. In response to the Complaint's second Paragraph 54, Defendants deny the allegations in Paragraph 54 and Defendants deny that Plaintiff is entitled to any recovery as set forth in the succeeding *ad damnum* and demand strict proof of any alleged damages.

55. In response to Plaintiff's second Paragraph 55, Defendants incorporate their responses to all the preceding Paragraphs above as if fully set forth herein.

56. Defendants deny the allegations in Paragraph 56.

57. Defendants deny the allegations in Paragraph 57.

58. Defendants deny the allegations in Paragraph 58, and Defendants deny that Plaintiff is entitled to any recovery as set forth in the succeeding *ad damnum* and demand strict proof of any alleged damages.

59. In response to Paragraph 59, Defendants incorporate their responses in the preceding Paragraphs above as if fully set forth herein.

60. In response to Paragraph 60 and its subparts a, b and c, Defendants are not required to respond to the request for bifurcation set forth therein, but to the extent that a response is required, Defendants deny that Plaintiff is entitled to have its claim for injunctive relief. To the extent that Paragraph 60 contains any factual allegations, Defendants deny each and every allegation.

61. Defendants deny the allegations in Paragraph 61.

62. Defendants deny the allegations in Paragraph 62, and Defendants deny that Plaintiff is entitled to any recovery or relief as set forth in the succeeding *ad damnum* and demand strict proof of any alleged damages.

63. In response to Paragraph 63, Defendants incorporate their responses to the preceding Paragraphs above as if fully set forth herein.

64. Defendants deny the allegations in Paragraph 64.

65. In response to Paragraph 65, Defendants are not obligated to respond to the legal conclusions set forth therein but, to the extent that a response is required, Defendants deny the allegations in Paragraph 65 and further state that Defendants have acted in accordance with their rights and obligations in the leaseholds and in accordance to law.

66. In response to Paragraph 66, Defendants are not obligated to respond to the legal conclusions set forth therein but, to the extent that a response is required, Defendants deny the allegations in Paragraph 66 and further state that Defendants have acted in accordance with their rights and obligations in the leaseholds and in accordance to law.

67. Defendants deny the allegations in Paragraph 67 and further state that Defendants have acted in accordance with their rights and obligations in the leaseholds and in accordance to law.

68. Defendants deny the allegations in Paragraph 68, and Defendants deny that Plaintiff is entitled to any recovery as set forth in the succeeding *ad damnum* and demand strict proof of any alleged damages.

69. In response to Paragraph 69, Defendants incorporate their responses to the preceding Paragraphs above as if fully set forth herein.

70. In response to Paragraph 70, Defendants are not obligated to respond to the legal conclusions set forth therein but, to the extent that a response is required, Defendants deny the allegations in Paragraph 70 and further state that Defendants have acted in accordance with their rights and obligations in the leaseholds and in accordance to law.

71. In response to Paragraph 71, Defendants are not obligated to respond to the legal conclusions set forth therein but, to the extent that a response is required, Defendants deny the

allegations in Paragraph 71 and further state that Defendants have acted in accordance with their rights and obligations in the leaseholds and in accordance to law.

72. In response to Paragraph 72, Defendants are not obligated to respond to the legal conclusions set forth therein but, to the extent that a response is required, Defendants deny the allegations in Paragraph 72 and further state that Defendants have acted in accordance with their rights and obligations in the leaseholds and in accordance to law.

73. Defendants deny the allegations in Paragraph 73, and Defendants deny that Plaintiff is entitled to any recovery as set forth in the succeeding *ad damnum* and demand strict proof of any alleged damages.

74. Defendants deny any allegations not specifically admitted herein and deny that Plaintiff is entitled to any relief sought against Defendants.

II. Affirmative and Other Defenses

1. Plaintiff's equitable claim for injunctive relief is invalid and not supported by fact or law. Furthermore, injunctive relief is not feasible, and Plaintiff cannot prove the elements required for same, including that an adequate remedy is not available at law.

2. Plaintiff's recovery is time barred by the applicable statute(s) of limitations or precluded by the doctrines of laches, estoppel, unclean hands, impossibility, *ultra vires*, and hardship.

3. Defendants deny breaching any duty owed to Plaintiff.

4. Defendants deny that their actions were the proximate cause of Plaintiff's alleged damages.

5. Defendants deny that Plaintiff has been damaged to the extent alleged, if at all, and demand strict proof thereof.

6. Defendants have the legal rights to perform the actions of which Plaintiff complains.

7. Plaintiff is not entitled to any of Defendants' profits under any theory.

8. Plaintiff's claims are precluded, and the relief sought is barred, by the doctrines of *res judicata* and collateral estoppel.

9. Plaintiff's claims are barred, in whole or in part, because Plaintiff has improperly split its causes of action.

10. Plaintiff lacks standing under the facts and/or relevant leases and other documents to pursue the claims asserted and the relief sought.

11. Plaintiff lacks the interests in the leasehold premises, coal, oil, gas and/or other mineral rights, as alleged.

12. Defendants' actions are regulated by federal and state regulations and agencies, and Defendants have acted in conformity with such regulations and agencies' actions and directives.

13. Plaintiff has failed to mitigate its damages, if any.

14. Defendants affirmatively aver that CERCLA has no application to this case.

15. Plaintiff's claims are barred, in whole or in part, by doctrines of impossibility, commercial impracticability and/or frustration of purpose.

16. Plaintiff's claims are barred, in whole or in part, by conditions of force majeure.

17. Plaintiff's claims are barred, in whole or in part, by any subsequent agreement or understandings between the parties.

18. Plaintiff's claims are barred, in whole or in part, by the parties' course of performance or course of dealings.

19. Plaintiff's claims are barred, in whole or in part, by the rule against double recovery.

20. Plaintiff's claims are barred, in whole or in part, by their own unclean hands and/or intentional conduct in creating the supervening conditions that prevent performance.

21. Plaintiff has failed to state a claim against CONSOL upon which relief can be granted.

22. Plaintiff's claims are barred, in whole or in part, by the economic loss rule.

23. To the extent that Defendants are not advised of all of the facts and circumstances surrounding the events referred to in the Complaint, they reserve the right to assert any and all other affirmative defenses that discovery and the evidence may reveal as applicable and reserve their right to amend.

WHEREFORE, Defendants, Consolidation Coal Company, Island Creek Coal Company, CNX Gas Company LLC and CONSOL Energy, Inc., respectfully request that this Court dismiss the Complaint filed against them in this matter with prejudice, award Defendants their fees and costs incurred in defending against the same, and grant such further relief as this Court deems just and necessary.

Respectfully submitted,

CONSOLIDATION COAL COMPANY,
ISLAND CREEK COAL COMPANY
CNX GAS COMPANY LLC, and
CONSOL ENERGY INC.

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CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of November, 2011, the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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