

**IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF WEST VIRGINIA
Beckley Division**

CENTRAL WEST VIRGINIA ENERGY)	
COMPANY, INC., a West Virginia)	
corporation; and A.T. MASSEY COAL)	
COMPANY, INC., a Virginia corporation,)	Civil Action No. 5:09-cv-0467
)	
Plaintiffs,)	Judge Thomas E. Johnston
)	
v.)	
)	
MOUNTAIN STATE CARBON, LLC, a)	
Delaware Limited Liability Company, SNA)	
CARBON, LLC, a Delaware Limited)	
Liability Company, SEVERSTAL)	
WHEELING, INC., a Delaware corporation,)	
SEVERSTAL NORTH AMERICA, INC., a)	
Delaware corporation and OAO)	
SEVERSTAL, a Russian Joint Stock)	
Company,)	

Defendants.

**ANSWER TO THIRD AMENDED COMPLAINT OF
DEFENDANT SEVERSTAL DEARBORN**

Defendant Severstal North America, Inc., now known as Severstal Dearborn ("Severstal Dearborn"), by and through its undersigned counsel, answers the Third Amended Complaint as follows:

1. The averments contained in Paragraph 1 constitute conclusions of law to which no response is required. Insofar as a response is required, those averments are denied.

I. THE PARTIES

2. Admitted in part and denied in part. It is admitted that Plaintiff Central West Virginia Energy Company ("CWVEC") is a West Virginia corporation that is in the business of selling metallurgical quality coking coal. Severstal Dearborn is without knowledge or

information sufficient to form a belief as to the truth or falsity of the remaining averments of fact contained in Paragraph 2, and accordingly, those averments are denied.

3. Severstal Dearborn is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments of fact contained in Paragraph 3, and accordingly, those averments are denied.

4. Admitted in part and denied in part. It is admitted that Mountain State is in the business of manufacturing coke (among other products) at its coke plant located in Follansbee, West Virginia (the "Follansbee Plant"). It is further admitted that, when Mountain State was formed, it intended to supply the coke that it produced to its two members, Severstal Wheeling, Inc. ("Severstal Wheeling")¹ and SNA Carbon, LLC ("SNA Carbon"), and that SNA Carbon then in turn intended to supply its portion of the coke to Severstal Dearborn, Inc. d/b/a Severstal North America. The remaining averments of fact contained in Paragraph 4 are denied.

5. Admitted in part and denied in part. It is admitted that Mountain State has no employees, and that the Follansbee Plant was managed by Severstal Wheeling at all times relevant to this action pursuant to certain management and operating agreements. The remaining averments of fact contained in Paragraph 5 are denied.

6. Admitted in part and denied in part. It is admitted that the two members of Mountain State during the relevant time period were SNA Carbon and Severstal Wheeling. The remaining averments contained Paragraph 6 constitute conclusions of law to which no response is required. Insofar as a response is required, those averments are denied.

7. Admitted in part and denied in part. It is admitted that SNA Carbon has no employees, and was formed (in part) to own a 50% interest in Mountain State. The remaining averments of fact contained in Paragraph 7 are denied.

¹ In early 2011, Severstal Wheeling was acquired by RG Steel LLC and is now known as RG Steel Wheeling, LLC.

8. Admitted in part and denied in part. It is admitted that SNA Carbon has no employees, and was formed (in part) to own a 50% interest in Mountain State. The remaining averments of fact contained in Paragraph 8 are denied.

9. Admitted in part and denied in part. It is admitted that Severstal Wheeling, now known as RG Steel Wheeling, LLC is a Delaware corporation. The remaining averments contained in Paragraph 9 are denied.

10. Admitted.

11. Admitted in part and denied in part. It is admitted that Severstal Dearborn is a Delaware corporation with its principal place of business in Dearborn, Michigan. The remaining averments contained in Paragraph 11 are denied.

12. Severstal Dearborn is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments of fact contained in Paragraph 12, and accordingly, those averments are denied.

13 – 15. Admitted.

16. Admitted in part and denied in part. It is admitted that subsidiaries of OAO Severstal obtained steel operations in North America and Europe after approximately 1993, and that OAO Severstal expanded its business to include the mining of iron ore, coal, and other minerals since 1993. It is further admitted that OAO Severstal (through its subsidiaries) is the largest Russian steel producer. The remaining averments of fact contained in Paragraph 16 are denied.

17. Admitted in part and denied in part. It is admitted that OAO Severstal (through its subsidiaries) spent approximately \$2.5 billion in the mid-2000 time period to acquire certain steelmaking assets, including the company formerly known as Wheeling Pittsburgh Steel

Corporation ("Wheeling Pitt"). It is further admitted that Wheeling Pitt owned, among other assets, those identified in Paragraph 17. The remaining averments of fact contained in Paragraph 17 are denied.

18. Admitted in part and denied in part. It is admitted, in 2008, OAO Severstal reorganized the operations of its subsidiaries into three divisions known as Severstal Russian Steel, Severstal Resources, and Severstal International and that the operations of Severstal Dearborn and Severstal Wheeling (among others) were a part of the Severstal International division. The remaining averments of fact contained in Paragraph 18 are denied.

19. Admitted in part and denied in part. It is admitted that Mr. Mordashov is the Chief Executive Officer and majority stockholder of OAO Severstal. The remaining averments of fact contained in Paragraph 19 are denied.

20. Denied.

II. JURISDICTION AND VENUE

21. The averments contained Paragraphs 21 constitute conclusions of law to which no responses are required. Insofar as responses are required, those averments are denied.

22. Admitted in part and denied in part. Upon information and belief, it is admitted that certain of the coal that CWVEC delivered to Mountain State under the Coal Supply Agreement was mined and loaded for shipment in Raleigh County, West Virginia. The remaining averments contained Paragraph 22 constitute conclusions of law to which no response is required. Insofar as a response is required, those averments are denied.

23-24. The averments contained Paragraphs 23 and 24 constitute conclusions of law to which no responses are required. Insofar as responses are required, those averments are denied.

III. FACTUAL ALLEGATIONS

A. The Coal Supply Agreement

25-26. Severstal Dearborn is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments of fact contained in Paragraphs 25 and 26, and accordingly, those averments are denied.

27. Admitted in part and denied in part. It is admitted that Wheeling Pitt and Mountain State entered into a Coal Supply Agreement on November 15, 1993 pursuant to which CWVEC agreed to supply, and Wheeling Pitt agreed to purchase, 100% of the high volatile metallurgical coal required by the Follansbee Plant (predicated on Wheeling Pitt's intention to utilize a coal blend of approximately 70% high volatile metallurgical coal and 30% low volatile metallurgical coal). The remaining averments of fact contained in Paragraph 27 are denied.

28. Denied.

29. The averments contained in Paragraph 29 are denied on the grounds they purport to interpret the content of a written agreement, which document speaks for itself.

30. Admitted.

B. Annual Coal Requirements and Quarterly Deliveries

31-35. The averments contained in Paragraphs 31 through 35 constitute conclusions of law to which no responses are required. Insofar as responses are required, those averments are denied on the grounds that they purport to interpret the content of the Coal Supply Agreement, which is a document that speaks for itself. To the extent further responses may be required, the remaining averments of fact contained in paragraphs 31 to 35 are denied. By way of further answer, it is specifically denied that the Coal Supply Agreement contains a defined term identified as the "Annual Requirements."

36. Denied.

37-40. The averments contained in Paragraphs 37 through 40 constitute conclusions of law to which no responses are required. Insofar as responses are required, those averments are denied on the grounds that they purport to interpret the content of the Coal Supply Agreement, which is a document that speaks for itself. To the extent further responses may be required, the remaining averments of fact contained in paragraphs 37 to 40 are denied. By way of further answer, it is specifically denied that the Coal Supply Agreement contains a defined term identified as the "Annual Requirements."

41. Severstal Dearborn is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments of fact contained in Paragraph 41, and accordingly, those averments are denied. By way of further answer, it is denied that Paragraph 41 accurately sets forth Mountain State's obligations under the Coal Supply Agreement.

C. Performance of the Parties Related to Contract Year 2009

42. Admitted in part and denied in part. It is admitted that, in or around the Fall of 2008, the demand and market prices for steel products worldwide began to decline from levels achieved earlier that year. The remaining averments of fact contained in Paragraph 42 are denied.

43. Admitted in part and denied in part. It is admitted that, in or around the Fall of 2008, the demand and market prices for both steel products and raw materials used for the manufacture of steel worldwide began to decline from levels achieved earlier that year. The remaining averments of fact contained in Paragraph 43 are denied.

44. Admitted in part and denied in part. It is admitted that Severstal Wheeling had meetings with its steel customers in August 2008, as it routinely does throughout the year. The remaining averments of fact contained in Paragraph 44 are denied.

45. Admitted in part and denied in part. It is admitted that representatives of OAO Severstal, Severstal Dearborn, Severstal Wheeling and other United States affiliates of OAO Severstal had meetings in late August and September of 2008. The remaining averments of fact contained in Paragraph 45 are denied.

46. Admitted in part and denied in part. It is admitted that a meeting was held in the United States in September 2008 that was attended by various representatives of OAO Severstal and its North American affiliates during which the condition of the steel market was discussed. The remaining averments of fact contained in Paragraph 46 are denied.

47. Admitted in part and denied in part. It is admitted that the outlook for the steel industry was a concern to all entities engaged in steelmaking operations into October 2008. The remaining averments of fact contained in Paragraph 47 are denied.

48. Admitted in part and denied in part. It is admitted that Mountain State did not provide ninety (90) days advance written notice of an intent to reduce the amount of coal to be delivered in the first quarter of the 2009 Contract Year below the level referred in Paragraph 48, but it is believed that Plaintiffs were aware of statements made by Wilbur Winland prior to October 31, 2008 indicating that future operating plans were in the process of being reviewed and that future coal needs could be lower than the then-current levels. The remaining averments of fact contained in Paragraph 48 are denied.

D. Effective Nominated Quantity for First Quarter (Nov – Jan) of Contract Year 2009

49. The averments contained in Paragraph 49 constitute conclusions of law to which no response is required. Insofar as a response is required, those averments are denied on the grounds that they purport to interpret the content of the Coal Supply Agreement, which is a document that speaks for itself. By way of further answer, it is denied that Paragraph 49 accurately sets forth Mountain State's obligations under the Coal Supply Agreement.

50. Denied.

E. Annual Requirements

51. Admitted in part and denied in part. It is admitted that Severstal Wheeling sent a letter to CWVEC on or around October 31, 2008 regarding Mountain State's anticipated need for high volatile metallurgical coal during the 2009 Contract Year, which is a written document that speaks for itself. The remaining averments of fact contained in Paragraph 51 are denied.

52. The averments contained in Paragraph 52 constitute conclusions of law to which no response is required. Insofar as a response is required, those averments are denied on the grounds that they purport to interpret the content of the Coal Supply Agreement, which is a document that speaks for itself.

F. Notice of Nominated Quantity for all Four Quarters of the Contract Year

53. The averments contained in Paragraph 53 constitute conclusions of law to which no response is required. Insofar as a response is required, those averments are denied on the grounds that they purport to interpret the content of the Coal Supply Agreement, which is a document that speaks for itself.

G. Ineffective Notice for First Quarter (Nov – Jan) of Contract Year 2009

54 - 55. The averments contained in Paragraphs 54 through 55 constitute conclusions of law to which no response is required. Insofar as responses are required, those averments are denied on the grounds that they purport to interpret the content of the Coal Supply Agreement, which is a document that speaks for itself.

H. Effective Nominated Quantity for Second Quarter (Feb-Apr) of Contract Year 2009

56. Admitted in part and denied in part. It is admitted that Severstal Wheeling sent a letter to CWVEC on or around January 20, 2009 regarding Mountain State's anticipated need for high volatile metallurgical coal during the 2009 Contract Year, which is a written document that speak for itself. The remaining averments of fact contained in Paragraph 56 are denied.

57. The averments contained in Paragraph 57 constitute conclusions of law to which no response is required. Insofar as a response is required, those averments are denied.

58. Admitted in part and denied in part. It is admitted that Severstal Wheeling continued to communicate to CWVEC, on behalf of Mountain State, regarding the Follansbee Plant's anticipated need for high volatile metallurgical coal during the 2009 Contract Year. The remaining averments of fact contained in Paragraph 58 are denied.

I. Nominated Quantity for Third Quarter (May – Jul) of Contract Year 2009

59. Admitted in part and denied in part. It is admitted that Severstal Wheeling sent a letter to CWVEC on or around January 20, 2009 regarding Mountain State's anticipated need for high volatile metallurgical coal during the 2009 Contract Year, which is a written document that speaks for itself. The remaining averments of fact contained in Paragraph 59 are denied.

J. Nominated Quantity for Fourth Quarter (Aug – Oct) of Contract Year 2009

60. Admitted in part and denied in part. It is admitted that Severstal Wheeling sent a letter to CWVEC on or around April 30, 2009 regarding Mountain State's anticipated need for

high volatile metallurgical coal during the 2009 Contract Year, which is a written document that speaks for itself. The remaining averments of fact contained in Paragraph 60 are denied.

61-65. The averments contained in Paragraphs 61 through 65 constitute conclusions of law to which no responses are required. Insofar as responses are required, those averments are denied.

66-67. Denied.

IV. CAUSES OF ACTION

Count I – **Breach of Implied Duty of Good Faith and Fair Dealing** (Mountain State)

68. Severstal Dearborn incorporates by reference its above responses to Paragraphs 1 through 67.

69-73. The averments of Paragraphs 69 through 73 are directed to another party and therefore no responses to Paragraphs 69 through 73 are required by Severstal Dearborn. Insofar as responses are required, those averments are denied.

74. Admitted in part and denied in part. It is admitted that Plaintiffs are seeking to recover alleged damages, including pre- and post-judgment interest. Insofar as Paragraph 74 implies that Plaintiffs are entitled to any damages, such implication is denied.

Count II -- **BREACH OF CONTRACT (Annual Requirements)** (Mountain State)

75. Severstal Dearborn incorporates by reference its above responses to Paragraphs 1 through 74.

76. Admitted in part and denied in part. It is admitted that Mountain State has advised that the Coal Supply Agreement defines CWVEC's breach of contract on both an annual and quarterly basis. The remaining averments of fact contained in Paragraph 76 are denied.

77-80. The averments of Paragraphs 77 through 80 are directed to another party and therefore no responses to Paragraphs 77 through 80 are required by Severstal Dearborn. Insofar as responses are required, those averments are denied.

81. Admitted in part and denied in part. It is admitted that Plaintiffs are seeking to recover alleged damages, including pre- and post-judgment interest. Insofar as Paragraph 81 implies that Plaintiffs are entitled to any damages, such implication is denied.

**Count III – Promissory Estoppel
(Mountain State)**

82. Severstal Dearborn incorporates by reference its above responses to Paragraphs 1 through 81.

83-86. The averments of Paragraphs 83 through 86 are directed to another party and therefore no responses to Paragraphs 83 through 86 are required by Severstal Dearborn. Insofar as responses are required, those averments are denied.

87. Admitted in part and denied in part. It is admitted that Plaintiffs are seeking to recover alleged damages, including pre- and post-judgment interest. Insofar as Paragraph 87 implies that Plaintiffs are entitled to any damages, such implication is denied.

**Count IV -- BREACH OF CONTRACT (Quarterly Nominations)
(Mountain State)**

88. Severstal Dearborn incorporates by reference its above responses to Paragraphs 1 through 87.

89. The averments contained in Paragraph 89 constitute conclusions of law to which no response is required. Insofar as a response is required, those averments are denied.

90. Admitted in part and denied in part. It is admitted that Mountain State has advised that the Coal Supply Agreement defines CWVEC's breach of contract on both an annual and quarterly basis. The remaining averments of fact contained in Paragraph 90 are denied.

91-96. The averments of Paragraphs 91 through 96 are directed to another party and therefore no responses to Paragraphs 91 through 96 are required by Severstal Dearborn. Insofar as responses are required, those averments are denied.

97. Admitted in part and denied in part. It is admitted that Plaintiffs are seeking to recover alleged damages, including pre- and post-judgment interest. Insofar as Paragraph 97 implies that Plaintiffs are entitled to any damages, such implication is denied.

**Count V -- BREACH OF CONTRACT (Cumulative Quarterly Nominations)
(Mountain State and Severstal Wheeling)**

98. Severstal Dearborn incorporates by reference its above responses to Paragraphs 1 through 97.

99 – 105. The averments of Paragraph 99 through 105 are directed to another party and therefore no response is required by Severstal Dearborn. Insofar as responses are required, those averments are denied.

106. Admitted in part and denied in part. It is admitted that Plaintiffs are seeking to recover alleged damages, including pre- and post-judgment interest. Insofar as Paragraph 106 implies that Plaintiffs are entitled to any damages, such implication is denied.

**Count VI -- BREACH OF CONTRACT
(Severstal Wheeling, Severstal Dearborn and OAO Severstal)**

107. Severstal Dearborn incorporates by reference its above responses to Paragraphs 1 through 106.

108-109. Denied.

110. Admitted in part and denied in part. It is admitted that Plaintiffs are seeking to recover alleged damages, including pre- and post-judgment interest. Insofar as Paragraph 110 implies that Plaintiffs are entitled to any damages, such implication is denied.

**Count VII – TORTIOUS INTERFERENCE/INDUCEMENT TO BREACH CONTRACT
(Severstal Wheeling, Severstal Dearborn and OAO Severstal)**

111. Severstal Dearborn incorporates by reference its above responses to Paragraphs 1 through 110.

112. Denied.

113. Admitted in part and denied in part. It is admitted that Severstal Wheeling and Severstal Dearborn were aware that Mountain State was party to an agreement with CWVEC. It is denied that Severstal Dearborn was aware of the specific provisions of that agreement or that OAO Severstal had any knowledge relating to that agreement.

114-119. Denied.

V. RELIEF SOUGHT

WHEREFORE, Severstal Dearborn respectfully requests that this Honorable Court enter judgment in its favor and against Plaintiffs; dismiss the Third Amended Complaint with prejudice; award Severstal Dearborn its costs, expenses, and attorney's fees to the fullest extent permitted by law; and enter any other relief that the Court deems to be just and proper.

DEFENSES

Severstal Dearborn states the following Defenses to the Third Amended Complaint, but does not assume the burden of proof on any defenses except as required by applicable law with respect to the particular defense asserted. Severstal Dearborn reserves the right to assert other defenses and/or otherwise supplement its Defenses upon discovery of facts or evidence rendering such action appropriate.

120. The averments set forth in Paragraphs 1 through 119 above are incorporated herein by reference.

121. The Third Amended Complaint fails to state a claim, in whole or in part, upon which relief can be granted.

122. Under the Coal Supply Agreement, Mountain State had the right to elect to take such quantity of coal which, in its opinion, would satisfy the requirements of the Follansbee Plant. Nothing in the Coal Supply Agreement required Mountain State to take (and pay for) more coal than was needed to satisfy the requirements of the Follansbee Plant.

123. At all relevant times, Mountain State accepted the quantity of high volatile metallurgical coal made available by CWVEC which satisfied in whole or in part the requirements of the Follansbee Plant.

124. During the course of performance of the Coal Supply Agreement, Wheeling Pitt and Mountain State regularly conveyed their requirements on a monthly basis, and requested (and received) without objection from CWVEC amounts of coal that differed from amounts identified in forecasts or estimates of anticipated requirements that had been provided to CWVEC.

125. Under the Coal Supply Agreement, CWVEC was required to advise Mountain State within thirty (30) days after receiving notice of the Nominated Quantity of the approximate equal monthly quantities that it anticipated shipping in each of the three months of the Contract Quarter-Year. CWVEC failed to provide this information to Mountain State during the 2009 Contract Year.

126. Under the Coal Supply Agreement, at least twenty (20) days prior to the beginning of a calendar month, CWVEC was required to advise Mountain State of the number of

tons to be shipped at each loading point at which barge deliveries were to be made during that month so that Mountain State could make arrangements to provide sufficient empty barges at those locations. CWVEC failed to provide this information to Mountain State during the 2009 Contract Year.

127. Plaintiffs' contract-related claims fail because CWVEC materially breached its obligations under the Coal Supply Agreement.

128. Plaintiffs' contention that the Coal Supply Agreement required CWVEC to obtain the coal to be delivered to Mountain State from mines owned and/or operated by A.T. Massey and/or its related entities contradict the unambiguous language of the Coal Supply Agreement. That contention is barred by the parol evidence rule and/or the statute of frauds.

129. Plaintiffs' contention that the Coal Supply Agreement required CWVEC to obtain the coal to be delivered to Mountain State from mines owned and/or operated by A.T. Massey and/or its related entities was a material and disputed issue in prior litigation between the parties, which was resolved in favor of Mountain State. That contention is barred by the doctrines of res judicata and/or collateral estoppel.

130. Under the coke supply agreements involving Mountain State, neither SNA Carbon nor Severstal Dearborn are obligated to purchase any of the coke that Mountain State produces at the Follansbee Plant.

131. Plaintiffs' tortious inference claims are barred because the conduct of Severstal Dearborn was privileged or justified. Severstal Dearborn, Severstal Wheeling, OAO Severstal and Mountain State shared a common economic interest in mitigating the effects of the economic downturn in the steel market beginning in the second half of 2008 by taking only that amount of coal that was needed to satisfy the requirements of the Follansbee Plant.

132. Plaintiffs' tortious inference claims are barred because Plaintiffs have not identified any wrongful conduct committed by Severstal Dearborn.

133. Plaintiffs' breach of contract claims against Severstal Dearborn are barred because Plaintiffs have not identified any facts suggesting that Mountain State or Severstal Dearborn (or any of their corporate affiliates) disregarded corporate formalities or otherwise did not operate independent legal entities. Accordingly, the doctrine of corporate separateness precludes Plaintiffs' breach of contract claims against Severstal Dearborn for any contract to which Severstal Dearborn was not an express party.

134. Plaintiffs' claims are barred by the doctrines of laches, waiver, estoppel, and/or unclean hands.

135. Mountain State fully performed its obligations under the Coal Supply Agreement. Plaintiffs' claims are therefore barred by the doctrines of performance, consent, and/or accord and satisfaction.

136. Upon information and belief, Plaintiffs have failed to mitigate their purported damages.

137. Plaintiffs' claims are barred because Plaintiffs have not suffered any legally recognizable damages.

WHEREFORE, Severstal Dearborn respectfully requests that this Honorable Court enter judgment in its favor and against Plaintiffs; dismiss the Third Amended Complaint with prejudice; award Severstal Dearborn its costs, expenses, and attorney's fees to the fullest extent permitted by law; and enter any other relief that the Court deems to be just and proper.

Respectfully submitted,

By: /s/ W. Jeffrey Vollmer
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **Answer to Third Amended Complaint of Defendant Severstal Dearborn** was filed electronically with the Court on the 13th day of April, 2012 via the CM/ECF system, which system will provide notice to the following counsel:

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/s/ W. Jeffrey Vollmer
W. Jeffrey Vollmer