

**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  
APPALACHIA HOLDING  
COMPANY, INC., a Virginia  
corporation,**

**Plaintiffs,**

v.

**Civil Action No.: 5:09-cv-0467  
Judge Thomas E. Johnston, Jr.**

**MOUNTAIN STATE CARBON,  
LLC, a Delaware Limited Liability  
Company;  
SEVERSTAL WHEELING, INC.,  
now known as RG STEEL  
WHEELING, LLC, a Delaware  
corporation;  
SEVERSTAL NORTH  
AMERICA, Inc., now known as  
SEVERSTAL DEARBORN, a  
Delaware corporation; and  
OAO SEVERSTAL, a Russian  
Joint Stock Company**

**Defendants.**

**THIRD AMENDED COMPLAINT**

COME NOW Central West Virginia Energy Company, Inc. ("Central West Virginia"), and Appalachia Holding Company (as successor in interest to A.T. Massey Coal Company, Inc.) ("Appalachia Holding"), through their undersigned counsel, and for their action against Mountain State Carbon, LLC, ("Mountain State"); RG Steel Wheeling, LLC (as successor in interest to Severstal Wheeling, Inc.; for ease of reference, Central West Virginia and Appalachia Holding will continue to refer to RG Steel Wheeling, LLC as "Severstal Wheeling" as that was its name during

the relevant time period); Severstal North America, Inc., now known as Severstal Dearborn, Inc., ("Severstal U.S."); and OAO Severstal ("Severstal Russia") state as follows:

1. Through this action, Central West Virginia and Appalachia Holding seek damages from Mountain State based upon its breach of the implied duty of good faith and fair dealing; promissory estoppel; breach of contract for failure to take its Nominated Annual Requirements; and breach of contract for failure for take its Quarterly Nominated Quantities, in accordance with its obligations under a Coal Supply Agreement dated November 15, 1993 (the "Coal Supply Agreement"). Central West Virginia and Appalachia Holding bring the same actions against Severstal Wheeling, Severstal U.S. and Severstal Russia as the *alter egos* of Mountain State. In the alternative, Central West Virginia and Appalachia Holding seek damages from Severstal Wheeling, Severstal U.S. and Severstal Russia for tortious interference with the performance of the Coal Supply Agreement.

#### I. THE PARTIES

##### **Central West Virginia Energy Company**

2. Central West Virginia is a West Virginia corporation with its principal place of business in Julian, Boone County, West Virginia 25529. It is in the business of, among other things, selling metallurgical quality coking coal mined by subsidiaries of its parent, Appalachia Holding, from mines situated primarily in southern West Virginia, including mines in Raleigh County, West Virginia.

##### **Appalachia Holding Company**

3. Appalachia Holding is a Virginia corporation with its principal place of business in Richmond, Virginia. It is in the business of mining coal through affiliated and subsidiary entities, which coal is sold by its sales companies to, among others, Central West Virginia.

**Mountain State Carbon, LLC**

4. Mountain State is a Delaware limited liability company and is in the business of manufacturing coke at its plant in Follansbee, West Virginia (the "Coking Plant"). That coke is supplied to its parent, Severstal Wheeling, and to affiliated entities owned and controlled by Severstal U.S., for use in their steelmaking activities.

5. Mountain State has no employees. The Coking Plant is managed and operated exclusively by employees of Severstal Wheeling and/or Severstal U.S. Severstal Wheeling, Severstal U.S. -- and ultimately, Severstal Russia's officers and employees -- make all corporate decisions relating to Mountain State's business operations, including its performance under the Coal Supply Agreement. These decisions are made or implemented by Severstal Wheeling and its officers and employees.

6. As a limited liability company, Mountain State's two member companies are SNA Carbon and Severstal Wheeling and its corporate citizenship is determined based on the corporate citizenship of those companies.

7. SNA Carbon is, upon information and belief, a shell corporation, with no employees or operations other than its interests in the operations of Mountain State.

8. SNA Carbon has no employees or operations separate and apart from Severstal U.S. and was formed solely to hold Severstal U.S.'s original 50% interest in Mountain State.

**Severstal Wheeling, Inc.**

9. Severstal Wheeling is a Delaware corporation with its principal place of business in Dearborn, Michigan. It is a wholly-owned subsidiary of Severstal U.S.

10. Severstal Wheeling was formed at the time the assets of the former Wheeling Pittsburgh Steel Corporation were acquired in 2008.

**Severstal North America, Inc., now known as Severstal Dearborn, Inc.**

11. Severstal U.S. is also a Delaware corporation with its principal place of business in Dearborn, Michigan. It was formed to act as the U.S. domestic arm of Severstal Russia through which its U.S. Steel operations, including Severstal Wheeling and Mountain State Carbon, were operated and controlled.

12. Severstal Russia is the fourth largest integrated steel company in the United States.

**OAO Severstal**

13. Severstal Russia is the successor to Cherepovets Metallurgical Works, a state owned steel producer formed in 1955. In 1993, Cherepovets Metallurgical Works was registered as an open joint stock company in accordance with the provisions for the Privatization of State and Municipal Enterprises Act in the Russian Federation.

14. At the time it was privatized, Cherepovets Metallurgical Works changed its name to OAO Severstal, which currently maintains its corporate headquarters at 30 Mira Street, Cherepovets, Vologodskaya in the Russian Federation.

15. Shares of stock in Severstal Russia are publicly traded on the MICEX stock exchange and Severstal Russia publicly solicits potential corporate investors in the United States and elsewhere through various means, including the English version of its website.

16. Since 1993, Severstal Russia has expanded its operations to include steel operations in North America and Europe. It has also expanded its core business to include the mining of iron ore, coal and other materials. Today, Severstal Russia is the largest Russian steel producer.

17. Severstal Russia's expansion included a \$2.5 billion program initiated in or around 2005 to acquire steelmaking assets in the United States, including the acquisition of the operations formerly held by Wheeling Pittsburgh Steel Corporation. These operations included:

- Severstal Wheeling's "Primary Operations Complex" in Steubenville, Ohio, and Mingo Junction, Ohio;

- A plant in Yorkville, Ohio that produces substrate steel used in tin mill products;
- A galvanizing plant in Martin's Ferry, Ohio;
- A cold-rolled steel plant in Allenport, Pennsylvania; and
- The Wheeling Corrugating Company, which manufactures mainly roofing, siding, and decking products in West Virginia and 14 other locations throughout the country.

18. In April of 2008, partly as a consequence of this expansion, Severstal Russia reorganized its business segments into three divisions: its Russian Steel Division, its Natural Resources Division, and its International Division. Severstal U.S.'s operations, as well as those of Severstal Wheeling, are part of the International Division of Severstal Russia.

19. Mr. Gregory Mason serves as Severstal Russia's Chief Operating Officer, sits on its Board of Directors, and heads Severstal Russia's International Division. As head of Severstal Russia's International Division, Mr. Gregory Mason reports directly to Alexey Mordashov. Mr. Alexey Mordashov is the Chief Executive Officer of Severstal Russia, and also the majority owner of the company. Having built up his holding during the state assets sales of 1993, Mr. Mordashov now controls over 80% of the company's stock.

20. Acting through Mr. Mordashov and Mr. Mason, Severstal Russia exercises complete control and dominion over the affairs of Severstal U.S., to include the price for commodities and the determination of operating budgets. Severstal U.S. in turn exercises complete control and dominion over the affairs of Severstal Wheeling and Mountain State. Such control includes, but is not limited to, decisions regarding the price Mountain State will pay for coal, the amount of coking coal delivered to Mountain State, and delivery schedules for Mountain State. Such control also includes the amount of coke Mountain State will produce, the entities to whom that coke is shipped, and any capital expenditures for the maintenance of Mountain State's coking facilities.

## II. JURISDICTION AND VENUE

21. Jurisdiction is proper in this Court based upon diversity of citizenship under 28 U.S.C. §1332, the parties being citizens of different states and countries, and the amount in controversy exceeding \$75,000.

22. Venue is proper in this judicial district and division as a consequence of the fact that a substantial portion of coal that has been sourced by the parties to supply the aforesaid contract is mined and loaded for shipment in Raleigh County, West Virginia. Thus, a substantial part of the events that give rise to this action occur in Raleigh County.

23. Venue is also proper in this judicial district and division in that a substantial portion of the impact of the tortious interference of Severstal Wheeling, Severstal U.S., and Severstal Russia occurred in Raleigh County, West Virginia.

24. The issues raised herein are ripe for adjudication, there being an actual controversy between the parties herein.

## III. FACTUAL ALLEGATIONS

### A. The Coal Supply Agreement

25. In the United States, metallurgical quality coal suitable for use in steelmaking is mined almost exclusively in the Central Appalachian Region and originates from mines situated primarily in southern West Virginia.

26. Because of the relative short supply of such coal, most steelmakers in the United States purchase metallurgical coal by means of long-term, fixed-price contracts having a term of a year or more in duration in order to ensure a steady supply of this raw material at a specified price.

27. Consistent with the foregoing industry practice and convention, on November 15, 1993, Wheeling Pittsburgh Steel Corporation ("Wheeling Pitt") and Central West Virginia entered into a ten-year coal supply agreement ("Coal Supply Agreement") pursuant to which Central West Virginia agreed to supply, and Wheeling Pitt agreed to purchase, one hundred percent (100%) of the

high volatile metallurgical quality coal required by Wheeling Pitt's coking plant at Follansbee, West Virginia, such requirements limited by capacity of Wheeling Pitt's facilities existing as the date of the Coal Supply Agreement (the "Requirements").

28. Because of the specific blend of coal required by the Coking Plant, the coal delivered pursuant to the terms of the Coal Supply Agreement was to be sourced from specific mines operated by subsidiaries of Appalachia Holding in Raleigh and Boone Counties in West Virginia (the "Source Mines"). This agreement of the parties is reflected in the course of their performance of the Coal Supply Agreement.

29. In 2002, the terms of the Coal Supply Agreement were formally amended to, among other things, extend its term by a period of seven years, each new year to begin November 1 and to end October 31 (the "Contract Year").

30. In 2005, Wheeling Pitt transferred ownership of the Coking Plant, as well as its interest in the Coal Supply Agreement, to Mountain State.

**B. Annual Coal Requirements and Quarterly Deliveries**

31. Mountain State's Requirements are predicated upon its standard practice of blending high volatile and low volatile coking coal, subject to the condition that its high volatile coking coal comprise not less than seventy percent (70%) of all the coking coal acquired by Mountain State from all sources during any Contract Year.

32. Prior to the commencement of each Contract Year, Mountain State is required to use its best efforts to determine its Annual Requirements. Mountain State is then required to advise Central West Virginia of those Annual Requirements for that Contract Year.

33. Central West Virginia is required to deliver, and Mountain State is required to accept, not less than 95% and not more than 105% of those Annual Requirements for each Contract Year, deliverable during that Contract Year.

34. Scheduling of the delivery of the Annual Requirements is required under the Coal Supply Agreement to be handled on the basis of Contract Quarter-Years, which quarters run from:

- First Contract Quarter: November 1 to January 31;
- Second Contract Quarter: February 1 to April 30;
- Third Contract Quarter: May 1 to July 31; and
- Fourth Contract Quarter: August 1 to October 31.

Mountain State has the right to allocate its Annual Requirements for delivery across the four quarters of the Contract Year. It must, however, give Central West Virginia written notice under the Coal Supply Agreement, at least ninety (90) days prior to the commencement of each Contract Quarter-Year, of the amount of its Annual Requirements to be delivered during that quarter (its "Nominated Quantity"). If Mountain State does not provide such written notice at least ninety (90) days prior to the commencement of each Contract Quarter-Year, then the Nominated Quantity for that quarter is deemed to be the same Nominated Quantity deliverable in the preceding Contract Quarter-Year.

35. Central West Virginia is required to deliver, and Mountain State is required to accept, not less than 90% and not more than 110% of the Nominated Quantity of coal, such coal deliverable during that Contract Quarter-Year.

36. At all time relevant to the proceedings, the Defendants were aware that Central West Virginia, Appalachia Holding, and their affiliated production companies relied upon Mountain State's Annual Requirements in preparing their annual operating budgets to: (a) determine how much coal had been sold or committed to their customers and how much additional coal is available for sale from the Source Mines to third-parties, during the coming Contract Year in question; (b) set their level of capital investments and expenditures at the Source Mines to meet their obligations to their customers during the coming Contract Year; and (c) set overall coal production and shipment schedules from those mines during that period.



37. Under the provisions of the Coal Supply Agreement, Mountain State assumed the risk that its Annual Requirements ultimately might be more or less than the amount of metallurgical quality coking coal it actually needed to operate the Coking Plant in any given year.

38. If Mountain State's Annual Requirements proved to be less than it actually needs for coal at the Coking Plant, Mountain State was to purchase any additional quantities as it may need from Central West Virginia or a third-party supplier at the then-prevailing market price.

39. If Mountain State's Annual Requirements proved to be more than it actually needed, then Mountain State was nevertheless required to accept its Annual Requirements as communicated to Central West Virginia, and either seek to resell that coal to third-parties or stockpile it for use in a subsequent Contract Year.

40. Under the Coal Supply Agreement, Central West Virginia and Appalachia Holding assumed the risk that Mountain State's nominated Annual Requirements could be increased or decreased from Contract Year to Contract Year, and also assumed the risk that Mountain State could schedule the delivery of its Annual Requirements unequally, or disproportionately, from Contract Quarter-Year to Contract Quarter-Year during any given Contract Year.

41. Mountain State's notification to Central West Virginia of its Annual Requirements as well as quarterly delivery schedules are critical to Central West Virginia and Appalachia Holding's operations and ability to perform their obligations under the Coal Supply Agreement. In the absence of timely notice of the Coking Plant's Annual Requirements, Appalachia Holding and its affiliated companies cannot properly budget for the necessary production during the coming Contract Year. Similarly, in the absence of timely nomination of the Coking Plant's quarterly schedule for deliveries (the Nominated Quantity), Central West Virginia and Appalachia Holding cannot properly schedule production or arrange for the transportation of the coal to Mountain State and its other coal purchasers. Defendants, at all times relevant thereto, knew or should have known of the foregoing.

**C. Performance of the Parties Related to Contract Year 2009**

42. Demand for steel -- and commodities used to make steel, such as metallurgical quality coal -- rose significantly during the first half of 2008. In or about June and July of 2008, however, Mountain State was notified by its parent and affiliate companies that orders for steel products appeared to be declining or were about to decline precipitously.

43. Mountain State, as well as its parent and affiliate companies, were also aware that orders for steel fell dramatically in August of 2008, prompting widespread concern and fear within the Severstal empire over a collapse of the industry.

44. By late August, Severstal Wheeling knew that the steel market was in a state of complete collapse. When Severstal Wheeling met with its largest steel customers, it was confronted with fear and panic as orders across the steel market had fallen drastically.

45. Events within the steel market prompted a series of meetings in late August and early September between representatives of Severstal Russia and their U.S. subordinates to assess how far the steel market was likely to drop and how long the fall was expected to last.

46. Conditions in the steel market were feared to be so bad that an emergency meeting was called in September of 2008 by Alexey Mordashov, the Chief Executive Officer of Severstal Russia. Held in the United States, the meeting was attended by all of the Vice Presidents and General Managers of each of Severstal's North American operations, and included all corporate officers from Severstal U.S. At this meeting, members of the Severstal empire expressed a belief that the collapse of the steel market was likely to last at least nine months, and that their overriding concern was for the very survival of Severstal U.S.'s North American operations.

47. The outlook for the steel industry, as well as the future of Severstal U.S.'s operations, did not improve by late October. As a consequence, top executives worked non-stop in an attempt to lower costs and develop business plans that would avoid a complete collapse in Severstal's North American operations -- while at the same time coke inventories grew to over three-times the normal size.

48. Prior to October 31, 2008, neither Mountain State nor any of the remaining Defendants chose to communicate any of the foregoing to Central West Virginia or its potential impact upon the requirements for coal to be supplied to the Coking Plant.

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

49. Under the terms of the Coal Supply Agreement, Mountain State's Nominated Quantity for the first Contract Quarter-Year of Contract Year 2009 was due at least ninety (90) days prior to November 1, 2008 -- or by approximately August 3, 2008. Neither Mountain State nor the remaining Defendants provided Central West Virginia with timely notice of Mountain State's first contract quarter Nominated Quantity for Contract Year 2009. As a result, under the Coal Supply Agreement, Mountain State's Nominated Quantity for first Contract Quarter-Year of Contract Year 2009 was the Nominated Quantity for the fourth Contract Quarter-Year of Contract Year 2008.

50. Severstal Russia, Severstal U.S., and Severstal Wheeling directed Mountain State to notify Central West Virginia that it was unilaterally reducing the amount of coal that it would accept for delivery during the first quarter of the 2009 Contract Year, despite the fact that under the terms of the Coal Supply Agreement the amount to be delivered and accepted during that quarter had been set on or about August 3, 2008.

**E. Annual Requirements**

51. By letter dated October 31, 2008 -- one day before the beginning of the Contract Year and the first Contract Quarter-Year -- Mountain State, pursuant to the instructions of Severstal Russia and Severstal U.S., provided Central West Virginia with "notice of its Nominated Quantity for the upcoming Contract-Year," stating that it "**requires** 1,128,000 tons for the Contract-Year" (emphasis added).

52. As a consequence of this "nomination," Central West Virginia became obligated to deliver, and Mountain State became obligated to accept, not less than 1,071,600 tons and not more than 1,184,400 tons of coal during the course of Contract Year 2009.

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

53. In the alternative, Mountain State's letter of October 31, 2008 also constituted notice of its cumulative Nominated Quantity of coal for Contract Year 2009, to be delivered in such amounts as it deemed appropriate during the four Contract Quarter-Years of Contract Year 2009.

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

54. Mountain State's attempted notice in its October, 2008 correspondence, by which it advised Central West Virginia that for "the first Contract Quarter-Year" it "only requires 228,000 tons," was untimely and ineffective since it was not provided at least ninety (90) days prior to the beginning of that Contract Quarter-Year. Consequently, Mountain State's Nominated Quantity for the first Contract Quarter-Year of Contract Year 2009 remained the amount it had nominated for delivery in the fourth quarter of Contract Year 2008.

55. Mountain State was obligated to accept delivery of that Nominated Quantity during the first Contract Quarter-Year that ran from November 1, 2008 to January 31, 2009.

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

56. Mountain State did not provide Central West Virginia with timely written notice of any change to its Nominated Quantity of coal to be delivered for the second quarter of Contract Year 2009, which notice was due at least 90 days prior to February 1, 2009. As a result, the Nominated Quantity of its Annual Requirements to be delivered during the second Contract Quarter-Year of Contract Year 2009 remained the same as the Nominated Quantity for the first Contract Quarter-Year of Contract Year 2009.

57. Mountain State was obligated to accept delivery of that Nominated Quantity during the second Contract Quarter-Year that ran from February 1, 2009 to April 30, 2009.

58. Notwithstanding the provisions of the Coal Supply Agreement, on January 30, 2009, Mountain State advised Central West Virginia that it wished to reduce the Nominated Quantity it was obligated to take during the second quarter of the 2009 Contract Year. That attempted reduction

in its nominated amount was not effective since it was not sent at least ninety (90) days prior to February 1, 2009, the commencement of the Second Contract Quarter-Year. For this reason, Mountain State's attempted unilateral change to the Nominated Quantity for delivery and acceptance during the second quarter was rejected by Central West Virginia.

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

59. In its letter of January 30, 2009, Mountain State also advised that its Nominated Quantity of its Annual Requirements to be delivered during the third Contract Quarter-Year was 195,000 tons. Since this notice was provided more than ninety (90) days prior to May 1, 2009, it was timely and binding upon both Mountain State and Central West Virginia.

**J. Effective Nominated Quantity for Fourth Quarter (Aug - Oct) of Contract Year 2009**

60. By letter dated April 30, 2009, Mountain State advised that it was nominating for delivery during the fourth Contract Quarter-Year zero (0) tons of its Annual Requirements.

61. Mountain State's attempted nomination of zero (0) tons for the fourth Contract Quarter-Year of the 2009 Contract Year was contractually ineffective since it had failed to accept delivery on its entire Annual Requirements of 1,128,000 tons for Contract Year 2009.

62. Central West Virginia was required to deliver and Mountain State was required to take at least 95% of the latter's specified Annual Requirements -- or 1,071,600 tons -- during the four Contract Quarter-Years. Consequently, Mountain State was contractually obligated to, and through its prior quarterly nominations effectively did, nominate the remainder of its Annual Requirement for delivery during the fourth Contract Quarter-Year of 2009.

63. Mountain State failed or otherwise refused to accept delivery of not less than ninety-five percent (95%) of its Annual Requirements for Contract Year 2009.

64. Mountain State failed or refused to accept delivery of not less than ninety-five percent (95%) of the cumulative total of the coal properly nominated for delivery during the four Contract Quarter-Years of Contract Year 2009.

65. Mountain State failed or refused to accept delivery of at least ninety percent (90%) of the Nominated Quantity of coal it was required to take in each of the four Contract Quarter-Years of Contract Year 2009.

66. Mountain State's actions, as set forth above, relating to the acceptance of coal from Central West Virginia for Contract Year 2009, were taken by and through Severstal Wheeling -- and at the direction of Severstal Wheeling, Severstal U.S. and Severstal Russia.

67. The failure or refusal of Mountain State to accept delivery of the tonnages set forth above was the direct consequence of the fact that, as a result of the downturn in steel prices, Severstal Russia's \$2.5 billion acquisition of United States' assets was dragging down its profits and diluting its cheap Russian production costs (\$290/ton as compared to \$600/ton in the United States). In order to minimize this, Defendants sought to shift this economic burden away from themselves and onto Central West Virginia, Appalachia Holding, their miners, pensioners, and bondholders -- many of whom are situated in Raleigh County and throughout southern West Virginia -- to the greatest extent possible, notwithstanding the fact that they had no legal or contractual basis for doing so.

#### **IV. CAUSES OF ACTION**

##### **COUNT I -- BREACH OF IMPLIED DUTY OF GOOD FAITH AND FAIR DEALING**

68. Central West Virginia and Appalachia Holding incorporate by reference the allegations set forth in Paragraphs 1 through 67 above as if fully set forth here.

69. Mountain State had an implied duty of good faith and fair dealing under the Coal Supply Agreement which required it to treat Central West Virginia fairly and in good faith in conjunction with the performance of its contractual obligations.

70. Mountain State breached its duty of good faith and fair dealing by wrongfully and in bad faith providing Central West Virginia with a nominated Annual Requirement for Contract Year

2009 that it knew did not constitute its best reasonable forecast of the amount of coal it would require during the 2009 Contract Year.

71. Mountain State breached its duty of good faith and fair dealing by wrongfully and in bad faith providing to Central West Virginia a "Nominated Quantity" applicable to the four Contract Quarter-Years of Contract Year 2009 that it knew to be false, contrary to its own intentions, and inconsistent with its internal expectations concerning the state of the steel market.

72. Mountain State repeatedly breached its duty of good faith and fair dealing by wrongfully and in bad faith refusing to accept coal deliveries from Central West Virginia, deliveries which it was contractually required to accept in accordance with the terms of the Coal Supply Agreement.

73. Mountain State repeatedly breached its duty of good faith and fair dealing by wrongfully and in bad faith advancing an interpretation of the Coal Supply Agreement that it falsely claimed permitted it to reduce its Nominated Quantities at will, and permitted it to take previously Nominated Quantities during later Contract Quarter-Years, which interpretation was wholly inconsistent with the terms of the Coal Supply Agreement.

74. Central West Virginia and Appalachia Holding have been substantially injured and have suffered damages in excess of \$75,000 as a result of Mountain State's breaches of its duty of good faith and fair dealing.

**COUNT II -- BREACH OF CONTRACT**  
**(FAILURE TO ACCEPT ANNUAL REQUIREMENTS)**

75. Central West Virginia and Appalachia Holding incorporate by reference the allegations set forth in Paragraphs 1 through 74 above as if fully set forth here.

76. Mountain State has repeatedly asserted during the course of the performance of the Coal Supply Agreement that the agreement defines a breach on both a Contract Year and Contract Quarter-Year basis, and that a failure to deliver substantially all of either the Annual Requirements or any Nominated Quantity for a Contract Quarter-Year constituted a breach of the agreement.

77. Under the terms of the Coal Supply Agreement, the quantity of coal to be produced by Appalachia Holding from the Source Mines, to be delivered by Central West Virginia, and to be accepted by Mountain State in any given Contract Year is not less than 95% of Mountain State's Annual Requirements.

78. By letter dated October 31, 2008, Mountain State advised Central West Virginia that its "Nominated" Annual Requirements for Contract Year 2009 were 1,128,000 tons. Mountain State was required to take delivery of at least 95% of the nominated Requirements -- or 1,071,600 tons -- during Contract Year 2009.

79. Central West Virginia fully performed all of its obligations under the Coal Supply Agreement during Contract Year 2009.

80. Mountain State failed to take delivery of a total of 1,071,600 tons of coal from Central West Virginia during the course of Contract Year 2009.

81. Central West Virginia and Appalachia Holding have suffered damages in excess of \$75,000 as a result of Mountain State's failure to accept its Annual Requirements during the course of the 2009 Contract Year.

### **COUNT III -- PROMISSORY ESTOPPEL**

82. Central West Virginia and Appalachia Holding incorporate by reference the allegations set forth in Paragraphs 1 through 81 above as if fully set forth here.

83. Mountain State, by its letter of October 31, 2008, promised Central West Virginia and Appalachia Holding that it would require and accept delivery of 1,128,000 tons of high volatile metallurgical coal in Contract Year 2009.

84. Mountain State reasonably expected, or should have reasonably expected, that Central West Virginia and Appalachia Holding would definitely and substantially rely upon this promise in ordering their sales and production for that period.



85. Central West Virginia and Appalachia Holding did, in fact, definitely and substantially rely upon Mountain State's promise.

86. Central West Virginia and Appalachia Holding's reliance was reasonable and foreseeable.

87. Central West Virginia and Appalachia Holding were injured and have suffered damages in excess of \$75,000 as a result of such reliance, and justice requires enforcement and recognition of said promise.

**COUNT IV - BREACH OF CONTRACT**  
**(FAILURE TO ACCEPT QUARTERLY NOMINATIONS)**

88. Central West Virginia and Appalachia Holding incorporate by reference the allegations set forth in Paragraphs 1 through 87 above as if fully set forth here.

89. Even if it was not contractually obligated to accept its Annual Requirements as set forth in its letter of October 31, 2008, Mountain State was obligated to accept not less than ninety percent (90%) of the Nominated Quantity of coal for each Contract Quarter-Year of the 2009 Contract Year.

90. Mountain State has repeatedly asserted during the course of the performance of the Coal Supply Agreement that the agreement defines a breach on both a Contract Year and Contract Quarter-Year basis, and that a failure to deliver the Annual Requirements or any Nominated Quantity, within the permitted percentage variances contained in the Coal Supply Agreement, constitutes a breach of the agreement.

91. Under the terms of the Coal Supply Agreement, the quantity of coal to be produced by Appalachia Holding from the Source Mines, delivered by Central West Virginia and accepted by Mountain State is not less than 90% of the Nominated Quantity for a given Contract Quarter-Year.

92. Central West Virginia has fully performed all of its obligations under the Coal Supply Agreement.

93. Mountain State's failure to take delivery of at least 90% of the Nominated Quantity for the first Contract Quarter-Year substantially impairs the value of, and constitutes a breach of, the terms of the Coal Supply Agreement.

94. Mountain State's failure to take delivery of at least 90% of the Nominated Quantity for the second Contract Quarter-Year substantially impairs the value of, and constitutes a breach of, the terms of the Coal Supply Agreement.

95. Mountain State's failure to take delivery of at least 90% of the Nominated Quantity for the third Contract Quarter-Year substantially impairs the value of, and constitutes a breach of, the terms of the Coal Supply Agreement.

96. Mountain State's failure to take delivery of at least 90% of the Nominated Quantity for the fourth Contract Quarter-Year substantially impairs the value of, and constitutes a breach of, the terms of the Coal Supply Agreement.

97. Central West Virginia and Appalachia Holding have suffered damages in excess of \$75,000 as a result of Mountain State's failure to take its Nominated Quantity in each Contract Quarter-Year for the 2009 Contract Year.

**COUNT V - BREACH OF CONTRACT**  
**(FAILURE TO ACCEPT CUMULATIVE QUARTERLY NOMINATIONS)**

98. Central West Virginia and Appalachia Holding incorporate by reference the allegations set forth in Paragraphs 1 through 97 above as if fully set forth here.

99. Even if it was not contractually obligated to accept its Annual Requirements as set forth in its letter of October 31, 2008, Mountain State was obligated to accept not less than ninety-five percent (95%) of the cumulative amount of the Nominated Quantity for each of the four Contract Quarter-Years.

100. Mountain State has repeatedly asserted during the course of the performance of the Coal Supply Agreement that the agreement defines a breach on both a Contract Year and Contract Quarter-Year basis, and that a failure to deliver the Annual Requirements or any Nominated

Quantity, within the permitted percentage variances contained in the Coal Supply Agreement, constitutes a breach of the agreement.

101. Under the terms of the Coal Supply Agreement, the quantity of coal to be produced by Appalachia Holding from the Source Mines, delivered by Central West Virginia and accepted by Mountain State is not less than 95% of the cumulative amount of the Nominated Quantity for each of the four Contract Quarter-Years.

102. Central West Virginia has fully performed all of its obligations under the Coal Supply Agreement.

103. Mountain State's failure to take delivery of at least 95% of the cumulative amount of the Nominated Quantity for the four Contract Quarter-Years substantially impairs the value of, and constitutes a breach of, the terms of the Coal Supply Agreement.

104. Central West Virginia and Appalachia Holding have suffered damages in excess of \$75,000 as a result of Mountain State's failure to accept the cumulative amount of the Nominated Quantity for the four Contract Quarter-Years for the 2009 Contract Year.

105. Severstal Wheeling is liable for any damages recoverable as a consequence of Mountain State's non-performance as guarantor of Mountain State's obligations to Central West Virginia to the extent Mountain State lacks the financial resources to pay damages.

106. Accordingly, Central West Virginia and and Appalachia Holding seek recovery from Severstal Wheeling and Severstal U.S.

**COUNT VI - BREACH OF CONTRACT**  
**(SEVERSTAL WHEELING, SEVERSTAL U.S.**  
**AND SEVERSTAL RUSSIA AS ALTER EGOS)**

107. Central West Virginia and Appalachia Holding incorporate by reference the allegations set forth in Paragraphs 1 through 106 above as if fully set forth here.

108. As detailed above, Severstal Russia, Severstal U.S., Severstal Wheeling and Mountain State operate as one entity with unity of interest and, are therefore, *alter egos* of each other.

109. An inequitable result will occur if the corporate veil is not pierced, given the precarious financial condition and lack of capitalization of Mountain State.

110. Consequently, Severstal Russia, Severstal U.S., and Severstal Wheeling are liable for all contractual damages and pre-and post-judgment interest due Central West Virginia and Appalachia Holding.

**COUNT VII - TORTIOUS INTERFERENCE/INDUCEMENT TO BREACH CONTRACT**

111. Central West Virginia and Appalachia Holding incorporate by reference the allegations set forth in Paragraphs 1 through 110 above as if fully set forth here.

112. In the alternative, and if Severstal Russia, Severstal U.S., and Severstal Wheeling are not the *alter ego* of Mountain State, then Severstal Russia, Severstal U.S., and Severstal Wheeling tortiously interfered with the contract between Mountain State and Central West Virginia.

113. Severstal Russia, Severstal U.S., and Severstal Wheeling knew that Mountain State had a contractual relationship with Central West Virginia.

114. Mountain State's actions, as set forth above, relating to the acceptance of coal from Central West Virginia for Contract Year 2009, were taken by and through Severstal Wheeling -- and at the direction of Severstal Wheeling, Severstal U.S. and Severstal Russia.

115. Severstal Russia, Severstal U.S., and Severstal Wheeling tortiously interfered with Central West Virginia's existing contractual relations with Mountain State in an intentional and knowing manner, and otherwise caused, induced, and/or aided and abetted Mountain State to breach its contract with Central West Virginia in order to improve their own financial condition by, among other things, shifting the consequences of the global downturn in the steel market away from themselves and onto Plaintiffs.

116. The interference by Severstal Russia, Severstal U.S., and Severstal Wheeling was not privileged and/or otherwise justified. Moreover, the interference was done with full knowledge that it would ultimately cause financial harm to, and was not in the best interest of, Mountain State.

117. The actions of Severstal Russia, Severstal U.S., and Severstal Wheeling were outrageous, willful, wanton, and intentionally committed with the knowledge they would cause harm and oppression to Central West Virginia, and for which they are jointly and severally answerable in damages, including punitive damages. In addition, Severstal Russia, Severstal U.S., and Severstal Wheeling's misconduct appears to be retaliatory in nature and intended to harm Central West Virginia.

118. Severstal Russia, Severstal U.S., and Severstal Wheeling acted with intentional disregard of the rights of Central West Virginia.

119. Central West Virginia and Appalachia Holding have been substantially injured as a result of the unlawful actions of Severstal Russia, Severstal U.S., and Severstal Wheeling.

## **V. RELIEF SOUGHT**

Accordingly, Central West Virginia and Appalachia Holding request that this Court enter judgment in favor of Central West Virginia and Appalachia Holding (and against Mountain State, Severstal Wheeling, Severstal U.S., and Severstal Russia) in excess of the jurisdictional limit of this Court, to include compensatory, consequential, and punitive damages; together with costs and attorney's fees; and any further relief this Court deems to be just and appropriate.

**CENTRAL WEST VIRGINIA AND APPALACHIA HOLDING DEMAND TRIAL BY JURY.**

**CENTRAL WEST VIRGINIA ENERGY CO. &  
APPALACHIA HOLDING COMPANY**

*BY COUNSEL*

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**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  
APPALACHIA HOLDING  
COMPANY, INC., a Virginia  
corporation,**

**Plaintiffs,**

v.

**Civil Action No.: 5:09-cv-0467  
Judge Thomas E. Johnston, Jr.**

**MOUNTAIN STATE CARBON,  
LLC, a Delaware Limited Liability  
Company;  
SEVERSTAL WHEELING, INC.,  
now known as RG STEEL  
WHEELING, LLC, a Delaware  
corporation;  
SEVERSTAL NORTH  
AMERICA, Inc., now known as  
SEVERSTAL DEARBORN, a  
Delaware corporation; and  
OAO SEVERSTAL, a Russian  
Joint Stock Company**

**Defendants.**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and exact copy of “**THIRD AMENDED COMPLAINT**” was served on this the 5<sup>th</sup> day of August, 2011, via the court’s electronic ECF filing system to counsel at the address below:

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