

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

JETSON MITCHELL, individually and on behalf)
of all others similarly situated,)

SHERMAN RIDER, individually and on behalf)
of all others similarly situated)

Plaintiffs,)

v.)

MURRAY ENERGY CORPORATION and)
THE AMERICAN COAL COMPANY, INC.)

Defendants.)

Case No.: 17-cv-444

JURY TRIAL DEMANDED

FIRST AMENDED COMPLAINT

Plaintiffs Jetson Mitchell and Sherman Rider, individually, and on behalf of all others similarly situated, bring this putative class action against Defendants Murray Energy Corporation (“Murray”) and The American Coal Company, Inc. (“TACC”) (collectively “Defendants”), and state as follows:

NATURE AND SUMMARY OF THE ACTION

1. This action arises out of Defendants’ failures to provide advance notice to workers in connection with Defendants’ 2017 closing of the Galatia Mining Complex (“Galatia”), in violation of the Worker Adjustment and Retraining Notification Act (the “WARN Act”), 29 U.S.C. § 2101 *et seq.*

2. Prior to April 22, 2017, Defendants decided to close Galatia.

3. The WARN Act, 29 U.S.C. § 2102, establishes that “[a]n employer shall not order a plant closing or mass layoff until the end of a 60-day period after the employer serves written

notice of such an order . . . to each representative of the affected employees as of the time of the notice or, if there is no such representative at that time, to each affected employee.”

4. On April 22, 2017, Defendants enacted a scheme to avoid their obligations under the WARN Act by: (A) mischaracterizing Galatia’s plant closing as a “layoff”; (B) immediately terminating *without* notice just under 33% of the Galatia work force (122 of Galatia’s approximately 375 workers); and (C) two days later, giving notice to the remaining 250+ workers that they would be terminated during a 14-day period starting July 21, 2017.

5. Thereafter, in August 2017, when Defendants postponed the plant closing for a second time, Defendants failed to provide supplemental notice of the postponement to Galatia’s remaining workers, as required by the WARN Act and 20 C.F.R. § 639.10.

6. Plaintiff Mitchell seeks to represent a class of workers who did not receive the notice required by the WARN Act in the event of a plant closing.

7. Plaintiff Rider seeks to represent a class of workers who did not receive timely and adequate notice of the postponement of Galatia’s closing.

8. Defendants’ failures to provide advance notice deprived over 150 “workers and their families some transition time to adjust to the prospective loss of employment, to seek and obtain alternative jobs and, if necessary, to enter skill training or retraining that will allow these workers to successfully compete in the job market.” 20 C.F.R. § 639.1(a).

9. Plaintiffs bring this putative class action against Defendants seeking, *inter alia*, back pay, benefits, and attorneys’ fees as provided for under the WARN Act.

THE PARTIES

10. Plaintiff Jetson Mitchell is domiciled in Saline County, Illinois, and, is therefore a citizen of the state of Illinois. Prior to April 22, 2017, Plaintiff Mitchell was a full-time employee of Defendants for 21 years.

11. Plaintiff Rider is domiciled in Gallatin County, Illinois, and, is therefore a citizen of the state of Illinois. Prior to October 3, 2017, Plaintiff Rider was a full-time employee of Defendants for approximately five (5) years.

12. Prior to their terminations from Galatia, Plaintiffs Mitchell and Rider received regular compensation and other substantial employee benefits from Defendants, including, *inter alia*, health insurance, a 401(k) plan, short-term disability insurance, long-term disability insurance, life insurance, accidental death and dismemberment insurance, accrued and unused vacation days, and monthly bonuses.

13. Defendant Murray is an Ohio corporation engaged in the production and marketing of coal through various subsidiaries, including TACC. Murray's principal place of business is 46226 National Road, St. Clairsville, Ohio 43950. Therefore, Murray is a citizen of the State of Ohio.

14. Murray is the largest privately owned coal company in the United States, producing approximately 65 million tons of coal each year.¹ Murray operates twelve coal mines in five states—Illinois, Ohio, Kentucky, Utah, and West Virginia—and also operates factories in Illinois, Ohio, Kentucky, and West Virginia to build mining equipment.²

¹ <http://www.murrayenergycorp.com/about/>

² <http://www.murrayenergycorp.com/production/>; <http://www.murrayenergycorp.com/>. In 2015, Murray Energy acquired Foresight Energy, which operates four additional mines in Illinois. http://www.stltoday.com/business/local/murray-energy-to-close-galatia-mine-next-year/article_aecf6963-c5ed-5edb-abd1-db6c5537a540.html

15. Defendant TACC is a Delaware corporation, with its principal office at 46226 National Road, St. Clairsville, Ohio 43950. Therefore, TACC is a citizen of the State of Delaware and Ohio. TACC is a wholly-owned subsidiary of AmCoal Holdings, Inc. In turn, AmCoal Holdings, Inc. is a wholly-owned subsidiary of Murray. Doc. 12, Defs.' Corp. Disclosure Statement, p. 1.

16. Like Murray, TACC's principal office is located at 46226 National Road, St. Clairsville, Ohio 43950.

17. Prior to 2017, Murray and TACC operated Galatia as a mining facility at which coal was both mined and cleaned in preparation for sale.

JURISDICTION AND VENUE

18. This Court has federal-question subject matter jurisdiction pursuant to 29 U.S.C. § 2104(a)(5) and 28 U.S.C. § 1331.

19. This Court has general and specific jurisdiction over Defendants because Defendants have sufficient minimum contacts with the State of Illinois and with the Southern District of Illinois, as Defendants are or were actively engaged in the management and operation of coal mines in this State, including at Galatia in Saline County, Illinois, and other active mines and locations in the State, and, further, because the material acts upon which the suit is based occurred within the Southern District of Illinois.

20. Venue is proper in the Southern District of Illinois pursuant to 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to Plaintiffs' claims asserted herein occurred in this judicial district in Saline County, Illinois. Alternatively, venue is proper in the Southern District of Illinois pursuant to 29 U.S.C. § 2104(a)(5) because the violation is alleged to have occurred in this district and Defendants transact business in this district.

THE WARN ACT

Initial Notice Obligations Pursuant to the WARN Act

21. The WARN Act, 29 U.S.C. § 2102, establishes that “[a]n employer shall not order a plant closing or mass layoff until the end of a 60-day period after the employer serves written notice of such an order . . . to each representative of the affected employees as of the time of the notice or, if there is no such representative at that time, to each affected employee.”

22. The term “affected employees” is defined by 29 U.S.C. § 2101(a)(5) as “employees who may reasonably be expected to experience an employment loss as a consequence of a proposed plant closing or mass layoff by their employer.”

23. The term “employment loss” is defined by 29 U.S.C. § 2101(a)(6) as “(A) an employment termination, other than a discharge for cause, voluntary departure, or retirement, (B) a layoff exceeding 6 months, or (C) a reduction in hours of work of more than 50 percent during each month of any 6-month period.”

24. The term “plant closing” is defined by 29 U.S.C. § 2101(a)(2):

The term “plant closing” means the permanent or temporary shutdown of a single site of employment, or one or more facilities or operating units within a single site of employment, if the shutdown results in an employment loss at the single site of employment during any 30-day period for 50 or more employees excluding any part-time employees.

25. The U.S. Department of Labor’s Regulations under the WARN Act further provide that “[a]n employment action that results in the effective cessation of production or the work performed by a unit, even if a few employees remain, is a shutdown.” 20 C.F.R. § 639.3(b).

26. The term “part-time employee” is defined by 29 U.S.C. § 2101(a)(8) as “an employee who is employed for an average of fewer than 20 hours per week or who has been employed for fewer than 6 of the 12 months preceding the date on which notice is required.”

Supplemental Notice Obligations Pursuant to the WARN Act

27. In addition to the WARN Act’s initial notice obligations, the WARN Act and 20 C.F.R. § 639.10 of the U.S. Department of Labor’s implementing regulations obligate employers to provide supplemental notice if the date of a “plant closing” or “mass layoff” is postponed:

- a. If the postponement is for less than 60 days, the additional notice should be given *as soon as possible* to the parties identified in § 639.6 and should include reference to the earlier notice, the date (or 14-day period) to which the planned action is postponed, and the reasons for the postponement. *The notice should be given in a manner which will provide the information to all affected employees.*
- b. If the postponement is for 60 days or more, the additional notice should be treated as new notice subject to the provisions of §§ 639.5, 639.6 and 639.7 of this part. Rolling notice, in the sense of routine periodic notice, given whether or not a plant closing or mass layoff is impending, and with the intent to evade the purpose of the Act rather than give specific notice as required by WARN, is not acceptable.

20 C.F.R. § 639.10(a)-(b) (emphasis added).

FACTUAL ALLEGATIONS

Galatia

28. Galatia is located in Galatia, Illinois, a village with a population of less than 1,000 people.

29. Prior to 2017, Defendants operated Galatia as a mining facility at which coal was both mined and cleaned in preparation for sale.

30. Galatia housed two coal mines: the New Future Mine and the New Era Mine.

31. Defendants shut down the New Era Mine in April of 2017, and shut down the New Future Mine in September of 2017.

32. In addition to the two mines, Galatia housed administrative offices, two warehouses, and a preparation plant at which coal from the mines was cleaned in preparation for sale.

33. Defendants shut down the preparation plant in October of 2017.

Murray Energy's Control over Galatia

34. Prior to its shutdown in 2017, Murray and TACC operated Galatia.

35. TACC and Murray operate as a single, integrated business, despite their multiple levels of corporate entities, and employed at all relevant times 100 or more full-time employees, or 100 or more employees who in the aggregate work at least 4,000 hours per week, exclusive of overtime.

36. According to Murray's website, "Murray Energy Corporation and its Subsidiary Companies employ approximately 6,000 Americans and currently operate thirteen active coal mines, consisting of eleven underground longwall mining systems and forty-six continuous mining units in Ohio, Illinois, Kentucky, Utah, and West Virginia."³

37. At all relevant times, Robert E. Murray served both as President of TACC and as Chief Executive Officer of Murray.

38. At all relevant times, Murray maintained direct responsibility for all Defendants' strategic, financial, human resources, and benefits decisions and functions, and exercised control over all Defendants' business plans and decisions, including the decision to shut down Galatia.

³ <http://www.murrayenergycorp.com/>

39. At all relevant times, Murray decided whether to provide notice to workers at Galatia of impending layoffs, plant closures, and/or postponements of impending employment actions, and controlled the implementation of the provision of WARN Act notices to workers at Galatia.

Defendants' Planned Shutdown of Galatia

40. In June of 2016, Heather Hutson, Corporate Human Resource Coordinator for Murray, directed TACC via e-mail to provide an electronic signature for WARN Notice letters that Defendants intended to send to all of their workers at Galatia. These WARN notice letters warned of an impending "mass layoff" of indefinite duration. Ex. 1.

41. On information and belief, Defendants planned to shut down operations at Galatia in the fall of 2016. Defendants, however, did not follow through on this plan, and operations at Galatia continued.

42. As of February 21, 2017, approximately 309 workers had been employed at Galatia for six (6) of the prior twelve (12) months.

43. On information and belief, in mid-April 2017, a roof collapsed at Galatia's New Future Mine.

44. Thereafter, on April 18, 2017, Ron Koontz, General Manager at Galatia, advised Jamia Rasmussen and other of Defendants' Human Resources personnel to postpone interviews of potential rehires. Ex. 2.

45. At or around this time, Defendants advised Rasmussen that the New Future Mine was closing. Ex. 3.

46. On April 22, 2017, Cindy Biggs, TACC's Human Resources Manager, emailed Paul Piccollini, Murray's Vice President of Human Resources, stating: "Paul/Patsy: I attached

the list of the 122 that will be laid off today and then the other list are the remaining ones that you are sending WARN notices.” Ex. 4.

47. Biggs’ April 22, 2017 email attached two lists, including: (A) a list of the 122 workers at Galatia who were to be terminated that day; and (B) a list of the remaining workers, to whom Piccollini was to send “WARN Notices.” See Ex. 4.

48. On April 22, 2017, Defendants terminated approximately 122 workers (including Plaintiff Mitchell) at Galatia without advance written notice, citing “adverse mining conditions.”

49. Defendants did not provide any severance to the workers terminated on April 22, 2017.

50. On April 24, 2017, Defendants provided letters to the approximately 200 remaining workers at Galatia stating that these workers would suffer permanent layoffs beginning on July 21, 2017:

We are writing to inform you that there will be a mass layoff at The American Coal Company on July 21, 2017, or within the two (2) weeks there following. ***This mass layoff is expected to be permanent.***

We regret to inform you that your position may be eliminated in a fourteen (14) day window beginning July 21, 2017. Employees will not be able to displace more junior employees out of their job positions as a result of this mass layoff.

If you have any question or want additional information concerning this matter, please contact Paul Piccolini, Vice President – Human Resources and Employee Relations for Murray Energy Corporation
...

Ex. 5 (emphasis added).

51. On April 26, 2017, Biggs issued an “Open Position Report” stating Defendants’ intent to close the New Future Mine: “We don’t have any open positions to report this week after recent layoff and ***plans to close New Future Mine.***” Ex. 6 (emphasis added).

52. On April 28, 2017, all underground activity ceased at the New Era Mine.

Defendants' Postponement of the Plant Closing

53. On June 20, 2017, Defendants sent a follow-up letter to Galatia workers (including Plaintiff Rider) who had received the April 24, 2017 WARN Notices:

We are writing to inform you that, due to unanticipated delays in completing the mining of the *last* longwall panel, the mass layoff at the The American Coal Company previously announced in a letter dated April 24, 2017, to occur on July 21, 2017, or within the two (2) weeks there following ***will now occur on August 6, 2017, or the two weeks there following. This mass layoff is expected to be permanent.***

Ex. 7 (emphasis added).

54. On July 17, 2017, Roy Heidelberg, Murray's Assistant VP for Operations, wrote to Matt Efaw, Galatia's General Superintendent, expressing concern about "the warn act notice date" and requesting the date on which mine recovery (equipment removal) at Galatia would be complete. Ten minutes later, Efaw wrote back that recovery at the New Future Mine would conclude by early October, and that work at the Preparation Plant would conclude by late September or early October. Ex. 8.

55. On July 19, 2017, Robert Murray, Chief Executive Officer of Murray, wrote a note to Efaw questioning the pace of operations at Galatia: "Why are you running the longwall only one shift per day? We must lay off July 21. Please advise." Ex. 9.

56. On July 19, 2017, Heidelberg reacted to Robert Murray's insistence that layoffs occur on July 21: "Why does REM [Robert Murray] still talk of reduction on July 21? We sent a note on it . . . No way to layoff on that date" Ex. 10.

57. On July 22 and 24, 2017, Efaw circulated drafts of an e-mail that he planned to send to Robert Murray, setting forth Defendants' plan to reduce the number of workers at Galatia to 100 or less by August 20, 2017:

In this summary, we will take the operation from the current 221, to 100 by August 20th. ***By getting the operation to 100 or less employees, we are not required to provide any additional Warn notices.***

Ex. 11 (emphasis added).

**Defendants' Failure to Provide Timely and Adequate
Notice of Defendants' Postponement of the Plant Closing**

58. On August 4, 2017, Biggs, TACC's HR Manager, confirmed to the Illinois Department of Commerce and Economic Opportunity that Defendants were going to lay off between sixty (60) and one-hundred (100) workers at the complex between August 6, 2017, and August 20, 2017. Ex. 12.

59. On or around August 18, 2017, Defendants terminated approximately 100 workers at Galatia.

60. As of August 23, 2017, seventy-five (75) active workers, including Plaintiff Rider, remained at Galatia. On information and belief, Defendants did not provide notice to these workers regarding the date (or 14-day period) to which Galatia's closing was postponed, or the reason for the postponement of Galatia's plant closing.

61. On the evening of September 20, 2017, Matt Efaw e-mailed Ryan Murray, Murray's VP of Operations, asking for direction regarding the shutdown of operations at Galatia:

Ryan

I have a few questions about New Future beyond the recovery this week.
I will keep the plant personnel past this Friday, but plan to layoff all of the remaining hourly personnel on Saturday.

First, James Carr has informed me that he will remain on the property for a period of time to manage the supply houses and the supply yards.

Once this is complete, there are a few things I need to do on the property past this Friday, and I will need to keep a few people. I would like to keep Terry Schmitt, Alan McIntosh, and Mike Marvel on the scene for some additional time.

- 1) Capping the shafts: I would like to keep Alan McIntosh on the property while we cap shafts and do other duties
- 2) Winterizing shields: I would like to keep Terry Schmitt and Kevin Coleman on hand to winterize the Big Dog / Little Dog / DBT shields
- 3) Prep Plant: I would like to keep Mike Marvel on hand to help Paul Shirel finish up cleaning and prepping the plant for idle

We will lay these Supervisors off once their services are no longer needed.

Please advise . . . Thank you,

Matt

Ex. 13 (emphasis added).

62. The following morning, September 21, Murray responded to Efaw: “Can you keep Mike Woods on for an extra week to help decommission and winterize the Prep Plant? I understand you are keeping Shirel and Marvel to assist as well.” Ex. 13.

63. Four minutes later, Efaw responded to Murray:

Yes, I planned to keep Mike until the plant was put to bed.

Mac, Terry, and Kevin will primarily working on the surface / capping shafts / winterizing shields / shipping shields to AEMI / etc.

We just knocked power to the bottom. We are recovering the remaining high line, pumps, and equipment.

We will finish tomorrow by dis-assembling the remaining equipment and hoisting out of the mine.

Ex. 13 (emphasis added).

64. On September 23, 2017, the last underground activity occurred at the New Future Mine. On the same day, Defendants terminated a group of approximately twenty-five (25) workers at Galatia.

65. On or around October 3, 2017, Defendants terminated fourteen (14) workers at Galatia, including Plaintiff Rider.

66. The first time that Plaintiff Rider knew with certainty the date of the termination of his employment at Galatia was October 3, 2017.

67. On October 14, 2017, the last coal was shipped from Galatia.

68. On October 21, 2017, Defendants terminated an additional two (2) workers at Galatia.

69. On November 1, 2017, TACC's administrative offices moved into the warehouse at Galatia.

70. On November 11, 2017, Defendants terminated an additional worker at Galatia.

CLASS ACTION ALLEGATIONS

71. Plaintiff Mitchell brings this class action pursuant to Federal Rule of Civil Procedure 23(a), 23(b)(1), 23(b)(3), and 23(c)(4), and the WARN Act, 29 U.S.C. § 2104(a)(5), on behalf of himself and all others similarly situated, as representative of the following class ("Class I"):

All workers at Galatia who Defendants terminated on or within 90 days of April 22, 2017 and who did not receive 60-days' advance written notice ahead of the date of their respective employment losses.⁴

⁴ Plaintiffs reserve the right to modify the class definitions in their class certification motion to account for facts obtained during discovery.

72. Plaintiff Rider brings this class action pursuant to Federal Rule of Civil Procedure 23(a), 23(b)(1), 23(b)(3), and 23(c)(4), and the WARN Act, 29 U.S.C. § 2104(a)(5) on behalf of himself and all others similarly situated, as representative of the following class (“Class II”):]

All workers at Galatia who were terminated after August 20, 2017, without notice of the postponement of the “plant closing” at Galatia.

73. Excluded from the Classes are any Defendant, its parents, subsidiaries, affiliates, predecessors, successors, officers, directors, and the immediate family members of such persons. Also excluded are any trial judge who may preside over this action, court personnel and their family members and any juror assigned to this action.

74. Each Plaintiff is a member of the Class which he seeks to represent.

75. The members of the Classes are ascertainable as the class definition describes a set of common characteristics sufficient to allow identification by Defendants and/or a prospective plaintiff to identify himself or herself as having a right to recover based on the description.

76. Each Class is so numerous that joinder is impracticable.

77. Each Plaintiff’s claims are typical of those in his respective Class and are based on the same legal and factual theories.

78. There are numerous questions of law and fact common to Class I, which include, but are not limited to the following:

- a. whether Plaintiff Mitchell and the Class I members were employed by Defendants;
- b. whether Plaintiff Mitchell and the Class members I suffered an “employment loss” as defined by the WARN Act as a result of a “plant closing” at Galatia;

- c. whether Plaintiff Mitchell and the Class I members are “affected employees” as defined by the WARN Act;
- d. whether Defendants failed to provide the notice required by the WARN Act;
- e. whether Defendants can avail themselves of any defenses provided for in the WARN Act; and
- f. whether Plaintiff Mitchell and the Class I members are entitled to damages permitted under the WARN Act, and, if so, in what amount.

79. There are numerous questions of law and fact common to Class II which include, but are not limited to the following:

- a. whether Plaintiff Rider and the Class II members were employed by Defendants;
- b. whether Plaintiff Rider and the Class II members suffered employment losses as a result of a “plant closing” at Galatia in the fall of 2017;
- c. when Defendants knew of the postponement of the “plant closing” at Galatia beyond August 20, 2017;
- d. whether Defendants provided notice of the postponement of the “plant closing” at Galatia as soon as possible;
- e. whether Defendants can avail themselves of any defenses provided for in the WARN Act; and
- f. whether Plaintiff Rider and Class II are entitled to damages permitted under the WARN Act, and, if so, in what amount.

80. Both Plaintiffs will fairly and adequately represent and protect the interests of the

their respective Classes. Both Plaintiffs are ready, willing, and able to serve as class representatives. Furthermore, Plaintiffs' counsel is experienced in handling class actions and competent to assert the interests of the Classes. Neither Plaintiffs nor Plaintiffs' counsel have any interest that might cause them not to vigorously pursue this action.

81. Certification of the Classes under Federal Rule of Civil Procedure 23(b)(3) is appropriate in that Plaintiffs and the Classes seek monetary damages, common questions predominate over any individual questions, and a plaintiff class action is superior for the fair and efficient adjudication of these controversies. A plaintiff class action will cause an orderly and expeditious administration of the each Class members' claims and economies of time, effort, and expense will be fostered and uniformity of decisions will be ensured. Moreover, the individual members of the Classes are unlikely to be aware of their rights and not in a position (either through experience or financially) to commence individual litigation against Defendants.

82. Alternatively, certification of the Class under Federal Rule of Civil Procedure 23(b)(1) or 23(c)(4) is appropriate in that this action involves issues affecting all members of the Classes and inconsistent or varying adjudications with respect to individual members of the Classes would establish incompatible standards of conduct for the Defendants or adjudications with respect to individual members of the Classes as a practical matter would be dispositive of the interests of the other members not parties to the adjudications or would substantially impair or impede their ability to protect their interests.

COUNT I
VIOLATION OF THE WARN ACT, 29 U.S.C. § 2101 et seq.

83. Plaintiff Mitchell incorporates by reference each and every allegation set forth above as if fully set forth herein.

84. Defendants are a business enterprise subject to the provisions of the WARN Act, 29 U.S.C. § 2101 *et seq.*, because Defendants employed 100 or more employees, excluding part-time employees, at all relevant times.

85. Defendants carried out a “plant closing” at Galatia that began on or around April 22, 2017, and concluded in the fall of 2017.

86. Defendants shut down the New Era Mine on April 28, 2017, the New Future Mine on September 23, 2017, and the Preparation Plant at Galatia on October 14, 2017.

87. Once the plant closing was complete, production at Galatia ceased.

88. As a result of Defendants’ plant closing at Galatia, Plaintiff Mitchell and the Class I members experienced an “employment loss” as defined by the WARN Act on or around April 22, 2017. During a thirty-day period encompassing April 22, 2017, Plaintiff Mitchell and more than fifty (50) of Defendants’ employees who were not “part-time employees” as defined by the WARN Act suffered either (a) terminations, (b) layoffs exceeding 6 months, or (c) a reduction in hours of more 50% during each month of a six month period as a result of Defendants’ plant closing at Galatia.

89. Defendants’ actions resulted in the permanent cessation of the employment relationship between Plaintiff Mitchell and the Class I members and Defendants in that, effective immediately: (1) Plaintiff Mitchell and the Class I members stopped receiving payment of wages; (2) all benefits to Plaintiff and the Class I members ceased; (3) Defendants stated that the loss of employment was permanent; and (4) Plaintiff Mitchell and the Class I members had no reasonable expectation of recall given Defendants’ plan to shut down Galatia.

90. Defendants failed to provide 60-days' advance written notice of the employment losses suffered by Plaintiff Mitchell and the Class I members that resulted from the "plant closing" at Galatia.

91. No exception to the WARN Act is applicable here.

92. Defendants did not act in good faith or with reasonable grounds for believing that their actions were not a violation of the WARN Act. Defendants provided no advance written notice of termination. Upon information and belief, Defendants could have given 60-days' written notice, but chose not to in an attempt to avoid payment of 60-days' wages to Plaintiff Mitchell and the Class I members.

93. Accordingly, pursuant to 29 U.S.C. § 2104(a)(7), Plaintiff Mitchell and the Class I members are "aggrieved employees" because they are employees who have worked for the employer ordering the plant closing and who, as a result of the failure by the employer to comply with section 2102 of this title, did not receive timely notice either directly or through their representative as required by section 2102 of this title. Plaintiff Mitchell and the Class I members are thus authorized to bring this action against Defendants for their violation of the WARN Act pursuant to 29 U.S.C. § 2104(a)(1).

94. Pursuant to 29 U.S.C. § 2104(a)(1)(A), Plaintiff Mitchell and the Class I members are entitled to back pay for each day of Defendants' violation at a rate of compensation not less than the higher of the average regular rate received by such employee during the last 3 years of the employee's employment or the final regular rate received by such employee.

95. Additionally, pursuant to 29 U.S.C. § 2104(a)(1)(B), Plaintiff Mitchell and the Class I members are entitled to benefits under an employee benefit plan described in 29 U.S.C. § 1002(3), including the cost of medical expenses incurred during the employment loss which

would have been covered under an employee benefit plan if the employment loss had not occurred, if applicable.

96. Defendants' liability shall be calculated for the period of the violation, up to a maximum of 60 days.

97. Plaintiff Mitchell has also been required to retain counsel in this matter to protect his rights and has incurred attorneys' fees and costs in this matter.

98. If any purported release was signed by Plaintiff Mitchell or the Class I members, such a release is invalid as it lacks consideration.

99. Accordingly, Plaintiff Mitchell and the Class I members are affected employees, have suffered economic harm due to Defendants' actions, and are therefore entitled to 60-days' back pay and continued benefits, pre- and post-judgment interest, reasonable attorneys' fees, the costs of this action, and any civil penalties this Court deems just and proper, all in an amount to be determined at trial.

COUNT II
VIOLATION OF THE WARN ACT, 29 U.S.C. § 2101 *et seq.* and 20 C.F.R. 639.10

100. Plaintiff Rider incorporates by reference each and every allegation set forth above as if fully set forth herein.

101. On April 24, 2017, Defendants notified Plaintiff Rider and the approximately 200 remaining employees at Galatia that these employees would suffer permanent layoffs during a 14-day period beginning on July 21, 2017, and ending on August 4, 2017.

102. On June 20, 2017, Defendants notified in writing Plaintiff Rider and the other recipients of the April 24, 2017 notice that the previously announced layoffs would be postponed until a 14-day period commencing on August 6, 2017, and ending on August 20, 2017.

103. On July 22, 2017, Matt Efaw, General Superintendent at Galatia, drafted an e-mail setting forth a plan to reduce the number of workers at Galatia to 100 or less by August 20, 2017, and stating that “[b]y getting the operation to 100 or less employees, we are not required to provide any additional Warn notices.” *See* Ex. 11.

104. On or around August 18, 2017, Defendants terminated approximately 100 workers at Galatia.

105. By August 23, 2017, Defendants had reduced the number of workers at Galatia to approximately 75.

106. Between August 23, 2017, and October 3, 2017, Defendants terminated approximately forty (40) of their workers at Galatia without timely and adequate notice.

107. Defendants terminated Plaintiff Rider’s employment on October 3, 2017.

108. The first time that Plaintiff Rider knew with certainty the date of the termination of his employment at Galatia was the date of his termination, October 3, 2017.

109. Defendants postponed the plant closing and the resulting employment losses of Plaintiff Rider and the Class II members for a period of less than sixty days after the end of the originally announced employment loss period of July 21, 2017 to August 4, 2017.⁵

110. On information and belief, Defendants could have provided notice of the postponement of the plant closing at Galatia at least as early as July 22, 2017, by which date Defendants had created a schedule for the permanent layoffs of the remaining workers at Galatia.

111. On information and belief, Defendants failed to provide notice as soon as possible of the postponement of the plant closing and the resulting employment losses at Galatia, as required by the WARN Act and 20 C.F.R. § 639.10(a).

⁵ Sixty calendar days after the end of the originally announced employment loss period is October 3, 2017. Sixty days after the end of the rescheduled employment loss period is October 19, 2017.

112. On information and belief, Defendants failed to provide notice of the postponement of the plant closing and the resulting employment losses that referenced the April 24, 2017 notice, the date to which the employment losses were postponed, and the reasons for the postponement, in violation of 20 C.F.R. § 639.10(a).

113. As a result of Defendants' violations, Plaintiff Rider and the Class II members were deprived of sufficient advance notice of the specific 14-day period during which their employment with Defendants was to end.

114. As a result of Defendants' violations, Plaintiff Rider and the Class II members are entitled to back pay for each day of Defendants' violation at a rate of compensation not less than the higher of the average regular rate received by such employee during the last 3 years of the employee's employment or the final regular rate received by such employee.

115. Additionally, pursuant to 29 U.S.C. § 2104(a)(1)(B), Plaintiff Rider and the Class II members are entitled to benefits under an employee benefit plan described in 29 U.S.C. § 1002(3), including the cost of medical expenses incurred during the employment loss which would have been covered under an employee benefit plan if the employment loss had not occurred, if applicable.

116. Defendants' liability shall be calculated for the period of the violation, up to a maximum of 60 days.

117. Plaintiff Rider has also been required to retain counsel in this matter to protect his rights and has incurred attorneys' fees and costs in this matter.

118. If any purported release was signed by Plaintiff Rider or the Class II members, such a release is invalid as it lacks consideration.

119. Accordingly, Plaintiff Rider and the Class II members are affected employees, have suffered harm due to Defendants' actions, and are entitled to back pay, pre- and post-judgment interest, reasonable attorneys' fees, the costs of this action, and any civil penalties this Court deems just and proper, all in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE Plaintiffs, individually and on behalf of all others similarly situated, pray for relief as follows:

- A. an order from the Court certifying the Classes identified herein as a class action pursuant to Fed. R. Civ. P. 23(b) and (c) and appointing Plaintiffs as class representatives and appointing their counsel to represent the Classes;
- B. an order from the Court finding that Defendants have violated the WARN Act and therefore holding Defendants liable to Plaintiffs and the Classes;
- C. an order from the Court awarding Plaintiffs and Class I and II members unpaid wages, salary, commission, bonuses, accrued holiday pay, accrued vacation pay, pension and 401(k) contributions and other ERISA benefits for 60 working days following the Plaintiffs' and/or Class members' termination, that would have been covered and paid under the then applicable employee benefit plans had that coverage continued for that period, all determined in accordance with the WARN Act, 29 U.S.C. § 2104(a)(1), in an amount to be proven at trial;
- C. an order from the Court awarding Plaintiffs and the members of the Classes pre-judgment and post-judgment interest, as well as reasonable attorneys' and expert-witness fees and other costs as may be available under law; and

D. an order from the Court awarding any civil penalties and such other and further relief as this Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demands a trial by jury as to all issues stated herein, and all issues so triable.

Respectfully submitted,

**GOLDENBERG HELLER &
ANTOGNOLI, P.C.**

By: /s/ Thomas C. Horscroft
Mark C. Goldenberg, #0990221
Thomas P. Rosenfeld #06301406
Thomas J. Lech # 06256261
Kevin P. Green #06299905
Thomas C. Horscroft #06327049
2227 South State Route 157
Edwardsville, IL 62025
618-656-5150
mark@ghalaw.com
tom@ghalaw.com
tlech@ghalaw.com
kevin@ghalaw.com
thorscroft@ghalaw.com

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing motion was electronically filed with the United States District Court, Southern District of Illinois, and that copies were sent electronically on this 17th Day of October, 2018, to all attorneys of record.

/s/ Thomas C. Horscroft

EXHIBIT 1

From: Hutson, Heather
Sent: Wednesday, June 29, 2016 5:01 PM
To: Crooks, Casey; Hubbard, Robert; Grimm, Eric; Hughes, Kevin (AEC); Ramsey, Terry; Simpson, Pete; Martin, Scott-Harrison County; Pollastro, Carson; Wiles, Randy; Hibbs, David
Cc: Parsons, Catherine
Subject: Warn Notices
Attachments: Letter to Employees - June 30, 2016 - To Be Executed By Company Representative (KenAmerican Resource.DOCX; Letter to Employees - June 30, 2016 - To Be Executed By Company Representative (Marion County Mine -.DOCX; Letter to Employees - June 30, 2016 - To Be Executed By Company Representative (Marshall County Mine.DOCX; Letter to Employees - June 30, 2016 - To Be Executed By Company Representative (Monongalia - Brave, .DOCX; Letter to Employees - June 30, 2016 - To Be Executed By Company Representative (Ohio County Mine).DOCX; Letter to Employees - June 30, 2016 - To Be Executed By Company Representative (OVCC - Powhatan No..DOCX; Letter to Employees - June 30, 2016 - To Be Executed By Company Representative (UtahAmerican Energy,.DOCX; Letter to Employees - June 30, 2016 - To Be Executed By Company Representative (American Coal Compa.DOCX; Letter to Employees - June 30, 2016 - To Be Executed By Company Representative (American Energy Corp.DOCX; Letter to Employees - June 30, 2016 - To Be Executed By Company Representative (Harrison County Mine.DOCX

Importance: High

Please see attached the warn notice letters for each of your locations. This is going to be mailed out with your signatures.

Can each of you please electronically scan me a copy of your signature to be added into the letters? I will need this ASAP, as I'm trying to get all of these out tonight.

Thank you,

Heather

Heather Hutson

Corporate Human Resource Coordinator

American Natural Gas, Inc.

Corporate Aviation Services, Inc.

Murray American Energy, Inc.

The Ohio Valley Coal Company - Salaried Employees

Murray Energy Corporation

46226 National Road | St. Clairsville, OH 43950

heatherhutson@coalsource.com

Office: 740-338-3184

Cell: 304-579-5018

Fax: 740-695-7261

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June 30, 2016

Via Hand Delivery

[Name And Address of Employee]

Re: Announcement of Planned Action

Dear [Employee Name]:

We are writing to inform you that there will be a mass layoff at The American Coal Company facilities at 9085 State Highway 34 North, Galatia, Illinois on August 29, 2016 or within the next two (2) weeks. This mass layoff is expected to be of indefinite duration.

We regret to inform you that your position may be eliminated on August 29, 2016 or within the following two weeks. As you know, The American Coal Company does not have a job bumping system for employees, that is, employees will not be able to displace more junior employees out of their job positions as a result of this mass layoff.

If you have any questions or want additional information concerning this matter, please contact Paul Piccolini, Vice President of Human Resources and Employee Relations at (740) 338-3100.

Sincerely,

[Name of Company Representative]

21279986.1

EXHIBIT 2 (FILED UNDER SEAL)

EXHIBIT 3

June 19th, 2017

Dear Mr. Murray,

My name is Jamia Rasmussen and I was a Human Resources Coordinator at the New Future Portal at The American Coal Company and have been with the company since August 2011. I liked many aspects about my job especially working with the new hires, presenting benefit orientations, and coordinating and scheduling the new hire testing. There are many positions that I could advance within Murray Energy Corporation because I possess a positive work attitude and I have a Bachelor's in Business Administration from Southern Illinois University in Edwardsville. If given the option, I would like to continue my experiences in Human Resources and/or learn the area of Worker's Compensation in Illinois.

Unfortunately, I am not employed by The American Coal Company any more. I have been laid off from American Coal three times in the last six years. The last time, my husband, Cory Rasmussen, (New Future, Shuttle Car driver) was laid off six months after I was so it was a very hard time the last few years. Cory had to move into another line of work. I expected to be back to work in the next few months following the layoff in August of 2015 however that was not the case. Months went by and I decided to enroll in a Licensed Practical Nursing program at John A Logan College after searching for meaningful employment. I finally got called back to work in March 2017 and was told that I would have to give quit nursing school if I wanted to come back so I did. A month after I started I was told that the portal was closing and they had another mass layoff. I was told that if another opportunity presented itself then I needed to pursue it. I realized that I could not go back to nursing school because they only offer the spring classes once a year so if I wanted to go back to school then I would have to wait a full year. I decided to accept a lesser paying job to support my family so I would not have to go back on unemployment. I have been at my new job for about a week when I received your memo in the mail asking me to write you and felt compelled that you hear my story. I appreciate the opportunities that my husband and I had while we were employed by your company.

Sincerely,

Jamia Rasmussen

EXHIBIT 4 (FILED UNDER SEAL)

EXHIBIT 5

April 24, 2017

Name
Address
City, State Zip Code

Re: Announcement of Planned Action

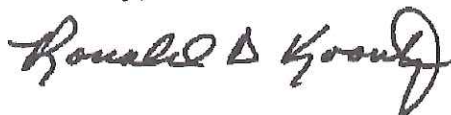
Dear [Employee Name]:

We are writing to inform you that there will be a mass layoff at The American Coal Company on July 21, 2017, or within the two (2) weeks there following. This mass layoff is expected to be permanent.

We regret to inform you that your position may be eliminated in a fourteen (14) day window beginning July 21, 2017. Employees will not be able to displace more junior employees out of their job positions as a result of this mass layoff.

If you have any questions or want additional information concerning this matter, please contact Paul Piccolini, Vice President – Human Resources and Employee Relations for Murray Energy Corporation, at (740) 338-3100.

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald D. Koontz", with a stylized flourish at the end.

Ronald D. Koontz
Vice President and General Manager

Sent Via United States Postal Service



46226 NATIONAL ROAD
ST. CLAIRSVILLE, OHIO 43950

April 24, 2017

PHONE: (740) 338-3100
FAX: (740) 338-3405
www.murrayenergycorp.com

VIA FACSIMILE AND UPS SIGNATURE REQUIRED

Mr. John Ray
Illinois Department of Commerce and Economic Opportunity
500 East Monroe, 9th Floor
Springfield, IL 62701-1643

Re: Announcement of Planned Action

Dear Mr. Ray:

We are writing to give you notice that there will be a mass layoff at The American Coal Company on July 21, 2017, or within the following two (2) weeks. This layoff is expected to be permanent.

All potentially affected employees have been notified that the layoff will be of indefinite duration. Those employees who are expected to be placed on indefinite layoff will be placed in this status beginning on July 21, 2017, or within the following two (2) weeks.

Below is a list of the job positions and number of individuals who may be affected by the mass layoff.

Laid off employees will not be able to displace less senior employees.

Position	Count
Asst Shift Foreman	3
Asst. Dir. Emerg. Preparedness	1
Asst. Maint. Manager.	1
Asst. to Lease Admin.	2
Belt Coordinator	1
Belt Man I	18
Belt Man II	3
Belt Man III	6
Belt Monitor	1
Belt Movers	1
Bulldozer Operator	6
Chief Engineer	1

Mr. John Ray
 April 24, 2017
 Page 2

Position	Count
CM Operator II	2
Communication Tech I	1
Communication Tech II	1
Compliance	1
Construction & Project Foreman	1
Control Room Supervisor	1
Data Entry Operator	6
Electrical Foreman	1
Environmental Engineer	1
Executive Admin Assistant	1
Fireboss/Examiner	7
Foreman, Belt	8
Foreman, CM Production	1
Foreman, Continuous Miner	3
Foreman, Longwall	8
Foreman, LW Maintenance	1
Foreman, Maintenance	5
Foreman, Prep Plant	3
Foreman, Prep Plant Maint	1
Foreman, Pump	1
General Mine Foreman	1
HR Coordinator	1
IS Technician	1
Land	1
Land Man	1
Land Manager	1
Lead Data Entry Coordinator - TACC	1
Lead Prep Plant Mechanic	1
Lead Service	1
Longwalls - AEMI	1
LW Maint Coord	2
LW Maintenance Foreman	3
LW MECH 3	5
LW Support	6
Manager Prep Plant	1
Manager, Conveyor Systems	1
Manager, Maintenance	2
Manager, Prep Plt Maint.	1
Manager, Safety & Health	1
Manager, Vulcanizing-Midwest	1
Master PP Operator	3
Mechanic	1
Mechanic - Outside Shop	2
Mechanic I	6
Mechanic II	3
Mechanic II - Diesel	2

Mr. John Ray
 April 24, 2017
 Page 3

Position	Count
Mechanic II - Prep Plant	8
Mechanic III	3
Mgr, Prep Plant Maintenance	1
Mgr., HR & Workers Comp.	1
Operations Operator	3
Operator II Plant	2
Outside Master Electrician II	3
Payroll-Timekeeper Coordinator	1
President Empire Dock	1
Programmer	1
Project Engineer	2
Project Foreman	1
Pumper	2
Pumper - Examiner	1
Pumper Electrical	1
Pumper Examiner	2
Purchasing Manager	1
Purchasing Manager - TACC	1
Railcar Loader Operator	1
Railroad Car Loader Opera	2
Ramcar Operator	2
Road Maintenance	3
Roofbolter II	1
Salaried Examiner	3
Scoop Car Operator	2
Security Guard	1
Senior Geologist	1
Senior Operator Plant	3
Shearer Operator	9
Shield Operator	14
Shift Foreman	5
Slope & Hoist Engineer	5
Slope Tail Clam	1
Sr. Project Engineer	1
Stageloader	5
Supply	1
Supply Motorman	3
Temp Foreman	6
Temp Foreman - LW	1
Warehouse Clerk II - Sal Non	1
Warehouse Clerk - KRI	1
Grand Total	255

If you have any questions or want additional information concerning this matter, please contact Paul Piccolini, Vice President of Human Resources and Employee Relations for Murray Energy Corporation at (740) 338-3100.

Mr. John Ray
April 24, 2017
Page 4

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald D. Koontz". The signature is fluid and cursive, with the first name "Ronald" being more prominent.

Ronald D. Koontz
Vice President and General Manager

cc: Saline County Board Chairman
(via Facsimile and UPS Signature Required)
10 East Poplar Street
Harrisburg, Illinois 62946-1553
618-252-6905

EXHIBIT 6

From: Hutson, Heather
Sent: Wednesday, April 26, 2017 9:05 AM
To: Biggs, Cindy
Subject: RE: open position report

Ok, thanks.

Heather Hutson
Corporate Human Resource Coordinator
American Natural Gas, Inc.
Corporate Aviation Services, Inc.
Murray American Energy, Inc.
The Ohio Valley Coal Company
Murray Energy Corporation
46226 National Road | St. Clairsville, OH 43950
heatherhutson@coalsource.com

Office: 740-338-3184
Cell: 304-579-5018
Fax: 740-695-7261

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From: Biggs, Cindy
Sent: Wednesday, April 26, 2017 8:42 AM
To: Hutson, Heather
Cc: Rasmussen, Jamia
Subject: open position report

Heather,
We don't have any open positions to report this week after recent layoff and plans to close New Future mine.

Thank you,

Cindy Biggs
Mgr – HR & Work Comp.
The American Coal Company
(618) 268-6440
(618) 268-6502 fax

EXHIBIT 7



46226 NATIONAL ROAD
ST. CLAIRSVILLE, OHIO 43950

June 20, 2017

PHONE: (740) 338-3100
FAX: (740) 338-3405
www.murrayenergycorp.com

Name
Address
City, State Zip Code

Re: Announcement of Planned Action

Dear [Employee Name]:

We are writing to inform you that, due to unanticipated delays in completing the mining of the last longwall panel, the mass layoff at The American Coal Company previously announced in a letter dated April 24, 2017, to occur on July 21, 2017, or within the two (2) weeks there following, will now occur on August 6, 2017, or the two weeks there following. This mass layoff is expected to be permanent.

If you have any questions or want additional information concerning this matter, please contact Paul Piccolini, Vice President – Human Resources and Employee Relations for Murray Energy Corporation, at (740) 338-3100.

Sincerely,

Matthew C. Efaw
General Superintendent

Sent Via United States Postal Service

CONFIDENTIAL

DEF 000177

EXHIBIT 8 (FILED UNDER SEAL)

EXHIBIT 9 (FILED UNDER SEAL)

EXHIBIT 10 (FILED UNDER SEAL)

EXHIBIT 11(FILED UNDER SEAL)

EXHIBIT 12

Office of Employment & Training
Illinois Department of Commerce & Economic Opportunity
O: 618.993.7237

From: Biggs, Cindy [<mailto:cbiggs@coalsource.com>]
Sent: Friday, August 04, 2017 8:50 AM
To: Ellis, Bryan
Subject: [External] RE: August layoffs

It will be more like 60-100 but yes as soon as I get the information, I will send to you.

From: Ellis, Bryan [<mailto:Bryan.Ellis@illinois.gov>]
Sent: Friday, August 04, 2017 8:27 AM
To: Biggs, Cindy <cbiggs@coalsource.com>
Subject: August layoffs

Hi Cindy,

I'm just following up; I have a WARN notice indicating that American Coal will be having approximately 255 layoffs sometime between 8/6 and 8/20/2017.

Are these layoffs still going to occur during this timeframe? If so, would you provide an address listing of the impacted employees so that we can begin to plan the next round of informational workshops?

Thanks,

Bryan Ellis
Workforce Development Specialist
Illinois Department of Commerce & Economic Opportunity
O: 618.993.7237
Bryan.Ellis@Illinois.gov
www.illinois.gov/dceo



Illinois
Department of Commerce
& Economic Opportunity
OFFICE OF EMPLOYMENT & TRAINING
Bruce Rauner, Governor

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EXHIBIT 13 (FILED UNDER SEAL)