

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
BLUEFIELD DIVISION**

**JAMES E. GRAHAM II; DENNIS ADKINS;  
ROGER WRISTON; and DAVID B. POLK;  
on behalf of themselves and  
others similarly situated; and  
UNITED MINE WORKERS OF AMERICA  
INTERNATIONAL UNION,**

**Plaintiffs,**

**v.**

**CIVIL ACTION NO. 1:19-cv-00597**

**JUSTICE ENERGY CO. INC.;;  
KEYSTONE SERVICE INDUSTRIES, INC.;;  
BLUESTONE COAL CORPORATION;  
DOUBLE-BONUS COAL CO.; and  
SOUTHERN COAL CORPORATION,**

**Defendants.**

**DEFENDANTS' MOTION TO DISMISS**

Come now the Defendants, Justice Energy Co., Inc., Keystone Service Industries, Inc., Bluestone Coal Corporation, Double-Bonus Coal Co., and Southern Coal Corporation (collectively "Defendants"), pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, and move this Court to dismiss the Complaint filed by Plaintiffs James E. Graham II, Dennis Adkins, Roger Wriston, David B. Polk, and the United Mine Workers of America International Union (collectively "Plaintiffs") for the reasons described in the accompanying Memorandum in Support which is incorporated herein by reference; namely:

1. With regard to their claims pursuant to Section 301 of the Labor and Management Relations Act of 1947 (29 U.S.C. §185), Plaintiffs have failed to exhaust *or allege that they have exhausted* the mandatory arbitral remedies provided by the arbitration procedure contained in

Article XXIII of the Parties' collective bargaining agreement, the National Bituminous Coal Wage Agreement of 2016 (the "NBCWA"), to which the Parties must submit all disputes arising between them.

2. With regard to their claims pursuant to the Employee Retirement Security Act ("ERISA"), 29 U.S.C. § 1001 et. seq., Plaintiffs have failed to exhaust *or allege that they have exhausted* the mandatory claims remedies and procedures provided by the Plan Documents for the applicable Health Plans.

3. Defendants submit the following Exhibits in support of this Motion:<sup>1</sup>

- a. Exhibit A - Portions of the 2016 *National Bituminous Coal Wage Agreement of 2016*.
- b. Exhibit B - *The Southern Coal Corporation Health and Wellness Plan-Summary Plan Description, 2014-July 2019* applicable to all Defendants.
- c. Exhibit C - *The Southern Coal Company Health and Wellness Plan-Plan Document and Summary Plan Description, July 2019-present* applicable to all Defendants; and,
- d. Exhibit D - Public UMWA-BCOA website listing all Defendants as being in Good Standing with Resolution of Disputes Trust:  
<https://www.umwafunds.org/Rods/Documents/RodTrustList.pdf>

For the reasons listed above and set forth in the attached Memorandum of Law In Support of Defendants' Motion to Dismiss, Plaintiffs have failed to state a plausible claim for relief, even when construing the applicable facts in their favor. The Defendants, therefore, move this Court to dismiss the Plaintiffs' Complaint with prejudice – pursuant to Rule 12(b)(6) – for failure to state a

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<sup>1</sup> In *Consolidation Coal Co. v. United Mine Workers of Am.*, 191 F. Supp. 3d 572, 576 (N.D.W. Va. 2016), the Court noted that it may consider documents "integral to and explicitly relied on in the complaint" such as the NBCWA and, in this case, the ERISA Health Plans without converting the Rule 12(b)(6) Motion to a Motion for Summary Judgment. *Id.*, citing, *Am. Chiropractic Ass'n v. Trigon Healthcare, Inc.*, 367 F.3d 212, 234–35 (4th Cir.2004).

claim upon which relief can be granted and to grant Defendants any further relief that the Court deems appropriate.

JUSTICE ENERGY CO. INC.;  
KEYSTONE SERVICE INDUSTRIES,  
INC.; BLUESTONE COAL  
CORPORATION;  
DOUBLE-BONUS COAL CO.; and  
SOUTHERN COAL CORPORATION,

By Counsel:

/s/ James P. McHugh

Christopher D. Pence (WVSB No. 9095)

James P. McHugh (WVSB No. 6008)

Hardy Pence PLLC

P.O. Box 2548

Charleston, WV 25329

Phone: (304) 345-7250

Fax: (304) 553-7227

*Counsel for Defendants*

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**CERTIFICATE OF SERVICE**

I, James P. McHugh, hereby certify that on the 5<sup>th</sup> day of November, 2019, the foregoing “*Defendants’ Motion to Dismiss*” was electronically filed with the Clerk of the Court through the CM/ECF System which will send electronic notification of such filing to counsel listed below:

Charles F. Donnelly, Esq.  
General Counsel  
United Mine Workers of America  
1300 Kanawha Blvd., East  
Charleston, WV 25301

Kevin F. Fagan, Esq.  
United Mine Workers of America  
18354 Quantico Gateway Drive, Suite 200  
Triangle, VA 22172  
*Counsel for Plaintiffs*

/s/ James P. McHugh  
James P. McHugh (WVSB No. 6008)