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From: Chase, Randall [mailto:rchase@ap.org]
Sent: Monday, May 23, 2011 2:43 PM
To: Strine Leo E (Courts)
Cc: Peg.Brickley@dowjones.com; ritakfarrell@yahoo.com
Subject: In re Massey Energy CA-5430

Dear Vice Chancellor Strine,

I'm writing in regard to several sealed filings in the above-captioned matter, which is scheduled for an injunction hearing on Thursday.

While the plaintiffs filed their third amended complaint under seal on May 12, they have to yet to file the redacted version, which is required under Rule 5(g) and typically filed within five business days of the initial filing.

Also, on behalf of the Delaware-based financial media, I object to the broad redactions that have been made in the public versions of other filings by the plaintiffs, specifically the opening brief in support of the motion for a preliminary injunction, and the brief in support of the motion to compel.

The context of the redactions in the brief supporting the injunction motion suggests that much of the material does not consist of proprietary business information, but arguments involving potential legal claims and defenses to those claims.

Moreover, some of the redacted information apparently is so secret that, for some reason, it's included in the proxy statement. See, e.g., footnotes 75, 78, 79, 81, 89, 103, 108, 109, 126, 129, 130 and 131, which cite to redacted material and direct the reader to the proxy.

It is interesting to note that significant effort was spent to redact material relating to the actions and thoughts of former Massey CEO and chairman Don Blankenship, who, coincidentally invoked his Fifth Amendment right against self-incrimination in response to a subpoena from the state of West Virginia and refused to be interviewed regarding the fatal April 2010 mine explosion. It's clear that Blankenship and Massey (whose own attorneys filed the plaintiffs' briefs at issue, apparently after censoring them) would like to keep certain information about the explosion and pending merger from the prying eyes of the public. But that hardly explains the scope of the redactions, e.g. "With Blankenship out as CEO (redacted) launched a nationwide search for a new CEO ..." See brief supporting motion to compel, at 5.

In closing, I respectfully ask the court to order the immediate filing of a redacted version of the third amended complaint, and to direct the attorneys for all parties to revisit the existing redactions in the other briefs to omit only that information which truly is, and should be, exempt from the court's presumption of openness and transparency. It is not enough, as attorney Brad Davey suggests in his May 18 letter to the court, that information be allowed to be kept under seal simply because it has been "designated as confidential by the parties."

I thank you for your consideration.

Sincerely,
Randall Chase
The Associated Press
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