

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

BONNIE HYNOSKI, STEPHEN	:	CIVIL ACTION
HYNOSKI, HELEN HYNOSKI,	:	NO. 10-2222-Judge Munley
WALTER HYNOSKI, CHRISTINE	:	
HYNOSKI, TOM HYNOSKI, THE	:	CLASS ACTION
BOROUGH OF CENTRALIA,	:	
HAROLD MERVINE, as Executor of the	:	
Estate of LAMAR MERVINE, JR. and	:	
LANA MERVINE and JOHN	:	
KOSCHOFF,	:	
Plaintiffs	:	
	:	
VS.	:	
	:	
COLUMBIA COUNTY	:	
REDEVELOPMENT AUTHORITY,	:	
ROSENN JENKINS AND	:	
GREENWALD, LLP, JOHN T.	:	
ZELINKA, GARY TAROLI,	:	
BLASCHAK COAL CO., STEVEN	:	
FISHMAN, and COMMONWEALTH	:	
OF PENNSYLVANIA, DEPARTMENT	:	
OF ECONOMIC DEVELOPMENT,	:	
Defendants	:	JURY TRIAL DEMANDED

MOTION FOR PRELIMINARY INJUNCTIVE RELIEF

AND NOW come Plaintiffs, through their attorney, Don Bailey, and move this Court for Preliminary Injunctive Relief pursuant to Fed. R. Civ. P. 65, and in support thereof, incorporates the verified Complaint being filed concurrently herewith, and avers as follows:

1. Plaintiffs have filed a federal Civil Rights complaint alleging violations of their Constitutional rights by persons acting under color of state authority, under 42 USC §1983.
2. Pertinent to that Complaint is the continued exercise of the Commonwealth of Pennsylvania’s power of eminent domain, and its efforts to evict the last remaining residents of the Borough of Centralia from their homes against their expressed will. For the reasons set forth

in plaintiffs' complaint, and as further set forth herein, plaintiffs now move this Court to enter an Order preliminarily enjoining the Commonwealth from taking any further action in the pursuit of the exercise of its power of eminent domain.

3. In order to obtain preliminary injunctive relief, Plaintiff must demonstrate: (i) a reasonable probability of eventual success in the litigation; (ii) the likelihood of immediate and irreparable harm which cannot be compensated by damages; (iii) that an injunction would serve the public interest; and (iv) that a greater injury may result from denial of the injunction than from its being granted. *Instant Air Freight Co. v. C. F. Air Freight, Inc.*, 882 F.2d 797, 800 (3d Cir. 1989). Plaintiffs can clearly meet the required showing.

4. With respect to the probability of eventual success on the merits, plaintiffs claim for violations of the Equal Protection Clause of the Fourteenth Amendment is clear with respect to the differential treatment between plaintiffs' property and the Netchel property. The Netchel property is directly within the "fire impact area" encompassed by the so-called mine fire, and is in every material respect similarly-situated to each and every plaintiff. Declarations of taking were filed with respect to the Netchel property and each of the plaintiffs herein in 1993 on the identical purported grounds – the mine fire. From 1993 through 2006, the eminent domain proceedings advanced in identical respects with respect to each and all of their properties and, according to the "official line" of the Commonwealth and its counsel, the fires remain the same hazard in 2010 that they did in 1993; yet, in 2006, the Commonwealth voluntarily withdrew its declaration of taking with respect to the Netchell property, leaving Netchell the owner in fee simple of all his property rights. Attached hereto as Exhibit 1 is the November 10, 2006 agreement reflecting this arrangement.

Attached hereto as Exhibit 2 is correspondence from plaintiffs' counsel to counsel for the Commonwealth dated December 31, 2009, requesting the release of the declarations of taking with respect to each of their properties on the basis that "there is no reason that the Declarations of Taking with respect to each of the [plaintiffs'] properties should not be withdrawn, and, in that same regard, no rational or legitimate basis to treat [plaintiffs], who are in all respects similarly-situated with the Nechtels, any differently." A written response was promised to that correspondence by Mr. Zelinka, and none has been received. There is utterly no conceivable rational difference for the treatment of the plaintiffs and the Netchel's under the circumstances, and the defendants have not articulated or attempted to articulate any such difference. As such, the plaintiff's right to relief for a violation of their equal protection rights is clear.

5. With respect to the irreparable harm, there simply needs to be no elaboration on the matter other than to point out that these American citizens stand to be permanently separated from their real property, their family homesteads, their chosen geographic locales, their community, their friends, their families, their churches, and every other core aspect of a free life in a free and open society, and, while they may be able to get "market value" for their real estate, none of these other matters can be reasonably compensated by any measurable standard in an action for damages. As such, plaintiffs can establish immediate and irreparable harm.

Conversely, there is no articulable harm whatsoever to the Commonwealth or any of the defendants. The declarations of taking were filed in 1993, and have been allowed to linger on the docket of the state court for years. There has been no additional evidence that there is any more hazard now than there was in 1993, or at any other time, and, to the contrary, plaintiffs will introduce evidence that the fires never presented the hazard claimed by the defendants, and that the actual mine fire that did exist is substantially extinguished and is not now, and never was, a

legitimate threat to the safety of the residents of the affected zone. The fact alone that the Netchel property has been returned free and clear is an admission of these facts and their conclusions.

For these reasons, plaintiffs also meet the fourth element of the test for establishing preliminary injunctive relief - that the grievous harm that they will suffer, i.e., the loss of their homes and community, outweighs the harm that the defendants will suffer, i.e., none.

6. As further support for their clear right to relief, plaintiffs are prepared to show that (1) the mine fire has substantially abated such that it no longer poses a threat to Centralia Borough residents; (2) the Commonwealth of Pennsylvania, by and through its agent the Columbia County Redevelopment Authority, have permitted at least one resident in the Impact Zone, and whose home is directly above the Buck coal vein where the fire is, to retain his property in return for a release of liability (and have granted Life Estates to others); (3) the Commonwealth of Pennsylvania, by and through its agent the Columbia County Redevelopment Authority, has permitted Blaschak Coal Corp. to build directly over the Impact Area; (4) the Commonwealth of Pennsylvania, by and through its agent the Columbia County Redevelopment Authority, has permitted other entities to build structures within the Borough of Centralia; (5) a March 10, 2008, Commonwealth of Pennsylvania Department of Environmental Protection Bureau of Air Quality report provides: “Even though there are small but detectable mercury emissions from the fire area, they are in the range of values found at Lancaster, which is the only other DEP mercury monitoring site...” (6) at least until March 5, 2010, Commonwealth’s Counsel, Rossen, Jenkins & Greenwald, LLC, has also represented Blaschak Coal Corp. which is acquiring significant holdings in the area, as well as the Nogard Coal Company predecessor who has asserted a claim of ownership for the subsurface rights beneath Centralia in the past, as well as the principals of

Nogard, who recently transferred substantial surface rights in the Borough of Centralia to Blaschak.

Plaintiffs are prepared to offer the following evidence in support of their claims, and attach hereto the following:

Exhibit 1

Letter from Garry S. Taroli on Rosenn, Jenkins & Greenwald, LLP to Robert & Mary Netchel dated October 9, 2006; “Re: Columbia County Redevelopment Authority – Pennsylvania Department of Community and Economic Development – Centralia Property Condemnation.” Offer to let them stay on their land in return for a release of liability. November 1, 2006, letter from Taroli encloses executed release (release executed November 12, 2006).

Exhibit 2

December 31, 2009 correspondence from Andrew J. Ostrowski (plaintiff’s counsel in the eminent domain proceedings) to John T. Zelinka (defendant’s counsel from Rosenn, Jenkins in the eminent domain proceedings) stating, in pertinent part that “[v]ery simply, [plaintiffs] seek the same agreement that was reached with Robert and Mary Nechtel in No. 182-CV-93 entered into on November 10, 2006, [and that] [t]here is no reason that the Declarations of Taking with respect to each of the referenced properties should not be withdrawn, and, in that same regard, no rational or legitimate basis to treat my clients, who are in all respects similarly-situated with the Nechtels, any differently.”

Exhibit 3

County of Columbia Recorder of Deeds; Grantor Blaschak Coal Corp.; Grantee Blaschak Coal Corp. re: property in Conyngham Township recorded on 2/5/2010, at 9:26:10 AM; Certification of Attorney Garry S. Taroli, Rosenn, Jenkins & Greenwald, LLP.

Exhibit 4

County of Columbia Recorder of Deeds; Grantor Blaschak Coal Corp.; Grantee Blaschak Coal Corp.; Amended and Restated Affidavit; “Blaschak is the owner or record of certain real property located in Centralia Borough...”; Affidavit by Anthony Blaschak, Jr., President of Blaschak Coal Corp.; Recorded on 4/27/2009 at 12:15:33 PM; Return Document to Rosenn, Jenkins & Greenwald, LLP. (lists multiple locations within Centralia).

Exhibit 5

Realty Transfer Tax Statement of Value; Rosenn, Jenkins & Greenwald, LLP; Grantor Debra C. Blaschak, et al; Grantee Blaschak Coal Corp.; dated 4/27/2009.

Exhibit 6

Amended and Restated Affidavit, Anthony Blaschak, Jr., President of Blaschak Coal Corp.; Certification of Attorney is Garry S. Taroli, Rosenn, Jenkins & Greenwald, LLP; 3/5/2010.

Exhibit 7

Notice of Declaration of Taking; Grantors Stephen and Bonnie Hynoski, 423 Meyers Street, Centralia, PA 17927; signed Garry S. Taroli ... Attorneys for Columbia County Redevelopment Authority, Agent for the Department of Community Affairs of the Commonwealth of Pennsylvania; dated 1/26/1993 – filed January 28, 1993.

Exhibit 8

Petition for Appointment of a Board of View in Accordance with Section 502(e) of the Eminent Domain Code; Appendix B. is a Deed from May 15, 1965, granting the Borough of Centralia “All the sub-surface, Minerals, Coals, Gasses and Deposits of any kind or nature underlying the entire Borough of Centralia, County of Columbia and State of Pennsylvania.”; originally granted by the Coats Coal Company, per court order, to Centralia Borough and Centralia School District as to “... vest an undivided fee simple title to said sub-surface underlying the Borough of Centralia in the Borough of Centralia.”

Exhibit 9

News Items Tuesday November 3, 1981: “Council Disputes Claim Over Mineral Rights” Harold Rosenn, of Rosenn, Jenkins & Greenwald, sent a letter of behalf of Nogard Corporation claiming 146.72 acres of subsurface rights under Centralia based on a 1943 deed.

Exhibit 10

Newspaper Article: “Longtime Mahanoy City Coal Company Gets Economic Boost; Friday, August 28, 2009; Blaschak Coal Corp. recapitalizes.

Exhibit 11

Real Estate Transfer from Thomas J. Lynott, Jr., and Mary Ann Lynott (former owners of the Nogard Coal Company) to Blaschak Coal Co., of six parcels of property situate in the Borough of Centralia, County of Columbia; Made April 24, 1997; recorded April 29, 1999.

Exhibit 12

Real Estate Transfer between Columbia Coal and Development Corporation and Blaschak Coal Corp. of: "All the Surface of Those lots, pieces or parcels or land situate in the Borough of Centralia, Columbia County, Pennsylvania, known as the Locust Mountain Lands, and being more particularly described as follows"; dated April 8, 1995; recorded April 13, 1995.

Exhibit 13

Letter from Thomas J. Nickels, Esquire, to Lamar and Harold Mervine; dated August 26, 2009; Commonwealth has offered them a Life Estate in the property at 411 Troutwine Street, Centralia, PA.

Exhibit 14 (Photograph)

Netchell property beside road and across from Blaschak Coal Corp.

Exhibit 15 (Photograph)

Netchel home in relation to Blaschak Coal Corp. job and current mining operation to West of Netchel's.

Exhibit 16 (Photograph)

Blaschak Coal Corp. operation looking South.

Exhibit 17 (Photograph)

Mining operation to the West (approx. 500') of Netchel's. Red building in background is Blaschak Coal Corp. garage.

Exhibit 18 (Photograph)

Taken standing approximately 300' South of Netchel property looking North. Buck vein was exposed here for years. However, pit was backfilled within the last 6 months by Blaschak Coal Co.

Exhibit 19 (Photograph)

Penndot stock area approximately 500' West of Netchel's. Never condemned.

Exhibit 20 (Photograph)

Koschoff Garage, Apple Street, Centralia Borough. Built 1995. A declaration of taking has since been filed with regard to this property since an issue was raised by plaintiffs.

Exhibit 21 (Photograph)

Tanis property.

Exhibit 22 (Photograph)

Womer property.

Exhibit 23 (Photograph)

John Lokitis property.

Exhibit 24 (Photograph)

Helen Hynoski property.

Exhibit 25 (Photograph)

Mervine property.

Exhibit 26 (Photograph)

Steve and Bonnie Hynoski properties.

Exhibit 27 (Map)

Annotated Map of Centralia and Environs showing location of various properties in relation to the Impact Area.

Exhibit 28 (Borehole Monitoring Reports – reduction in temperature)

Department of Environmental Protection Bureau of Abandoned Mine Reclamation – Wilkes Barre Borehole Monitoring Reports; Project name: Centralia Mine Fire; project number: (in town boreholes); monitored by Williamson; Units: Degree Fahrenheit; Time: 2003 – 2007. Temperatures at various depths trending significantly downward.

Exhibit 29 (Maps and Borehold Measurements)

Maps and results of borehole measurements as far back as 1993. Conducted by Bureau of Abandoned Mine Reclamation.

Exhibit 30 (Centralia Mine Fire Mercury Study Final Report)

Dated March 10, 2008; Commonwealth of Pennsylvania Department of Environmental Protection Bureau of Air Quality; page 6: “Even though there are small but detectable mercury emissions from the fire area, they are in the range of values found at Lancaster, which is the only other DEP mercury monitoring site.... (p. 7) Clearly, the elemental mercury vapor levels measured at Centralia are not significant when compared to these risk levels.”

Exhibit 31 (Engineering Analysis and Evaluation of the Centralia Mine Fire)

Volume 2, July 1983, GAI Consultants, Inc.; Office of Surface Mining United States Department of the Interior.

Exhibit 32 (Report)

“Problems in the Control of the Centralia Mine Fire,” A Report by the Bureau of Mines U.S. Department of the Interior, August 15, 1980: p. 8: Fire is a hazard but natural geological barriers will protect part of Centralia Borough and will eventually limit the progress of the fire in all directions. p. 10: Fire is a current hazard to 140 surface acres and approximately one third of Centralia Borough. p. 14: Figure 3 shows Centralia Fire Area. Shows location of Buck Mountain Bed Outcrop in relation to Netchel property. p. 16: “A third influence is the presence of natural barriers. The Buck Mountain coal bed dips north to the water table at 1,000 feet elevation. The water table prevents the northward propagation of the fire areas under the major portion of Centralia Borough.” p. 19: Only 500 people out of 1,200 currently or potentially affected by the fire. p. 32: To date, no high concentrations of carbon monoxide, attributable to the mine fire, have been detected by the 15 detectors.

Exhibit 33 (Map)

Map showing likely spread of fire along Buck vein in relation addresses that have been permitted to remain even though on top of Buck vein: Netchels; 217 E. Center Street; Koschott Garage (1997); Sport Club; Blaschak Garage and Office (2005).

Exhibit 34 (Map)

Map showing location of coal veins and their depth.

Exhibit 35 (Map)

Map showing locations of mines and outcrops of coal.

Exhibit 36 (Map)

Map showing Centralia and environs.

Exhibit 37(Map)

Map showing mines in Centralia area.

Plaintiff also makes, among other witnesses, the following proffers:

Gary Taroli, Esquire – will testify that he was the attorney for Rosenn, Jenkins & Greenwals (RJG) that filed the original Declarations of Taking (Exhibits G and H) in 1992, and has represented Blaschack Coal Company in connection with the recordation of deeds to surface rights in the Borough of Centralia (Exhibits I and J) at least since 1995. Exhibits 3-6 show his continued representation of Blaschack. The deeds (Exhibits 3 and 4) are between Blaschack and the principles of a predecessor coal company whom RJG also represented in a 1981 claim for ownership on behalf of that company of the coal rights under the Borough (Exhibit 9). Taroli was also the attorney who represented the Commonwealth in its withdrawal of a Declaration of Taking with respect to Netchel in 2006 (Exhibit 1).

Tom Hynoski – lifelong coal miner in and around Columbia County, Pennsylvania, with expert knowledge of the mining maps and other matters relating to the mine fires who will testify to the history of the efforts of the Commonwealth with respect to the Borough as well as to identify the photographs for the Court, and descriptions of mining maps and other matters to provide relevant background to this case.

Gary Troup – will testify that he actively mined recently in the area behind the property of the person as to whom the Declaration of Taking was lifted in 2006 (Netchel), and that there is no question that the coal runs right under the Netchel property.

Plaintiffs – as needed.

7. Moreover, it is clearly in the interest of the public to have integrity in the affairs of its government, and to intercede in courses of official conduct that have perpetuated a massive fraud on the plaintiffs, and all American citizens for that matter, through a course of conduct that is anathema to every principle upon which our Constitution is based.

8. For the foregoing reasons, and as to be elaborated upon at the time of the hearing on this motion, which is hereby requested, plaintiffs demand that this Court enter a preliminary injunction restraining and enjoining the Commonwealth of Pennsylvania, and any and all other

defendants or anyone acting on any of their behalf, from taking any additional actions in furtherance of the eminent domain proceedings now pending in the state courts.

WHEREFORE, Plaintiffs prays this court grant their motion and enter an appropriate Order granting relief consistent herewith.

Respectfully submitted,

/s/ Don Bailey
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