

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
BIG STONE GAP DIVISION**

SOUTHERN APPALACHIAN MOUNTAIN  
STEWARDS, APPALACHIAN VOICES,  
and SIERRA CLUB,

Plaintiffs,

v.

CIVIL ACTION NO. 2:23-CV-00002

A&G COAL CORPORATION,

Defendant.

**PLAINTIFFS' MOTION FOR LEAVE TO SUBMIT NEWLY DISCOVERED POST-  
HEARING EVIDENCE, STATUS REPORT, AND REQUEST FOR STATUS  
CONFERENCE**

Recently discovered evidence that post-dates the evidentiary hearing in this matter necessitates a status report from the parties and a status conference because it fundamentally conflicts with evidence presented by A&G Coal Corporation at last November's evidentiary hearing.

The core issue in this action has been A&G Coal Corporation's purported "inability to pay" as a defense to contempt of this Court's Consent Decree. That defense rested on many sworn assertions that A&G has no assets, no income, and no way to perform the extensive mine reclamation work it agreed to do more than three years ago. However, a few weeks ago, A&G Coal Corporation created an audited financial statement for year end 2025 that appears to show (1) net assets of more than \$9 million; (2) investment assets of more than \$30 million; and (3) operational revenue of more than \$27 million. These figures appear to flatly contradict both the testimony and the defense that A&G presented to the Court in November 2025. Plaintiffs submit that this newly produced financial statement is highly relevant to the Court's pending decision. At minimum, the Court should require

A&G to produce a witness who can explain the contradictions between the trial testimony and the newly created financial statement, and then allow the parties to present their clients' positions on the consequences of those contradictions. Plaintiffs request the Court accept and admit the attached newly discovered evidence, on the grounds stated in this motion. See Local Rule 11(c)(1).

Plaintiffs wrote a letter to A&G (copied to certain regulatory authorities) on December 5, 2025, notifying A&G of their intent to sue for A&G's failure to notify Virginia Energy that the company did not have at least \$1 million in net assets, a requirement of Virginia law governing self-bonding for surface coal mines. ECF No. 51-2. On February 2, 2026, A&G responded to the Plaintiffs' letter, asserting that the company was now in compliance with the self-bonding laws. Ex. 2 (Feb. 2, 2026 A&G letter). A&G did not, however, provide Plaintiffs with any evidence to support that assertion, such as the cited audited financial statement. Pursuant to a Freedom of Information Act request to Virginia Energy, Plaintiffs obtained an audited financial statement sent by A&G to Virginia Energy and dated January 14, 2026. The audited financial statement is attached as Exhibit 1.

At the evidentiary hearing in this action on November 13, 2025, A&G Executive Vice President and General Counsel Stephen Ball testified clearly that in 2025 (1) A&G's net value is roughly negative \$41,000,000; (2) A&G has no significant assets; (3) A&G has no significant operations, and (4) A&G has no way, other than incurring debt, to generate any further funds or resources to achieve the mine reclamation ordered by this Court.

On direct examination, Ball was asked to describe the largest assets held by A&G. Tr. 89-10-11. Ball identified only the Ramsey Prep Plant and the mining permits held by A&G. Ball was then asked "Any other assets at A&G that you're aware of?" Answer: "Not today." Tr. 90:6-7. Further, from 2022 until 2025, A&G had no bank account because "[t]here was no activity from a revenue standpoint." Tr. 90:25. Ball described the years 2022 and 2023 for A&G as "[d]ire without coal operations," and said the company's only method of funding current obligations was through

borrowing from related parties. Tr. 97:1-98:5. For 2024, Ball agreed that A&G had “basically no operating revenue or anything of that nature.” Tr. 100:12-14. Ball testified that A&G’s new and only bank account received certain deposits in 2025 but almost immediately transferred the entirety of those funds to a related entity that was a creditor of A&G. Tr. 103:2-6. Ball testified that incurring intercompany debt was the sole way that A&G could fund and perform reclamation. Tr. 104:6-12. Ball was asked “Has A&G profited from coal sales in Virginia in the last – since 2022?” Answer: “No, just to the extent it has offset the reclamation expenses, but no net or gross profit.” Tr. 111:24-112:2. Ball testified that negative \$41,326,000 was an accurate and current book value of A&G as of the hearing date in November 2025. Tr. 137:23-25; 138:12. Ball testified that A&G’s debts exceeded its assets by tens of millions of dollars and there was no document anywhere with a more accurate figure of A&G’s value than negative \$41 million. Tr. 139:12-21. See also Tr. 163:13-17. (A&G’s 2025 liabilities exceed assets by tens of millions).

In stark and apparently irreconcilable contrast, the January 2026 audited A&G financial statement shows vast revenue and assets. For example, the accountant asserted that A&G had at least \$1 million in assets, after subtracting liabilities, as of December 31, 2025, less than seven weeks after Ball’s testimony. Ex. 1 at 1. The financial statement lists more than \$30 million in investment assets, assets never mentioned by Ball when asked specifically to identify A&G’s assets. Ex. 1 at 6. The statement shows income for 2025 as more than \$27 million dollars. Ex. 1 At 7. It shows “Additional paid-in capital” of more than \$95 million. *Id.* Somehow, a company’s whose situation was so dire and stagnant in mid-November 2025 nonetheless reports more than \$28 million in “Revenue” and more than \$27 million in “Gain From Operations” in that same year, 2025. The statement lists A&G as having \$0 in accounts receivable and \$0 in coal inventory for 2025, raising further questions about the source of revenue. Ex. 1 at 14. The company is even listed as having roughly \$3.8 million in buildings

and mining equipment, after subtracting depletion and depreciation, another substantial asset nowhere mentioned by the company during the hearing. Ex. 1 at 15.

This Court has discretion to consider the newly discovered evidence. Plaintiffs could not have discovered nor presented the audited financial statement at the November 13, 2025 hearing, as the document was created on January 14, 2026. Ex. 1. No judgment has been entered in this action, so Rule 60 of the Federal Rules of Civil Procedure governing post-judgment relief on the basis of newly discovered evidence does not squarely apply. Still, the pertinent elements of that more stringent standard are readily met: the evidence is newly discovered, the Plaintiffs exercised due diligence, the evidence is not merely cumulative, and the evidence is material. See Boryan v. United States, 884 F.2d 767, 771 (4th Cir. 1989).

In sum, A&G very clearly and repeatedly told this Court that the company was in dire straits in 2025 and debt exceeded assets by more than \$41 million. A few weeks later, A&G told Virginia Energy that the same company, for the same year, had tens of millions in revenue, tens of millions in investment assets, and had a net value of \$9 million. A&G is trying to have it both ways: telling this Court it is underwater and utterly destitute and therefore entitled to its impossibility defense, but telling Virginia Energy in the next breath that the company has vast resources nearly tenfold what Virginia law requires for self-bonded mining permittees. Plaintiffs submit that both positions cannot be true. If A&G has resources, then it is in open contempt of this Court's order, since it has an ability to pay and no other defense. If A&G has no resources, then it is in open violation of Virginia's self-bonding law.

### **CONCLUSION**

For the foregoing reasons, Plaintiffs respectfully request that the Court (1) accept the attached financial statement for purposes of the parties' pending motions; and (2) conduct a status conference and potentially schedule an evidentiary hearing in which A&G is given the opportunity to adduce

evidence to explain the apparent contradiction between its hearing testimony and its new financial statement.

DATED: February 11, 2026

Respectfully submitted,

/s/ Isak Howell

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**CERTIFICATE OF SERVICE**

I, Isak Jordan Howell, certify that on February 11, 2026, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF filing system, which will notify all counsel of record.

/s/ Isak Howell  
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