



BENJAMIN A. KAHN  
UNITED STATES BANKRUPTCY JUDGE

**Dated: February 9th, 2023**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF WEST VIRGINIA  
HUNTINGTON DIVISION

In re:	)	Case No. 19-30289
	)	
Blackjewel L.L.C., <i>et al.</i> ,	)	Chapter 11
	)	
<u>Debtors.</u>	)	(Jointly Administered)
	)	
Cardinal Reclamation Company,	)	
LLC,	)	
	)	
Plaintiff,	)	
	)	
Lexon Insurance Company	)	
	)	
Intervenor-Plaintiff	)	
	)	
v.	)	
	)	Adv. No. 21-03003
Blackjewel, LLC;	)	
Revelation Energy, LLC;	)	
Harold Keen Coal Co. LLC;	)	
Rhino Energy, LLC;	)	
Jewel Valley Mining, LLC;	)	
Mountaineer Metallurgical	)	
Holdings, LLC;	)	
Kopper Glo Mining, LLC; and	)	
Nally & Hamilton Enterprises,	)	
Inc.	)	
	)	
<u>Defendants.</u>	)	

**ORDER REGARDING COVID PROTOCOLS FOR TRIAL**

The following protocols will apply to the trial scheduled to take place in the captioned adversary proceeding February 13 through 17, 2023, in Charleston, West Virginia, ECF Nos. 164 & 225:

1. Any person attending the trial in person, whether party, witness, counsel, or interested member of the public, must take a self-administered test for COVID-19 within 24 hours of the start of the trial. For each day of the trial thereafter, any person planning to attend the trial must take a self-administered test for COVID-19 in the morning of that day, before arriving to court. The Court will provide tests for COVID-19 each day to parties and counsel, if needed.

2. Entry into the courthouse is governed by General Order #14, attached as Exhibit A, and General Order #2, attached as Exhibit B (collectively, the "General Orders"), entered by the United States District Court for the Southern District of West Virginia, unless modified or amended by the District Court.<sup>1</sup>

3. Any party representative, witness, or counsel who is ineligible to enter the courthouse under the terms of the General Orders shall immediately notify Karen Champagne by email at karen\_champagne@ncmb.uscourts.gov with a copy on all counsel

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<sup>1</sup> <https://www.wvsd.uscourts.gov/orders-and-information-regarding-covid-19>

participating in the trial (Steven Thomas, sthomas@kaycasto.com; Jared Tully, jtully@fbtlaw.com; Eric Frye, effrye@c-wlaw.com; James Irving, james.irving@dentons.com; Gina Young, gina.young@dentons.com; Robert Kuenzel, rob@kuenzellaw.com). Such a person may then request permission from the Court, and, if granted, make arrangements with Ms. Champagne for appearance by video conference through Zoom for Government. Only party representatives, counsel, or testifying witnesses who are ineligible to enter the courthouse under the General Orders will be entitled to request leave to appear by video conference.

4. Remote Witnesses. A witness will be permitted to testify remotely only in the event that the witness is ineligible to enter the courthouse under the terms of the General Orders. In the event that a witness appears by videoconference under the provisions of this Order, any party calling a witness should arrange for that witness to have an individual binder of all exhibits filed by all parties or access to tabbed, indexed exhibits through electronic means other than the means through which the witness is connected to the hearing, with all numbering corresponding to that used in the .pdf documents filed pursuant to the procedures outlined in ECF Nos. 164 & 225.

5. Affirming Remote Witnesses. All Remote Witnesses shall be affirmed during the video conference, and such testimony will have the same effect and be binding upon the Remote Witness in the

same manner as if such Remote Witness was affirmed by the courtroom deputy in person in open court. The Court may direct any remote witness to allow viewing of the entire room from which the remote witness testifies.

6. Responsibility for Remote Witnesses. The party sponsoring the Remote Witness shall be responsible for ensuring that all virtual hearing information and all exhibits are supplied to the Remote Witness prior to the hearings, and that the Remote Witness has access to a reliable internet connection, audio- and video-streaming equipment and software compatible with Zoom for Government, and the Zoom for Government conference link, as applicable.

7. Courtroom Formalities. The trial constitutes a court proceeding. No person shall record the audio or video of the hearing from any location or by any means. The audio recording created and maintained by the Court shall constitute the official record of the hearing. Further, the formalities of a courtroom shall be observed by all virtual attendees. Counsel and Remote Witnesses shall dress appropriately, exercise civility, and otherwise conduct themselves in a manner consistent with the dignity of the Court and its proceedings. The Court may revoke leave to appear remotely in its discretion.

8. As stated in General Order #14, persons attending the trial will not be required to mask or socially distance but are free to do so, unless otherwise ordered by the Court.

[END OF DOCUMENT]

# **EXHIBIT A**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF WEST VIRGINIA

Miscellaneous Case No. 2:20-mc-00052



IN RE: **FACE COVERINGS or MASKS**  
**in COURTHOUSES**  
**in the SOUTHERN DISTRICT OF WEST VIRGINIA**

**GENERAL ORDER #14**

On August 2, 2021, the Court entered General Order #13, which imposed a mask or face covering requirement for all persons seeking entry to courthouses in the Southern District of West Virginia, in response to the presence of the COVID-19 Delta variant and guidance by the Centers for Disease Control and Prevention (CDC). The mask requirement has been in place since that time, including during the recent outbreak of the Omicron variant. Throughout the pandemic, the Court has followed the guidance of public health officials when choosing how best to implement layered safety standards while fulfilling its responsibility to continue court operations in a manner that protects all participants.

The CDC recently established a new method<sup>1</sup> for evaluating risk levels on a county-by-county basis as determined by locality-specific factors. The CDC's

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<sup>1</sup> Centers for Disease Control and Prevention: "COVID-19 Community Levels" <https://www.cdc.gov/coronavirus/2019-ncov/science/community-levels.html> (Last Visited March 24, 2022).

three-tiered system assigns a Low, Medium, or High “COVID-19 Community Level” to each locality and recommends universal indoor masking only in localities with a High Community Level. As of the date of this General Order, all the courthouses in the Southern District of West Virginia are in areas where local conditions are located in areas that fall into the CDC’s Low Community Level category. This assessment is consistent with information maintained<sup>2</sup> by state public health authorities, which indicate a sustained downward trend in daily cases and hospitalizations over the past several weeks.

Based on the CDC’s updated COVID-19 Community Level standard, and the CDC’s associated recommendations for preventative steps, IT IS ORDERED, effective immediately, that the **requirement that masks be worn in all common areas of the courthouses is suspended** in all four of its Divisions. Individuals may, of course, elect to wear a mask in Court facilities based upon their own personal preference and risk tolerance.

The suspension of the Districtwide mask requirement does **not** preclude a presiding judge—including a judge presiding over a grand jury proceeding—from requiring masks in their own courtroom and related spaces should the judge determine that such safety measures are appropriate based on the number of people present, the courtroom layout, current community conditions, the medical risk factors or vaccination status of those who appear (including witnesses and litigants compelled to appear), or other relevant factors. For example, presiding judges may

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<sup>2</sup> West Virginia Department of Health and Human Resources: “West Virginia COVID-19 Dashboard” <https://dhhr.wv.gov/COVID-19/Pages/default.aspx> (Last Visited March 24, 2022).



require masks during the jury assembly and selection process to ensure that the large number of prospective jurors compelled to appear and participate in a congregate setting feel safe and comfortable. Individual judges may also, of course, elect to maintain mask requirements for their chambers.

All Court employees and Courthouse users should be aware that mask requirements may be reinstated if local metrics move a Courthouse into the “High” Community Level category or if pandemic conditions worsen and renewed safety precautions are warranted. Although the mask requirement is suspended in all Divisions regardless of vaccination status, employees and Courthouse users are reminded that the CDC strongly encourages all persons, including those living and working on Low Community Level areas, to stay up to date with their vaccines and vaccine boosters.

Should conditions in a county where one of our Courthouses is located worsen to the point where that county falls into the CDC’s High Community Level category, the Chief Judge may: (1) address the matter by issuing a General Order reinstating a mask requirement; or (2) upon consultation with the Judges involved, elect instead to post Division-specific signs at Courthouse entrances and notify all local employees that masks will be temporarily required in the impacted Division. If this General Order conflicts with posted signs establishing Courthouse entry requirements, the posted entry requirements will control; and it is further

ORDERED that the courthouse entry restrictions set forth in General Order #2 remain in full force and effect, and it is finally

ORDERED that the United States Marshal, his Deputies, and the Court Security Officers shall enforce this order.

SO ORDERED this 25th day of March, 2022.



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THOMAS E. JOHNSTON, CHIEF JUDGE

# **EXHIBIT B**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF WEST VIRGINIA

Miscellaneous Case No. 2:20-mc-00052



**IN RE: ENTRY INTO COURTHOUSES  
OF THE SOUTHERN DISTRICT  
OF WEST VIRGINIA IN LIGHT OF  
THE COVID-19 PANDEMIC**

**GENERAL ORDER #2**

On March 13, 2020 a General Order was entered recognizing the exigent circumstances created by the COVID-19 pandemic and continuing all jury matters in the District for a period of two weeks. Since that time, there has been a confirmed case of COVID-19 in West Virginia, and the guidance issued by local and national public health authorities has urged the public to increase social distancing and take other precautions in order to slow the spread of disease.

IT IS THEREFORE ORDERED, effective immediately, in an attempt to ensure the safety of courthouse staff and visitors, the following persons shall not enter any courthouse in the Southern District of West Virginia:

- Persons who have returned from travel in the last 14 days to an area with a Level 3 Travel Health Notice issued by the Centers for Disease Control (updated list available at <https://wwwnc.cdc.gov/travel>);

- Persons who reside or have had close contact with anyone who has returned from travel in the last 14 days to an area with a Level 3 Travel Health Notice issued by the Centers for Disease Control (updated list available at <https://wwwnc.cdc.gov/travel>);
- Persons who have been asked to self-quarantine by any doctor, hospital, or health agency;
- Persons who have been diagnosed with, or had contact with, anyone who has been diagnosed with COVID-19 in the last 14 days;
- Persons with fever, cough, or shortness of breath.

**Anyone attempting to enter in violation of these protocols will be denied entry by a Court Security Officer.**

If you are scheduled to appear at this courthouse or otherwise need to visit offices in the building and you are unable to enter because of these restrictions and you are represented by an attorney, please contact your attorney, or use the appropriate contact information listed below.

- District Clerk — (304) 347-3000
- Bankruptcy Clerk — (304) 347-3003
- U.S. Trustee (304) 347-3400
- Probation and Pretrial Services — (304) 347-3300
- Marshals Service — (304) 347-5136
- U.S. Attorney (304) 345-2200
- Federal Public Defender (304) 347-3350
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SO ORDERED this 18<sup>th</sup> day of March, 2020.

  
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THOMAS E. JOHNSTON, CHIEF JUDGE