Judge,

RE: 83-400

Harrison Combs, et al. v. Elkhorn Drilling Co.

Hearing on Motion for D/J, Friday, 1-13-84

At the time plff moved for D/J and the Court set this hearing, def. had not responded to the complaint. However, yesterday, 1-11-84, the def. moved the Court for leave to file a late answer and tendered its answer to the Court.

Therefore, it seems that if the Answer is filed, this action is now ready to set for a PC.

Donald

RE: 83-400 Harrison Combs, et al. v. Elkhorn Drilling Co. PC, Friday, 4-13-84, at 10:00 This is an action by the UMWA Trustees Synopsis: to collect tonnage royalties from the def. The one thing different about this case is that it appears that the def. was a contract miner working for Ferrells Creek Coal Co., and apparently it was agreed from the beginning that Ferrells Creek Coal would be paying the tonnage royalties, while the def. would only be responsible for "wage royalties". The plffs have also sued Ferrells Creek Coal Co., and that suit is presently pending in this Court. The Def.'s PC memo states that in the action against Ferrells Creek Coal, the plff is attempting to collect the same monies from it and Ferrells Creek Coal. Substantive Issues: Whether the def. is required to pay tonnage royalties as well as Ferrells Creek Coal Co.? Whether plff may recover tonnage royalties from both companies? Comments: There are no pending motions. 2. The parties are ready for the PC.