

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

**THE MARSHALL COUNTY COAL COMPANY, THE  
MARION COUNTY COAL COMPANY, THE  
MONONGALIA COUNTY COAL COMPANY, THE  
HARRISON COUNTY COAL COMPANY, THE OHIO  
COUNTY COAL COMPANY, MURRAY ENERGY  
CORPORATION, and ROBERT E. MURRAY,**

**Plaintiffs,**

**v.**

**JOHN OLIVER, CHARLES WILSON, PARTIALLY  
IMPORTANT PRODUCTIONS, LLC, HOME BOX  
OFFICE, INC., TIME WARNER, INC., and DOES 1  
through 10,**

**Defendants.**

Civil Action No.: 5:17-CV-99

Judge John Preston Bailey

CIVIL ACTION NO. 17-C-  
124

Judge Cramer  
(Marshall County Circuit  
Court)

**PLAINTIFFS' REPLY REGARDING  
THEIR MOTION FOR A TEMPORARY RESTRAINING ORDER**

Five days before a scheduled state court hearing on Plaintiffs' motion for a temporary restraining order and preliminary injunction (the "Motion"), and on the brink of the July 4<sup>th</sup> holiday weekend, Defendants avoided that hearing by purporting to invoke this Court's jurisdiction. Nearly a month has passed since Plaintiffs filed their Motion and Defendants just now have responded (without offering any explanation for their delay). Nevertheless, given the baseless contentions asserted by the Defendants in their attempts to escape the West Virginia state courts, and the clear authorities belying those contentions, this Court is without jurisdiction over this case and cannot properly decide the Motion.

A Federal court lacking jurisdiction over an action also lacks jurisdiction to decide the merits of any part of that action. *See Roach v. West Va. Regional Jail & Correctional Facility Auth.*, 74 F.3d 46 (4<sup>th</sup> Cir. 1996) (reversing the district court for granting defendants' motion to

dismiss where action should have been remanded). Courts accordingly have refused to rule on pending temporary restraining orders and preliminary injunctions in circumstances such as this. *See, e.g., New Day Fin., LLC v. Katz*, Civil No. CCB-15-2245, 2015 U.S. Dist. LEXIS 114289 at \*12 (D. Md. Aug. 28, 2015) (“This court prefers not to opine on an exigent dispute when its jurisdiction remains in doubt.”); *Red Barn Farms, LLC v. GE Capital Corp.*, No. 1:09CV747, 2011 U.S. Dist. LEXIS 23213 at \*22 (N.C.M.D. Mar. 8, 2011) (refusing to consider motion for temporary restraining order and preliminary injunction where jurisdiction over action was lacking); *Time Warner Entertainment v. Foster Mgmt.*, 1:96CV00347, 1996 U.S. Dist. LEXIS 14587 \*12-13 (“Because this Court did not have jurisdiction over this case, it could not rule on the merits of [Plaintiff’s preliminary injunction] motion.”); *BJT, Inc. v. Molson Breweries USA*, 848 F. Supp. 54, 57 (E.D.N.C. 1994) (“In light of the court's resolution of plaintiff's motion to remand, this court lacks jurisdiction to hear the defendants' motion to dissolve the temporary restraining order.”); *Osborne v. Osborne*, 554 F. Supp. 566, 569 (D. Md. 1982) (“The above canvassing of elementary authorities requires that defendant’s removal petition borders on the frivolous. As a consequence, no federal jurisdiction exists and remand is mandatory under 28 U.S.C. § 1447(c). Defendant's motion for a temporary restraining order will not be considered.”).

For the reasons set forth in Plaintiff’s Memorandum of law in Support of Plaintiff’s Motion to Remand [Docket No. 4, filed on July 7, 2017] and Plaintiff’s Reply in Support of Their Motion to Remand [Docket No. 20, filed on July 28, 2017], the Court lacks jurisdiction over this action. As such, the Court also cannot properly decide the Motion, which jurisdiction is properly vested in the state courts of West Virginia.

Dated: July 28, 2017

Respectfully submitted,

/s/ Jeffrey A. Grove  
Of Counsel for Plaintiff

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**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Service of the foregoing **PLAINTIFFS' REPLY REGARDING THEIR MOTION FOR A TEMPORARY RESTRAINING ORDER** was electronically filed with the Clerk of this Court on the 28<sup>th</sup> day of July, 2017, by using the CM/ECF system who shall provide electronic notice of such filing to the following:

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