

Coal mine owners sued for \$19.3M

Investors say loan is in default on mine near Roundup

By JAN FALSTAD

Of The Gazette Staff

Three East Coast companies representing investors who loaned nearly \$20 million to help develop the Bull Mountain coal mine near Roundup have filed suit claiming mine owners defaulted on the loan.

The suit names Bull Mountain Coal Properties Inc. and five companies affiliated with Airlie Opportunity Fund Cayman LTD, of Greenwich, Conn.

The action was filed Friday in U.S. District Court in Yellowstone County by Atlanta securities attorney Gregory Bartko.

On Monday, Bartko said his clients - Webb Financial Group Inc., Franklin Asset Exchange LLC and Disciples Limited LLC - are suing to collect \$19,314,064 on loans made between 2001 and 2005.

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Airlie is a private equity fund based in Greenwich and London, England and buys distressed properties,

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Bull Mountain lawsuit



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Read the lawsuit against Bull Mountain coal brought by a group of investors

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Players in the lawsuit Three plaintiffs

- Webb Financial Group Inc. - A North Carolina company doing business out of Orlando, Fla.
- Franklin Asset Exchange LLC - A North Carolina company doing business out of Orlando, Fla.
- Disciples Limited LLC - Registered in Nevada and doing business out of Nashville, Tenn.

Six defendants

- Bull Mountain Coal Properties Inc. - A Delaware corporation with its principle business location in Greenwich, Conn. The Airlie group controls and owns BMCP, according to the lawsuit.
- Airlie Opportunity Fund Cayman Ltd. - A limited liability company incorporated under the laws of the Cayman Islands.
- Airlie Opportunity Master Fund Ltd. -

Bartko said. Airlie bought the Bull Mountain assets in Sept. 9, 2005.

"They bottom fish is what they do," Bartko said.

The Bull Mountain coal mine failed a decade ago when developer John Baugues Jr., ran up about \$2 million in debts and closed after losing his mining permit for environmental violations.

More than 300 individual investors bought the Bull Mountain bonds between 2001 and 2005 when Baugues and New York financier George Parthemos were in charge, Bartko said.

"Baugues and Parthemos, when they controlled everything, they got a hold of \$20 million of my clients' money," Bartko said. "As first promoters, I rate their integrity at zero combined."

Baugues and John DeMichiei, who took over from Parthemos as president and chief executive in the fall of 2005, could not be reached for comment. Sources at Airlie in Connecticut also could not be reached.

The Bull Mountain coal mine reopened in 2004 and has been trucking coal to Lockwood for shipment by rail.

On Oct. 2, Gov. Brian Schweitzer held a news conference at the mine site 16 miles south of Roundup to announce a proposed \$1.5 billion to \$2 billion energy project. Schweitzer predicted building a coal-to-liquids project and "clean coal" power plant that could create 4,200 jobs, directly and indirectly, generating \$260 million in annual wages.

Billings attorney Joe Gerbase, who is general counsel for the Bull Mountain coal companies involved in the mine, said late Monday that he hadn't heard of the lawsuit.

He said Ames Construction of Salt Lake City is ready to start building the railroad from the mine.

"There has been final permitting. There's some equipment delivered," he said. "Whether they've cut dirt or not, I can't tell you."

Airlie assumed the debt when it bought the Bull Mountain assets in 2005, he said, but missed payments.

In April, a North Carolina court approved a receiver to oversee the case.

On May 23, 2006, Airlie signed an agreement to pay the notes with interest in six months or by Nov. 15.

But in September and again in early November, Bartko said, Airlie refused to pay, citing lower coal

LLC incorporated in the Caymans with a business address of Greenwich, Conn.

- Airlie Opportunity Fund, L.P. - A Delaware limited liability partnership serving as a "feeder fund" to the Master Fund.
- Airlie Opportunity Capital Management L.P. - U.S. based limited partnership responsible for all investment decisions.
- Airlie Opportunity Capital Management LLC - A limited liability company in Delaware and partner of Airlie Investment Manager.

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prices and development costs of the 35-mile railroad.

"They decided to default and the reason was, 'It's just not convenient to pay you,' " he said. "The defendants have expressly taken a 'So, sue me' approach."

Despite the financial dispute, Airlie said it isn't backing away from the Bull Mountain project, Bartko said.

"In fact, (they said) 'We're investing more and getting deeper into the project because we have a chance to build a CTL (coal-to-liquids) project," he said.

Investors, mostly from North Carolina, were promised annual interest rates of between 12 percent and 15 percent for the 12-month notes. The loans are secured by liens against the Montana coal, real estate and personal property, Bartko said.

Meanwhile, he said if Airlie pays, Baugues and Parthemos are off the hook. If Airlie doesn't pay, he said they will be individually responsible for the debt.

"This is my priority mission. I want this money for these people," he said. "These are good people, middle class, grandmothers, young people who wanted a good rate of return."

One creditor includes a Baptist church in North Carolina that invested more than \$2 million, he said.

The project so far

Baugues closed the mine in 1998 and returned to Tennessee owing an estimated \$2 million in debt to Montana businesses. He owed state fines of more than \$531,000. In addition, the Montana Department of Environmental Quality collected \$428,200 on a reclamation bond that Baugues forfeited.

Eight years ago, for the first time in state history, a coal-mining permit was revoked for environmental violations. That meant Baugues or another developer would have to start over and spend millions to obtain another permit.

However, during the first months of 2001, then Rep. Alan Olson, R-Roundup, sponsored a bill reinstating the coal mining permit for the Bull Mountain Coal Mine No. 1.

On Oct. 1, 2001, Baugues and Mountain Inc. paid a settlement payment to Montana of \$300,000.

The same day, then-Gov. Judy Martz, R-Mont., held a news conference in Roundup to announce reopening of the mine, plus plans to build two coal-fired power plants nearby and a short-distance railroad to Broadview so the coal could be shipped on the BNSF

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Railway.

In 2002, the mining permit was transferred to Bull Mountain Properties Investments (BMPI), which was headed by Parthemos.

The mine reopened in early 2004.

In January 2005, the mine missed its payroll, fell behind on its property taxes and owed an estimated \$100,000 to a trucking company.

In November of 2005, the DEQ ordered the company to stop mining a coal seam that was uncovered when the company was clearing a site for a power plant because the company lacked the proper permit.

Also that fall, a coal industry veteran with 30 years experience, DeMichiei, became president and chief executive of BMP Investments Inc. Parthemos stepped down from those jobs, but stayed on as chairman of the board.

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billings conservative wrote on December 19, 2006 5:58 AM

This Bull Mountain mine just seems to be fraught with fraud. I think the Repubs who have supported it should give up the ghost on it. Schweitzer should stay away from it. It should be allowed to just go away before more people are hurt financially.



Mind over matter wrote on December 19, 2006 6:32 AM

I knew Gov. Schweitzer made a mistake with that company, should have gone with a company that pays their bills and aren't in the hole. Western Energy could have done a better job. I worked for the Bull Mtn mine got laid off a few times because they couldn't even pay wages. Watch out Ames Construction, your in for a treat.



dbw wrote on December 19, 2006 6:48 AM

Looks like ten companies with a hundred accountants and a thousand lawyers incorporated in one place, doing business out of another, with the money stashed in offshore accounts. And probably not a coal miner in the bunch. Oh, what a tangled web we weave.



well well well wrote on December 19, 2006 7:00 AM
so they rated the integrity of the people ramrodding this project at zero , , , , well thats where governor bs , s integrity level is . at zero along with his bros and testers



coydog wrote on December 19, 2006 7:14 AM
sounds like its time to shut er down and start over again.





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