

**UNITED STATES DISTRICT COURT
District of Maine**

SPRAGUE ENERGY CORP.,)	
Plaintiff)	
)	
v.)	
)	Civil No. 05-222-P-S
MASSEY COAL SALES)	
COMPANY, INC.,)	
)	
Defendant)	
)	

**ORDER AFFIRMING THE
RECOMMENDED DECISION OF THE MAGISTRATE JUDGE**

The United States Magistrate Judge filed with the Court on March 15, 2006, his Recommended Decision (Docket No. 18). Defendant filed its Objection to the Recommended Decision (Docket No. 21) on April 3, 2006. Plaintiff filed its Response to Objection (Docket No. 27) on April 20, 2006.

I have reviewed and considered the Magistrate Judge's Recommended Decision, together with the entire record; I have made a de novo determination of all matters adjudicated by the Magistrate Judge's Recommended Decision; and I concur with the recommendations of the United States Magistrate Judge for the reasons set forth in his Recommended Decision, and determine that no further proceeding is necessary.

1. It is therefore ORDERED that the Recommended Decision of the Magistrate Judge is hereby AFFIRMED.

2. Defendant's Motion to Dismiss (Docket No. 10) is GRANTED as to Count V and

otherwise DENIED.

Plaintiff may conduct discovery regarding the time, place and content of the fraud alleged in Count VI and is directed to file, on or before the deadline for joinder of parties and amendment of pleadings, pursuant to the scheduling order to be issued by the Clerk's Office, either (1) a motion to amend, accompanied by a proposed amended complaint complying fully with Rule 9(b), or (2) a voluntary dismissal of Count VI. Plaintiff's failure to timely file will be grounds for dismissal of Count VI.

/s/ George Z. Singal
Chief U.S. District Judge

Dated this 21st day of April, 2006.

SPRAGUE ENERGY CORP

represented by **GEORGE T. DILWORTH**
MCCLOSKEY, MINA & CUNNIFF,
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**MASSEY COAL SALES
COMPANY INC**
doing business as
MASSEY INDUSTRIAL SALES CO
doing business as
**MASSEY INDUSTRIAL COAL
SALES COMPANY**

represented by **JAY S. GELLER**
LAW OFFICE OF JAY S. GELLER
ONE MONUMENT WAY
SUITE 200
PORTLAND, ME 04101
772-6668

Counter Claimant

**MASSEY COAL SALES
COMPANY INC**

represented by **JAY S. GELLER**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Counter Defendant

SPRAGUE ENERGY CORP

represented by **GEORGE T. DILWORTH**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

ThirdParty Plaintiff

**MASSEY COAL SALES
COMPANY INC**

represented by **JAY S. GELLER**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

ThirdParty Defendant

NEWPAGE CORPORATION

represented by **JOHN P. MCVEIGH**
PRETI, FLAHERTY, BELIVEAU,
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PO BOX 9546
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ThirdParty Plaintiff

**MASSEY COAL SALES
COMPANY INC**

represented by **JAY S. GELLER**
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

ThirdParty Defendant

**RUMFORD COGENERATION
COMPANY LIMITED**

represented by **JOHN P. MCVEIGH**
(See above for address)

PARTNERSHIP

*LEAD ATTORNEY
ATTORNEY TO BE NOTICED*

ThirdParty Defendant

NEWPAGE CORPORATION

represented by **JOHN P. MCVEIGH**
(See above for address)
*LEAD ATTORNEY
ATTORNEY TO BE NOTICED*

Counter Claimant

**RUMFORD COGENERATION
COMPANY LIMITED
PARTNERSHIP**

represented by **JOHN P. MCVEIGH**
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*LEAD ATTORNEY
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V.

Counter Defendant

**MASSEY COAL SALES
COMPANY INC**

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