

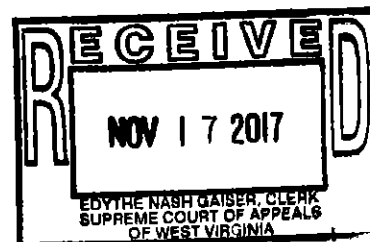
# WILLIAM J. LEON, LC

William J. Leon

Admitted to practice in  
West Virginia and Pennsylvania

November 17, 2017

Rory L. Perry II, Clerk  
West Virginia Supreme Court of Appeals  
State Capitol Rm E-317  
1900 Kanawha Blvd. East  
Charleston, WV 25305



Via: Facsimile transmission (304-558-3815)  
Re: *Meral Inc. v. Brewster Morhous et. Al*  
Circuit Court of Mercer County  
Civil Action No. 17-C-303

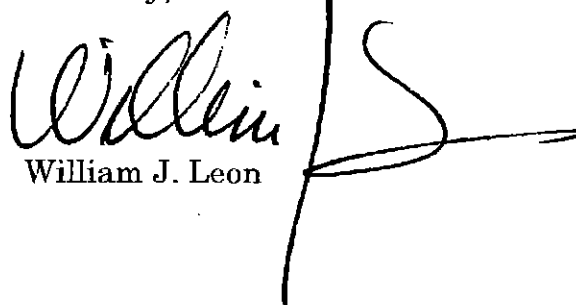
Dear Mr. Perry,

I represent Plaintiff Meral Inc. in the above referenced civil action pending in the Circuit Court of Mercer County. Pursuant to Trial Court Rule 12.04, find enclosed for filing Plaintiff's supplement to its motion to transfer this action to the Business Court Division previously filed herein.

As required by Trial Court Rule 29.06, by copy of this letter, I have provided a copy of the pleading to the Mercer County Circuit Clerk; the presiding judge; and to the Business Court Division.

Please contact me if you need any additional information. Your attention to this matter is appreciated.

Sincerely,

  
William J. Leon

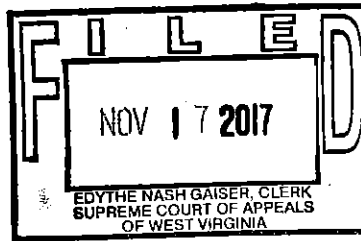
encl.

cc: Hon. Derek C. Swope, w/encl.  
Lorri Stotler, w/encl.  
Peter DeMasters, Esq., w/encl.

**IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA**

**Meral, Inc.,**  
a West Virginia corporation,

Plaintiff,



v.

Circuit Court of Mercer County  
Civil Action No. 17-C-303  
(Judge Swope)

**Brewster, Morhous, Cameron, Caruth,**  
**Moore, Kersey & Stafford, PLLC,**  
a West Virginia professional limited liability company;  
**Lawrence E. Morhous;**  
and  
**Jerry J. Cameron,**

Defendants.

**SUPPLEMENT TO PLAINTIFF'S MOTION TO REFER ACTION TO BUSINESS  
COURT DIVISION**

Comes now Plaintiff, by counsel, and offers this supplement to its motion to refer to this matter to the Business Court Division filed on October 23, 2017 and in response to statements in Defendants' reply memorandum served November 13, 2017.

Defendants suggest that a legal malpractice action is not the type of claim that can or should be transferred to the Business Court Division. Defendants' reply memorandum, p. 4. In fact, Trial Court Rule 29.04(a)(3) excludes from the definition of "business litigation" consumer malpractice actions, thereby plainly indicating that malpractice actions arising from commercial transactions such as is presented here

constitute business litigation for the purposes of transfer to the Business Court Division.

The averments contained in Plaintiff's complaint also belie Defendants' contention that this litigation does not involve complex legal issues. The averments contained in Plaintiff's complaint concern a "transactional" legal malpractice claim growing out of a multimillion dollar transaction whereby Plaintiff sold its leasehold and mining rights to a large tract of metallurgical coal property. Unlike "litigation" malpractice cases where the claimed malpractice typically involves missed deadlines or failure to muster the appropriate evidence in an underlying lawsuit, transactional malpractice cases typically involve claims that counsel gave erroneous advice regarding a contemplated business transaction and/or prepared documents that did not adequately protect the client's interest. *See, e.g., Rubin Resources Inc. v. Morris*, 273 W.Va. 370, 787 S.E. 2d 671 (2016). Plaintiff's complaint alleges both erroneous advice and inadequate document preparation.

Plaintiff's complaint alleges that because of erroneous advice from and inadequate document preparation by its counsel, Plaintiff's right to receive payment of the agreed upon purchase price and future overriding royalty payments from buyer South Fork Coal Company were not adequately protected and preserved. The commercial issues presented in this litigation include collateralization of purchase money installments due Meral under its Asset Purchase Agreement with South Fork (Complaint, ¶¶17, 51a-c); preparation and recordation of documents of a type typically employed to establish a party's right to receive an overriding royalty

(Complaint, ¶¶18, 51f); and structuring of the transaction so that Meral retained a reversionary interest in the lease transferred to South Fork (Complaint, ¶¶30, 51e). The characterization and treatment of Plaintiff's rights under the Meral-South Fork Asset Purchase Agreement in South Fork's Chapter 11 bankruptcy proceeding (Complaint ¶¶31-40) plainly involve commercial issues which lend themselves to specialized knowledge and expertise as defined in Trial Court Rule 29.04(a) and favors transfer of this action to the Business Court Division.

Meral therefore asserts that the averments contained in its complaint describe a dispute between business entities arising from a complex commercial dispute the resolution of which would benefit from specialized knowledge and expertise in the subject matter of the litigation as contemplated by Trial Court Rule 29.04 and that, therefore, assignment to the Business Court Division is plainly indicated.

Respectfully submitted,  
Meral, Inc.,  
Plaintiff, by counsel



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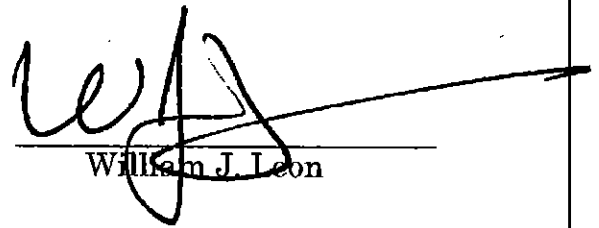
**CERTIFICATE OF SERVICE**

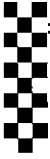
As required by Trial Court Rule 29.06(a)(3), I certify that on November 17, 2017, I caused the attached Supplement to Plaintiff's Motion to Refer to be served by placing the same in the United States Mail, first class and postage prepaid, upon counsel for Defendants at the following address:

Peter T. DeMasters  
Flaherty Sensabaugh Bonasso PLLC  
48 Donley Street, Suite 501  
Morgantown, WV 26501

I further certify that as required by said Trial Court Rule, I also caused a copy of this motion to be served upon the Hon. Derek C. Swope, the circuit judge assigned this action at the following address:

Hon. Derek C. Swope, Judge  
Circuit Court of Mercer County  
Mercer County Courthouse  
1501 Main Street, Suite 200  
Princeton, WV 24740

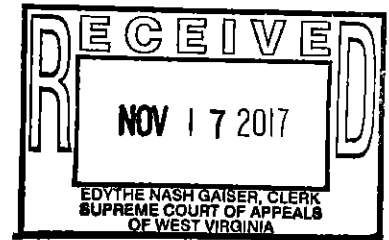
  
William J. Leon



# FAX

Date 11/17/2017

Number of pages including cover sheet: 6



To:

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Phone

Fax Phone (304) 558-3815

From:

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William Leon

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William J. Leon, LC

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Phone (304) 554-3880 \* 1

Fax Phone (888) 640-4782

## REMARKS:

Meral Inc. v Brewster Morhous et al.  
Circuit Court of Mercer County-civil action 17-C-303  
  
Motion to refer to Business Court Division