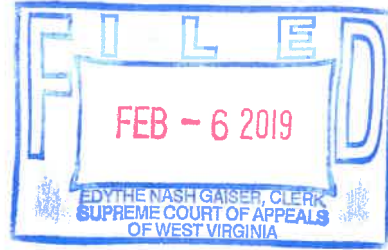


IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

Meral, Inc.,
a West Virginia corporation,

Plaintiff,



v.

Circuit Court of Mercer County
Civil Action No. 17-C-303
(Hon. William Sadler, Judge)

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

Defendants.

TO: THE HONORABLE CHIEF JUSTICE

**PLAINTIFF'S RENEWED MOTION TO REFER CASE TO THE BUSINESS COURT
DIVISION**

Pursuant to Rule 29.06 of the West Virginia Trial Court Rules, Meral, Inc., Plaintiff, by counsel, William J. Leon and Harley E. Stallings, respectfully requests the above-styled case be referred to the Business Court Division.

1. In regard to additional related actions:

- ☒ There are no known related actions.
- ☐ The following related actions could be the subject of consolidation, and are
- ☐ now pending
 - or
 - ☐ may be filed in the future. (Please list case style, number, and Court if any)

2. This action involves: (Please check all that apply)

<input checked="" type="checkbox"/> Breach of Contract;	<input checked="" type="checkbox"/> Professional Liability Claims in Connection with the Rendering of Professional Services to a Commercial Entity;
<input type="checkbox"/> Sale or Purchase of Commercial Entity;	<input type="checkbox"/> Anti-trust Actions between Commercial Entities;
<input checked="" type="checkbox"/> Sale or Purchase of Commercial Real Estate;	<input type="checkbox"/> Injunctive and Declaratory Relief Between Commercial Entities;
<input type="checkbox"/> Sale or Purchase of Commercial Products Covered by the Uniform Commercial Code;	<input type="checkbox"/> Liability of Shareholders, Directors, Officers, Partners, etc.
<input checked="" type="checkbox"/> Terms of a Commercial Lease;	<input type="checkbox"/> Mergers, Consolidations, Sale of Assets, Issuance of Debt, Equity and Like Interest;
<input type="checkbox"/> Commercial Non-consumer debts;	<input type="checkbox"/> Shareholders Derivative Claims;
<input type="checkbox"/> Internal Affairs of a Commercial Entity;	<input type="checkbox"/> Commercial Bank Transactions;
<input type="checkbox"/> Trade Secrets and Trademark Infringement;	<input type="checkbox"/> Franchisees/Franchisors;
<input type="checkbox"/> Non-compete Agreements;	<input type="checkbox"/> Internet, Electronic Commerce and Biotechnology
<input type="checkbox"/> Intellectual Property, Securities, Technology Disputes;	<input type="checkbox"/> Disputes involving Commercial Entities; or
<input type="checkbox"/> Commercial Torts;	<input type="checkbox"/> Other (Describe) _____
<input type="checkbox"/> Insurance Coverage Disputes in Commercial Insurance Policies;	

3. In support of this motion, this matter contains issues significant to businesses, and presents novel and/or complex commercial or technological issues for which specialized treatment will be helpful, as more fully described here:

This legal malpractice action grows out of Defendant Cameron and Morhous' representation of Plaintiff in a commercial transaction involving the sale of Plaintiff's coal leases concerning approximately 12,000 acres of metallurgical coal located in Falling Springs District,

Greenbrier County, West Virginia to South Fork Coal Company. The damages claimed by Meral, Inc. will be approximately \$7,000,000.00 by the time of trial.

Plaintiff Meral Inc. is a West Virginia corporation currently headquartered in Tennessee. Defendant Brewster, Morhous, Cameron, Caruth, Moore, Kersey and Stafford, PLLC is a West Virginia professional limited liability company. Defendant Brewster Morhous' offices are located in Bluefield, Mercer County, West Virginia. Defendants Lawrence Morhous and Jerry Cameron are attorneys licensed to practice in West Virginia and are members of Defendant Brewster Morhous.

Meral asserts that because of the failure of Morhous and Cameron to properly document the sale of Meral's rights to South Fork and, in particular, the failure of Morhous and Cameron to prepare documentation memorializing Meral's rights to receive overriding royalties on coal mined and sold by South Fork. Meral's right to receive such royalties were lost when South Fork reorganized in bankruptcy in 2015.

This matter contains issues significant to businesses and presents novel and/or complex commercial or technological issues for which specialized treatment will be helpful. For example, the case concerns the appropriate structuring of commercial transactions wherein the seller will not receive all consideration at closing but rather will receive future installment payments. The case also concerns the creation and preservation of overriding royalties in the context of mineral conveyancing. The case concerns issues regarding the effect of a reorganization in bankruptcy on a debtor's obligation to continue to pay overriding royalties due a seller/creditor such as Meral. The narrative portion of Plaintiff's Omnibus Memorandum filed in the Circuit Court of Mercer County sets forth more fully the complex factual background of the transaction and bankruptcy proceedings involving South Fork Coal Company. See Exhibit 1.

PROCEDURAL HISTORY

Since this case concerns the sale of mineral rights located in Greenbrier County, Meral initially brought suit in the Circuit Court of Greenbrier County on April 3, 2017. Defendants moved to dismiss the Greenbrier County action for lack of venue. By order entered July 27, 2017, the Circuit Court Greenbrier County granted Defendants motion to dismiss. A copy of the order of the Greenbrier County Circuit Court granting Defendants' motion to dismiss is attached as Exhibit 2. Meral disagreed with the Greenbrier Circuit Court's conclusion that venue for this action does not exist in Greenbrier County. Rather than incur the delay that would have resulted from an appeal from the Greenbrier County Court's order, Meral elected to commence this action in the Circuit Court of Mercer County. Mercer County is the principal place of business of Defendant Brewster Morhous and the residence of Defendants Morhous and Cameron. Meral filed the Mercer County action on August 4, 2017. The case was assigned to Judge Derek Swope.

This is Plaintiff's second motion to this Court requesting referral to the Business Court Division. Plaintiff filed a Motion to Refer with this Court on October 23, 2017. Both Greenbrier County and Mercer County are in Assignment Region F under Trial Court Rule 29.04. Per Trial Rule 29.07, reference to the Business Division would permit hearings and trial to be held in Greenbrier County if more convenient to the Presiding or Resolution Judge, or witnesses. By order entered November 22, 2017, then Chief Justice Loughry denied the first motion. A copy of Plaintiff's first motion to refer, excluding the attachments thereto, and Loughry's order are attached as Exhibits 3 and 4 Loughry's order stated that he "determined that this dispute does not require specialized treatment to improve the expectation of a fair and reasonable resolution, and, therefore, this case does not meet the criteria for referral under Rule 29.04(a)(2) of the West Virginia Trial Court Rules. Then, as now, Plaintiff disagreed with Loughry's conclusion regarding the appropriateness of this case for transfer to the Business Court Division. Indeed, as described

in this motion and the attachments thereto, it is difficult to conceive of a case more appropriate for transfer to the Business Court.

After denial of Plaintiff's first Motion to Refer, Plaintiff caused a scheduling conference to be set on February 13, 2018. The conference was presided over by Judge Swope's then law clerk. As a result of the scheduling conference, a jury trial was scheduled to begin on January 15, 2019. A final pretrial conference was scheduled for November 14, 2018. To accommodate a subsequent scheduling conflict of Defendants' counsel, the final pretrial was rescheduled to December 10, 2018.

The parties then engaged in extensive discovery. Seventeen depositions were taken at locations stretching from Newport, Tennessee to Newark, New Jersey. In addition to Defendants Morhous and Cameron, five expert witnesses are designated to testify at trial. Those experts include a mining engineer, three lawyers, and two certified public accountants. Plaintiff claims damages in the form of lost royalty income and future lost royalty income totaling over \$7 million. The case was mediated without success on November 6, 2018.

Ten motions in limine, a partial motion to dismiss, and a motion to compel discovery were filed and noticed for hearing at the December 10, 2018 pretrial conference. At the pretrial conference, Judge Swope did not consider the pending motions. Rather, he there advised the parties that he had extensive personal and professional relationships with members of Defendant Brewster Morhous. For example, Swope advised that he had recently presided over the wedding of Brewster Morhous attorney Kermit Moore who attended the pretrial. Swope advised that he was familiar with Fred and Leon Browning, who are shareholders and officers of Plaintiff Meral Inc, as well as other members of the Browning family. Swope indicated that while he was nevertheless willing to preside over the case, he would defer to counsel regarding whether he should assign the case to

another judge in the circuit. Swope advised that he had conferred with Judge Sadler who indicated his willingness assume responsibility for the case. After conducting impromptu mediation discussions on December 10 that proved unsuccessful, Swope entered an order assigning the case to Judge Sadler. A copy of that order is attached as Exhibit 5. The case is now set for a final pretrial conference before Sadler on May 6, 2019 and for a jury trial beginning on May 21, 2019. Judge Sadler has not indicated whether he has personal or professional relationships with either party.

4. As required by Trial Court Rule 29.06(a)(1), a copy of the Mercer County complaint, the answer of Defendant Brewster Morhous, and the Mercer County docket sheet are attached as Exhibits 6, 7 and 8 respectively.

5. There are no additional related actions pending or contemplated between the parties. The principal claims in this action involve matters of significance to transactions between business entities as required by Trial Court Rule 29.04(a)(1).

6. As required by Trial Court Rule 29.04(a)(2), the dispute concerns commercial issues for which specialized treatment is likely to improve the expectation of a fair and reasonable resolution of the dispute because the need for specialized knowledge and expertise in the subject matter or familiarity of some specific law or legal principle that may be applicable. This action **does not** involve consumer litigation, consumer malpractice actions or other claims of the type identified in Trial Court Rule 29.04(a)(3).

7. Wherefore, Plaintiff asserts that referral of this action to the Business Court Division is permissible under Trial Court Rule 29.06 and respectfully requests that Plaintiff's motion be granted; that an order referring this action to the Business Court Division be entered by the Court; and for such other and further relief as the Court deems appropriate

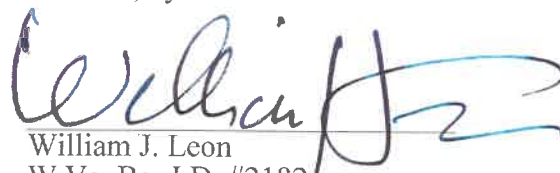
In regard to expedited review, the Movant:

- ☒ DOES NOT request an expedited review under W.Va. Trial Court Rule 29.06(a)(4), and gives notice that all affected parties may file a memorandum stating their position, in accordance with W.Va. Trial Court Rule 29.
- ☐ hereby REQUESTS that the Chief Justice grant this Motion to Refer without responses, pursuant to W.Va. Trial Court Rule 29.06(a)(4), and contends that the following constitutes good cause to do so: _____

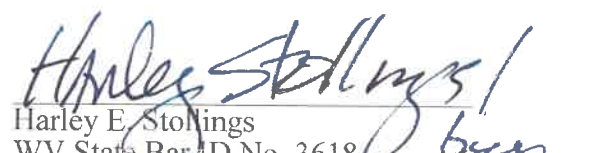

WHEREFORE, the undersigned hereby moves, pursuant to W.Va. Trial Court Rule 29, the Chief Justice of the West Virginia Supreme Court of Appeals to refer this case to the Business Court Division.

Respectfully submitted, this 4th day of February 2019.

Meral, Inc.,
Plaintiff, by counsel


William J. Leon
W.Va. Bar I.D. #2182
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and


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Summersville, WV 26651
304-872-7330


CERTIFICATE OF SERVICE

As required by Trial Court Rule 29.06(a)(3), I certify that on February 4th, 2019, I caused the attached Motion to Refer to be served via facsimile transmission and 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. William Sadler, the circuit judge assigned this action at the following address:

Hon. William Sadler, Judge
Circuit Court of Mercer County
Mercer County Courthouse
1501 Main Street, Suite 200
Princeton, WV 24740


William J. Leon