

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

**Meral, Inc.,  
A West Virginia Corporation.**

**Plaintiff.**

v.

**Civil Action No. 17-C-303  
Judge Sadler**

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

**Defendants.**



**DEFENDANT BREWSTER, MORHOUS, CAMERON, CARUTH,  
MOORE, KERSEY & STAFFORD, LAWRENCE E. MORHOUS, AND JERRY J.  
CAMERON'S REPLY IN OPPOSITION TO MERAL, INC.'S RENEWED MOTION TO  
REFER ACTION TO THE BUSINESS COURT DIVISION**

COME NOW Defendants Brewster, Morhous, Cameron, Caruth, Moore, Kersey & Stafford ("Brewster Morhous"), Lawrence E. Morhous ("Morhous"), and Jerry J. Cameron ("Cameron") (collectively "Defendants"), by counsel, Peter T. DeMasters, John T. McCartney, and the law firm of Flaherty Sensabaugh Bonasso, PLLC, and pursuant to Trial Court Rule 29.06(a)(1), submit their *Reply in Opposition to Meral, Inc.'s Renewed Motion to Refer Action to the Business Court Division* ("Reply"). Meral, Inc.'s ("Plaintiff") claims of attorney malpractice and breach of contract in the instant litigation do not involve complex business issues; to the contrary, the major inquiries in this case are rather simple and straight forward, requiring no intricate or expert knowledge of complex commercial issues. Notably, this issue has been ruled upon by the West Virginia Supreme Court of Appeals. *See Supreme Court of Appeals of West Virginia November 27, 2017 Opinion*, attached as Exhibit A. The Supreme Court held that this matter "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)." *Id.* There are no new issues presented in this matter since the Supreme Court's November 27, 2017 ruling. Thus, the present case does not warrant referral to the business

court division and should remain in the Circuit Court of Mercer County. In support of this Reply, Defendants state the following:

### **FACTS AND PROCEDURAL POSTURE**

Plaintiff filed its original *Motion to Refer Action to the Business Court Division* (“Motion to Refer”) on October 18, 2017. See *October 18, 2017 Motion to Refer*, attached as Exhibit B. Defendants replied to Plaintiff’s original motion to refer on November 13, 2017. See *Defendants’ Reply in Opposition to Meral, Inc.’s Motion to Refer Action to the Business Court Division*, attached as Exhibit C. Since the filing of Plaintiff’s original Motion to Refer, no amendments to the Complaint have been made. The allegations and parties are the same as they were when Plaintiff filed his original Motion to Refer. Defendants, therefore, incorporate the facts and allegations as outlined in their November 13, 2017 reply. See Exhibit C.

### **ARGUMENT**

Defendants incorporate their arguments as outlined in the November 13, 2017 reply to Plaintiff’s original motion to refer. See Exhibit C. As Defendants’ previously noted, the allegations in this matter are related to attorney malpractice, not “transactions between business entities.” Further, whether Defendants’ breached the requisite standard of care as counsel for Plaintiffs does not involve issues which require “specialized treatment” or “specialized knowledge or expertise”. Now, in light of those arguments previously accepted by the Supreme Court of West Virginia, Plaintiff is making a clear attempt to forum shop.

Plaintiff does not try to hide the fact that he is working to circumvent Judge Dent’s dismissal of this action from the Circuit Court of Greenbrier County for lack of venue. See *Dismissal Order*, attached as Exhibit D. In its Renewed Motion to Refer, Plaintiff highlights that it “disagreed with the Greenbrier Circuit Court’s conclusion that venue for this action does not exist in Greenbrier County” and now makes this motion because “the Business Division would permit hearings and trial to be held in Greenbrier County[.]” See *Renewed Motion to Refer* at p. 4. As Justice Brotherton noted in his dissent in *Kidwell v. Westinghouse Elec. Co.*, “one of the purposes of the venue rules was to prevent forum shopping.” 178 W. Va. 161, 358 S.E.2d 420

(1986) (citing *Rodriguez v. Grand Trunk Western R.R. Co.*, 120 Mich. App. 599, 328 N.W.2d 89 (1982)). Justice Brotherton highlighted the most nefarious use of venue shopping when he explained that “[i]f we allowed plaintiffs to sue in any court in the State, courts giving larger verdicts would be overrun with plaintiffs.” *Id.* This Court must not allow blatant venue shopping, particularly when it attempts to place a matter of this nature in the Business Division to avoid proper venue in Mercer County. At this time, Judge William Sadler has accepted assignment of this matter based upon Judge Derek Swope’s conflicts and the appropriate venue remains in Mercer County.

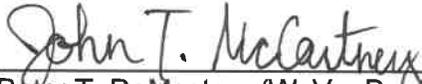
In sum, a referral of this case to business court would be contrary to the business court’s stated purpose and intent. It would further be a waste of time, as the case is properly in Mercer County Circuit Court before the honorable William Sadler. Further, removal to business court would further delay this matter and sanction clear efforts to forum shop.

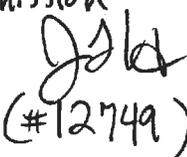
#### **CONCLUSION**

For all the foregoing reasons, the Defendants respectfully requests that this Court deny Plaintiff’s Renewed Motion to Refer Action to Business Court Division and allow this case to properly remain in Mercer County Circuit Court.

**BREWSTER, MORHOUS, CAMERON,  
CARUTH, MOORE, KERSEY & STAFFORD,  
PLLC, LAWRENCE E. MORHOUS, and JERRY J.  
CAMERON**

**By Counsel**

 *w/ permission*  
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## ADMINISTRATIVE ORDER

### SUPREME COURT OF APPEALS OF WEST VIRGINIA

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

**vs.) Civil Action No. 17-C-303 (Mercer County)**

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

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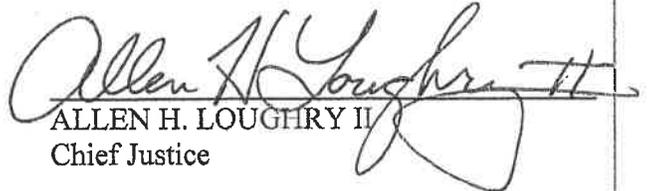
JULIE BALL  
CLERK CIRCUIT COURT  
MERCER COUNTY

The Chief Justice of the Supreme Court of Appeals has been advised that Plaintiff Meral, Inc., by counsel, William J. Leon and the law firm of William J. Leon, LC, has filed a motion to refer the above-referenced case to the Business Court Division pursuant to Rule 29 of the West Virginia Trial Court Rules, and a supplement thereto. Defendants Brewster, Morhous, Cameron, Caruth, Moore, Kersey & Stafford, Lawrence E. Morhous, and Jerry J. Cameron, by counsel Peter T. DeMasters, John T. McCartney, and the law firm of Flaherty Sensabaugh Bonasso, PLLC, filed a response in opposition to the motion to refer.

Upon careful review and consideration of the motion, the supplement, and the response thereto, the Chief Justice has 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.

It is hereby ORDERED that the motion to refer this case to the Business Court Division is DENIED and that a copy of this order be transmitted to the Honorable Christopher C. Wilkes, Chair of the Business Court Division; to the Central Office of the Business Court Division; the Honorable Derek C. Swope, Judge of the Ninth Judicial Circuit; and to the Clerk of the Circuit Court of Mercer County, who is to provide copies of the same to all parties of record or their counsel.

ENTERED: NOVEMBER 22, 2017

  
ALLEN H. LOUGHRY II  
Chief Justice

EXHIBIT

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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.

**MOTION TO REFER ACTION TO BUSINESS COURT DIVISION**

Comes now Plaintiff, by counsel, pursuant to Rule 29.06 of the West Virginia Trial Court Rules, and moves that this action be referred and transferred to the Business Court Division. Plaintiff asserts the following grounds in support of its motion.

1. Plaintiff Meral Inc. is a corporation formed under West Virginia law currently headquartered in Tennessee.
2. Defendant Brewster, Morhous, Cameron, Caruth, Moore, Kersey and Stafford, PLLC is a professional limited liability company formed under West Virginia law. Defendant Brewster Morhous' offices are located in Bluefield, Mercer County, West Virginia.



3. As required by Trial Court Rule 29.06(a)(1), a copy of the complaint, the answer of Defendant Brewster Morhous, and docket sheet are attached to this motion as Exhibits A, B and C respectively.

4. As described in the attached complaint, this legal malpractice action grows out of Defendants' representation of Plaintiff in a commercial transaction involving the sale of Plaintiff's rights to mine metallurgical coal on approximately 11,000 acres located in Falling Springs District, Greenbrier County, West Virginia.

5. Plaintiff initially brought this action in the Circuit Court of Greenbrier County, West Virginia on April 3, 2017. The action was there identified as Civil Action 17-C-72. Defendants moved to dismiss the action alleging that venue in Greenbrier County was improper. Meral opposed the motion.

6. By order entered July 27, 2017, the Circuit Court of Greenbrier County granted Defendants' motion to dismiss. While Meral respectfully disagrees with the Greenbrier Circuit Court's conclusion that venue for this action does not exist in Greenbrier County, Meral opted to commence the present action in Mercer County. Meral's Mercer County complaint was filed on August 4, 2017.

7. There are no additional related actions pending or contemplated between the parties.

8. 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).

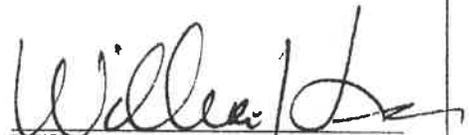
9. As required by Trial Court Rule 29.04(a)(2) the dispute concerns commercial issues for which specialized treatment is likely to improve the

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.

10. 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).

Wherefore, Plaintiff asserts that transfer 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 transferring this action to the Business Court Division be entered by the Court; and for such other and further relief as the Court deems appropriate.

Meral, Inc.,  
Plaintiff, by counsel



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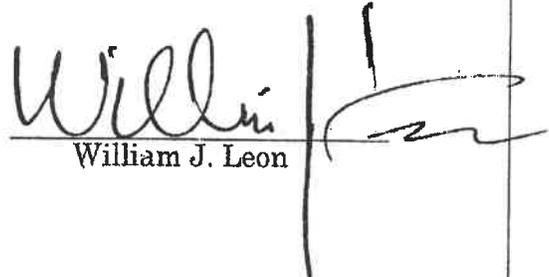
CERTIFICATE OF SERVICE

As required by Trial Court Rule 29.06(a)(3), I certify that on October 18<sup>th</sup>, 2017, 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. 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

**IN THE CIRCUIT COURT OF MERCER COUNTY, WEST VIRGINIA**

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

Plaintiff,

v.

Civil Action No. 17-C-\_\_\_\_\_

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

Defendants.

**COMPLAINT**

Comes now Plaintiff Meral Inc., by counsel, pursuant to Rule 15(a) of the West Virginia Rules of Civil Procedure, and for its amended complaint, avers and states as follows:

1. Plaintiff, Meral, Inc. is a corporation formed under West Virginia law.
2. Defendant Brewster, Morhous, Cameron, Caruth, Moore, Kersey & Stafford, PLLC (hereafter "Brewster Morhous") is a professional limited liability company formed under West Virginia law. Brewster Morhous' offices are located in Bluefield, Mercer County, West Virginia.
3. Brewster Morhous, by and through its members and employees, is engaged in the practice of law throughout southern West Virginia.
4. Defendant Lawrence E. Morhous is an attorney licensed to practice law in West Virginia and resides in Bluefield, Mercer County, West Virginia.

5. Defendant Jerry J. Cameron is an attorney licensed to practice law in West Virginia and, on information and belief, resides in Mercer County, West Virginia.

6. At all times relevant hereto, Defendants Morhous and Cameron were members of Defendant Brewster Morhous engaged in the practice of law as members and employees of Defendant Brewster Morhous.

7. This action asserts claims of professional liability, breach of contract and vicarious liability against Defendants residing and conducting business in Mercer County West Virginia. Plaintiff's complaint seeks damages in excess of applicable jurisdictional limits. Therefore, this Court has personal jurisdiction over the parties and subject matter jurisdiction over the matters in dispute.

8. Defendants Morhous and Cameron reside in Mercer County, West Virginia and Defendant Brewster Morhous is headquartered in Mercer County, West Virginia. Venue in Mercer County is therefore appropriate.

#### **GENERAL AVERMENTS**

9. In May 2008, Meral, by and through its agent, Leon Browning, began negotiations with WPP, LLC, a Delaware limited liability company, about the possibility of Meral leasing several thousand acres of metallurgical coal owned by WPP and located in Falling Spring District, Greenbrier County, West Virginia. Those negotiations resulted in an agreement between Meral and WPP regarding the leasing of said coal.

10. That Meral and WPP entered into a Coal Mining Lease dated August 13, 2008 (hereafter "the WPP lease") whereby Meral acquired the exclusive right to mine and sell coal from approximately 11,000 acres of metallurgical coal reserves owned by WPP and located in Falling Spring District, Greenbrier County.

11. That Defendant Morhous represented Meral during Meral's negotiations with WPP concerning the leasing of said coal and the preparation of said Coal Mining Lease.

12. That having acquired the WPP lease, Meral set about acquiring the rights to a coal loading facility owned by Mead Westvaco in Greenbrier County, West Virginia located near the WPP leasehold. Such realty was necessary to allow coal mined from the WPP leasehold to be loaded on railcars for shipment.

13. That as a result of such negotiations, Plaintiff and Mead Westvaco entered into a Coal Load-Out facility Lease and Easement (hereafter "the Load-Out agreement") dated November 30, 2011. Defendant Morhous represented Plaintiff in the preparation of said contract.

14. That in October 2010, Meral began negotiations whereby Meral would assign certain of its rights to mine and ship coal pursuant to the WPP lease and Load-out Agreement. Such negotiations resulted in Meral entering into an Asset Purchase Agreement dated January 31, 2011 with South Fork Mining Company, LLC, a limited liability company formed under West Virginia law (hereafter "South Fork").

15. That per the terms of the Asset Purchase Agreement, South Fork acquired Meral's right to mine and sell coal from the WPP leasehold and Meral's rights under the Load-Out agreement.

16. That per to the terms of said Asset Purchase Agreement, in exchange for assignment of certain of Meral's rights under the WPP lease and the Load-Out agreement, Meral was to receive cash payments totaling \$5.2 million (hereafter the "purchase price")

17 That per the terms of the Asset Purchase Agreement, Meral received \$1.7 million of the purchase price at the closing of the Asset Purchase Agreement transaction held on January 31, 2011. Meral was to receive \$2.5 million of the purchase price upon South Fork's acquisition of permits necessary to conduct mining operations on the WPP leasehold and a final payment of \$1 million within 18 months of South Fork having acquired said mining permits.

18. That in addition to the purchase price, the Asset Purchase Agreement provided that Meral would receive an overriding royalty on coal mined and sold from the WPP leasehold entitling Meral to receive a payment of an amount specified in the Agreement on each ton of coal mined and sold from the leasehold (hereinafter the "overriding royalty").

19. That Defendant Morhous represented Meral during negotiations that resulted in said Asset Purchase Agreement and the preparation of said Agreement and related documents.

20. That Defendant Cameron represented Meral during Meral's negotiations that resulted in said Asset Purchase Agreement and in the preparation of said Agreement and related documents.

21. Defendant Cameron represented Meral at the closing of the Asset Purchase Agreement on January 31, 2011.

22. Having acquired the necessary permits to conduct mining operations on the WPP leasehold, on September 18, 2012, South Fork paid Meral the \$2.5 purchase price installment due Meral per the terms of the Asset Purchase Agreement.

23. Per the terms of the Asset Purchase Agreement, the final \$1 million purchase price installment was due Meral on March 18, 2014.

24. As the date for payment of the \$1 million purchase price installment neared, South Fork approached Meral and requested that Meral consider amending the Asset Purchase Agreement to allow South Fork to pay Meral the \$1 million purchase price balance in installments.

25. Negotiations between South Fork and Meral resulted in the execution of an amendment to the Asset Purchase Agreement dated March 17, 2014.

26. Per the terms of said amendment, Meral would receive \$200,000.00 on April 15, 2014. Said amendment further provided that beginning on July 15, 2014 and continuing on the 15<sup>th</sup> day of each third month thereafter, Meral would receive an additional installment of not less than \$50,000.00 until the balance of the purchase price was paid in full.

27. Defendant Morhous represented Meral during Meral's negotiations with South Fork that resulted in the amendment to the Asset Purchase Agreement and in the preparation of documents memorializing said amend.

28. In their capacity as counsel for Plaintiff Meral, Defendants Morhous and Cameron failed to prepare a deed of trust, financing statement, or other document granting Meral a security interest in South Fork's assets sufficient to secure payment of the purchase price installment payments due Meral pursuant to the Asset Purchase Agreement.

29. Defendant Morhous failed to recommend to Meral that in exchange for Meral's agreement to restructure payment of the final \$1 million installment of the purchase price, South Fork provide Meral with security sufficient to assure such payment in the event South Fork breached the terms of the amended Asset Purchase Agreement.

30. Defendant Morhous erroneously advised and assured Meral that the terms of the Asset Purchase Agreement provided that Meral could eject South Fork and retake possession of the WPP leasehold and Meral's rights under the 2008 WPP lease and the Load-Out agreement if South Fork failed to pay either the purchase price or overriding royalties due Meral pursuant to the Asset Purchase Agreement

31. That on April 6, 2015, South Fork and several related corporate entities commenced a Chapter 11 bankruptcy proceeding in the United States Bankruptcy Court for the Western District of Virginia (hereafter "the Bankruptcy Court"). Said

bankruptcy proceedings were consolidated for joint administration and thereafter identified as Case 15-70444.

32. That when South Fork commenced said bankruptcy proceeding, Meral was owed \$671,812.14 of the \$5.2 million purchase price owed Meral per the terms of the amended Asset Purchase Agreement.

33. That when South Fork commenced said bankruptcy proceeding, Meral was owed \$109,920.55 in overriding royalty payments due Meral per the terms of the Asset Purchase Agreement.

34. That despite having commenced said bankruptcy proceeding, South Fork continued to pay Meral overriding royalties for coal mined after the date South Fork had commenced bankruptcy.

35. That on July 27, 2015, Meral filed a proof of claim in said bankruptcy proceeding asserting that the unpaid balance of the purchase price and unpaid overriding royalty payments due Meral under the Asset Purchase agreement constituted secured claims.

36. That on or about September 10, 2015, South Fork made the last overriding royalty payment to Meral pursuant to the terms of the Asset Purchase Agreement.

37. That on November 6, 2015, South Fork objected to Meral's proof of claim to the extent that Meral asserted that it was a secured creditor.

38. That in reliance on the advice and recommendations of Defendant Morhous, on November 9, 2015, Meral filed a motion in the South Fork bankruptcy

seeking authorization from the Bankruptcy Court to allow Meral to eject South Fork and retake possession of the WPP leasehold and loadout facility pursuant to Paragraph 3(a)(vii) of the Asset Purchase Agreement.

39. On November 24, 2015, South Fork filed its objection to Meral's motion seeking authorization to retake possession of the WPP leasehold, arguing that under the terms of the Asset Purchase Agreement, Meral conveyed all its interest in the WPP leasehold and loadout facility to South Fork and, as such, had no right to retake possession of the WPP leasehold and loadout facility under West Virginia law.

40. That by order entered on February 3, 2016, the Bankruptcy Court found that Meral had failed to record documents among the Greenbrier County land records to perfect a security interest in South Fork's assets and thereby secure payment of the balance of the purchase price and unpaid production royalties owed Meral. As a result, the Bankruptcy Court classified Meral as an unsecured creditor. The Court further found that having conveyed away all its rights to the WPP leasehold and loadout facility, Meral could assert no right to retake possession of the WPP leasehold and loadout facility under West Virginia law.

40. That Meral timely appealed the Bankruptcy Court's ruling to the United States District Court for the Western District of Virginia.

41. That by order entered December 13, 2016, the United States District Court for the Western District of Virginia affirmed the Bankruptcy Court's order classifying Meral an unsecured creditor and affirming the Bankruptcy Court's ruling

that Meral had no right to retake possession of the WPP leasehold and loadout facility.

42. By order entered January 27, 2016, said Bankruptcy Court confirmed South Fork's plan of reorganization.

43. Per the terms of South Fork's plan of reorganization, unsecured creditors such as Meral will receive approximately 4¢ on the dollar on their claims.

44. Per the terms of South Fork's plan of reorganization, South Fork characterized the Asset Purchase Agreement as an executory contract and rejected the same. South Fork contends that as a result, it has no obligation to pay Meral an overriding royalty on coal mined and sold pursuant to the WPP lease.

45. South Fork continues to mine and sell coal from the WPP leasehold pursuant to the terms of the WPP lease.

46. That since confirmation of South Fork's plan of reorganization, Meral has received no overriding royalty payments from South Fork on coal mined and sold from the WPP lease.

#### **I. PROFESSIONAL LIABILITY**

47. Plaintiff restates the averments contained in Paragraphs 1 through 46 of the Complaint.

48. That Defendants Morhous and Cameron knew that in acquiring the WPP lease and the Load-Out agreement, Meral intended to mine and sell coal from the WPP leasehold.

49. That before entering into the Asset Purchase Agreement with South Fork, Defendants Morhous and Cameron assured Meral that if South Fork failed to perform its obligations under the Asset Purchase Agreement, said Agreement entitled Meral to retake possession of the WPP leasehold and the Load-Out facility, thereby allowing Meral to mine and sell coal from the WPP leasehold.

50. That in providing legal services and representation to Meral, Defendants Morhous and Cameron had a duty to exercise such skill, prudence and diligence as members of the legal profession commonly possess and exercise.

51. That during their representation of Meral, the conduct of Defendants Morhous and Cameron fell below the applicable standard of care in numerous respects, including, but not limited to:

- a. failing to recommend and require that Meral's right to receive purchase price payments under the Asset Purchase Agreement be secured by assets owned or subsequently acquired by South Fork;
- b. failing to prepare a deed of trust, security agreement, financing statement or other documents necessary to create a security interest in favor of Meral securing payment of the purchase price due Meral under the Asset Purchase Agreement;
- c. failing to cause a deed of trust, security agreement, financing statement or other appropriate documents creating a security interest in favor of Meral and securing payment of the purchase price due Meral under the Asset Purchase Agreement to be recorded by the Clerk of the County

Commission of Greenbrier County, West Virginia, thereby perfecting such security interest;

- d. erroneously advising Meral that the terms of the Asset Purchase Agreement gave Meral the right to eject South Fork retake possession of the WPP leasehold and Load-Out facility if South Fork failed to pay the purchase price and royalty payments due Meral or otherwise failed to meet its obligations under the Asset Purchase Agreement.
- e. failing to prepare and record with the Clerk of the County commission of Greenbrier County documents containing language sufficient to preserve Meral's reversionary interest in the WPP leasehold exercisable by Meral upon South Fork's failure to pay amounts owed Meral pursuant to the Asset Purchase Agreement.
- f. failing to prepare and record with the Clerk of the County Commission of Greenbrier County documents of the type typically prepared and recorded in transactions in West Virginia whereby a party receives or retains an overriding royalty interest in minerals;
- g. failing to consider, conduct legal research and take such steps as were reasonably prudent and necessary to protect Meral's rights under the Asset Purchase Agreement in the event of South Fork's bankruptcy or insolvency.

52. That as a direct and proximate result of the errors, acts and omissions of Defendants Morhous and Cameron, each of which constitutes a breach or violation

of the duty of care owed Plaintiff by said Defendants, Plaintiff cannot recover possession of the WPP leasehold and loadout facility.

53. That as a direct and proximate result of the errors, acts and omissions of Defendants Morhous and Cameron, each of which constitutes a breach or violation of the duty of care owed Plaintiff by said Defendants, Plaintiff suffered a loss of \$671,812.14 of the purchase price and \$109,920.55 in accrued overriding royalty payments due Meral per the terms of the Asset Purchase Agreement.

54. That as a direct and proximate result of the errors, acts and omissions of Defendants Morhous and Cameron, each of which constitutes a breach or violation of the duty of care owed Plaintiff by said Defendants, Plaintiff will incur lost income in the form of an overriding royalty interest on coal mined and sold from the WPP leasehold, the estimated value of which exceeds \$20,000,000.00.

Wherefore, Plaintiff Meral, Inc. asks that judgment be rendered in its favor and against Defendant Lawrence E. Morhous and Defendant Jerry J. Cameron, jointly and severally; that Meral be awarded damages, including the balance due on the purchase price owed Meral under the terms of the Asset Purchase Agreement; accrued overriding royalty payments; and lost future income sufficient to compensate it for all losses suffered and to be suffered as a result of the errors, omissions and other actionable conduct of Defendants Morhous and Cameron and in an amount in excess of any applicable jurisdictional limit; that Meral be awarded its costs and attorney fees; and such other and further relief as the Court deems appropriate.

## II. BREACH OF CONTRACT

55. Plaintiff restates the averments contained in Paragraphs 1 through 54 of the Complaint.

56. That Defendants Morhous and Cameron expressly or impliedly contracted to exercise ordinary professional skill, knowledge and judgment in their rendition of professional services to Plaintiff Meral.

57. That Defendants Morhous and Cameron failed to exercise ordinary professional skill and knowledge in their rendition of professional services to Plaintiff Meral in its dealings with South Fork, all of which constitutes a breach of contract.

58. That as a direct and proximate result of Defendants Morhous and Cameron breach of contract, Plaintiff could not recover possession of the WPP leasehold and loadout facility.

59. That as a direct and proximate result of the errors, acts and omissions of Defendants Morhous and Cameron, each of which constitutes a breach of contract, Plaintiff suffered a loss of \$671,812.14 of the purchase price and \$109,920.55 in accrued overriding royalty payments due Meral per the terms of the Asset Purchase Agreement.

60. That as a direct and proximate result of the errors, acts and omissions of Defendants Morhous and Cameron, each of which constitutes a breach of contract, Plaintiff will incur lost income in the form of an overriding royalty interest on coal

mined and removed from the WPP leasehold, the estimated value of which exceeds \$20,000,000.00.

Wherefore, Plaintiff Meral, Inc. asks that judgment be rendered in its favor and against Defendant Lawrence E. Morhous and Defendant Jerry J. Cameron, jointly and severally; that Meral be awarded damages, including the balance due on the purchase price owed Meral under the terms of the Asset Purchase Agreement; accrued overriding royalty payments; and lost future income sufficient to compensate it for all losses suffered and to be suffered as a result of the errors, omissions and other actionable conduct of Defendants Morhous and Cameron and in an amount in excess of any applicable jurisdictional limit; that Meral be awarded its costs and attorney fees; and such other and further relief as the Court deems appropriate.

### **III. LIABILITY FOR ACTS AND OMISSIONS OF MEMBERS**

61. Plaintiff restates the averments contained in Paragraphs 1 through 60 of the Complaint.

62. That Defendant Brewster Morhous is a professional limited liability company formed under the laws of the state of West Virginia.

63. That per West Virginia Code §31B-13-1305(c), a professional limited liability company is liable for the acts or omissions of its members and employees while carrying on the business of the professional limited liability company to the same extent any other limited liability company would be liable for the acts or omissions of its members and employees.

64. Per West Virginia Code §31B-3-302, a limited liability company is liable for loss or injury caused as a result of a wrongful act, omission or other actionable conduct of a member acting in the ordinary course of business of the limited liability company.

65. That at all times relevant hereto, Defendants Morhous and Cameron have been members and employees of Defendant Brewster Morhous.

66. That during their representation of Plaintiff, Defendants Morhous and Cameron acted negligently and in violation of applicable professional standards of care.

67. That as a direct and proximate result of the errors, acts, omissions and actionable conduct of Defendants Morhous and Cameron, Plaintiff cannot recover possession of WPP leasehold and loadout facility.

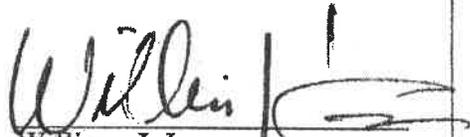
68. That as a direct and proximate result of the errors, acts and omissions of Defendants Morhous and Cameron, each of which constitutes a breach of contract, Plaintiff suffered a loss of \$671,812.14 of the purchase price and \$109,920.55 in accrued overriding royalty payments due Meral per the terms of the Asset Purchase Agreement.

69. That as a direct and proximate result of the errors, acts and omissions of Defendants Morhous and Cameron, each of which constitutes a breach of contract, Plaintiff will incur lost income in the form of an overriding royalty interest on coal mined and removed from the WPP leasehold, the estimated value of which exceeds \$20,000,000.00.

Wherefore, Plaintiff Meral, Inc. asks that judgment be rendered in its favor and against Defendant Brewster. Morhous, Cameron, Caruth, Moore, Kersey & Stafford, PLLC; that Meral be awarded damages, including the balance due on the purchase price owed Meral under the terms of the Asset Purchase Agreement; accrued overriding royalty payments; and lost future income sufficient to compensate it for all losses suffered and to be suffered as a result of the errors, omissions and other actionable conduct of Defendants Morhous and Cameron and in an amount in excess of any applicable jurisdictional limit; that Meral be awarded its costs and attorney fees; and such other and further relief as the Court deems appropriate.

**PLAINTIFF REQUESTS A TRIAL BY JURY**

Meral, Inc.,  
Plaintiff, by counsel



William J. Leon  
W.Va. Bar I.D. #2182  
William J. Leon, LC  
1200 Dorsey Ave., Suite III  
Morgantown, WV 26501  
304-554-3880  
jay@jayleonlaw.com

IN THE CIRCUIT COURT OF MERCER COUNTY, WEST VIRGINIA

Meral, Inc.,  
A West Virginia Corporation.

Plaintiff.

v.

Civil Action No. 17-C-303-DS

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

Defendants.

ANSWER OF BREWSTER, MORHOUS, CAMERON, CARUTH,  
MOORE, KERSEY & STAFFORD, PLLC

NOW COMES the defendant, Brewster, Morhous, Cameron, Caruth, Moore, Kersey & Stafford, PLLC ("Defendant"), by counsel, and answers or otherwise responds to the allegations set forth in Plaintiff's Complaint as follows:

FIRST DEFENSE

Defendant, not being fully advised of all the circumstances surrounding the allegations set forth in the Complaint, reserves the defense that claims set forth in the Complaint fail or may fail to state claims against the Defendant upon which relief may be granted and should, therefore, be dismissed as a matter of law pursuant to Rule 12(b)(6) of the West Virginia Rules of Civil Procedure.

SECOND DEFENSE

For responses to the specific allegations set forth in the Complaint, Defendant states as follows:

Exhibit B

1. Answering paragraph numbered one (1) of the Complaint, Defendant is without sufficient information or knowledge upon which to form a belief as to the truth of the allegations contained therein, and, therefore, denies the same.

2. Answering paragraph numbered two (2) of the Complaint, Defendant admits the allegations contained therein.

3. Answering paragraph numbered three (3) of the Complaint, Defendant admits the allegations contained therein.

4. Answering paragraph numbered four (4) of the Complaint, Defendant admits the allegations contained therein.

5. Answering paragraph numbered five (5) of the Complaint, Defendant admits that Jerry J. Cameron is an attorney licensed to practice law in West Virginia but denies that he resides in Mercer County, West Virginia.

6. Answering paragraph numbered six (6) of the Complaint, Defendant admits that Lawrence E. Morhous was and is currently a member of Defendant and that Jerry J. Cameron was a member of Defendant, both engaged in the practice of law as members of Defendant at all times relevant hereto, but denies that Lawrence E. Morhous and Jerry J. Cameron were employees of Defendant.

7. Answering the first and second sentences of paragraph numbered seven (7) of the Complaint, Defendant states that the Complaint and the allegations contained therein speak for themselves. To the extent Plaintiff misrepresents the Complaint and the allegations contained therein in the first and second sentence of paragraph numbered seven (7), the allegations contained in the first and second sentence are denied. Answering the remainder of paragraph numbered seven (7), Defendant states

this portion of the paragraph calls for a legal conclusion to which no response is required. To the extent a response is required, Defendant is without sufficient information or knowledge upon which to form a belief as to the truth of the allegations contained therein, and, therefore, denies the same.

8. Answering paragraph numbered eight (8) of the Complaint, Defendant admits that Lawrence E. Morhous resides in Mercer County, West Virginia but denies that Jerry J. Cameron resides in Mercer County, West Virginia. Defendant further admits that it is headquartered in Mercer County, West Virginia. Answering the remaining allegations contained in paragraph numbered eight (8) of the Complaint, Defendant states this portion of the paragraph calls for a legal conclusion to which no response is required. To the extent a response is required, Defendant is without sufficient information or knowledge upon which to form a belief as to the truth of the allegations contained therein, and, therefore, denies the same.

#### **General Averments**

9. Answering paragraph numbered nine (9) of the Complaint, Defendant is without sufficient information or knowledge upon which to form a belief as to the truth of the allegations contained therein, and, therefore, denies the same.

10. Answering paragraph numbered ten (10) of the Complaint, Defendant is without sufficient information or knowledge upon which to form a belief as to the truth of the allegations contained therein, and, therefore, denies the same.

11. Answering paragraph numbered eleven (11) of the Complaint, Defendant denies the allegations contained therein.

12. Answering paragraph numbered twelve (12) of the Complaint, Defendant is without sufficient information or knowledge upon which to form a belief as to the truth of the allegations contained therein, and, therefore, denies the same.

13. Answering the first sentence of paragraph numbered thirteen (13) of the Complaint, Defendant denies the allegations contained therein. Answering the second sentence of paragraph numbered thirteen (13) of the Complaint, Defendant admits the allegations contained therein.

14. Answering the first sentence of paragraph numbered fourteen (14) of the Complaint, Defendant is without sufficient information or knowledge upon which to form a belief as to the truth of the allegations contained therein, and, therefore, denies the same. Answering the second sentence of paragraph numbered fourteen, Defendant admits the allegations contained therein.

15. Answering paragraph numbered fifteen (15) of the Complaint, Defendant states that the agreement speaks for itself. To the extent Plaintiff's representations of the agreement are inaccurate or otherwise incorrect, Defendant denies the allegations regarding the same.

16. Answering paragraph numbered sixteen (16) of the Complaint, Defendant states that the agreement speaks for itself. To the extent Plaintiff's representations of the agreement are inaccurate or otherwise incorrect, Defendant denies the allegations regarding the same.

17. Answering paragraph numbered seventeen (17) of the Complaint, Defendant states that the agreement speaks for itself. To the extent Plaintiff's

representations of the agreement are inaccurate or otherwise incorrect, Defendant denies the allegations regarding the same.

18. Answering paragraph numbered eighteen (18) of the Complaint, Defendant states that the agreement speaks for itself. To the extent Plaintiff's representations of the agreement are inaccurate or otherwise incorrect, Defendant denies the allegations regarding the same.

19. Answering paragraph numbered nineteen (19) of the Complaint, Defendant admits that Lawrence E. Morhous represented Plaintiff during negotiations but denies that he prepared the subject agreement.

20. Answering paragraph numbered twenty (20) of the Complaint, admits that Jerry Cameron represented Plaintiff during negotiations but denies that he prepared the subject agreement.

21. Answering paragraph numbered twenty-one (21) of the Complaint, Defendant admits the allegations contained therein. Defendant states that Lawrence E. Morhous was also present at the January 31, 2011 closing.

22. Answering paragraph numbered twenty-two (22) of the Complaint, Defendant is without sufficient information or knowledge upon which to form a belief as to the truth of the allegations contained therein, and, therefore, denies the same.

23. Answering paragraph numbered twenty-three (23) of the Complaint, Defendant states that the agreement speaks for itself. To the extent Plaintiff's representations of the agreement are inaccurate or otherwise incorrect, Defendant denies the allegations regarding the same.

24. Answering paragraph numbered twenty-four (24) of the Complaint, Defendant is without sufficient information or knowledge upon which to form a belief as to the truth of the allegations contained therein, and, therefore, denies the same.

25. Answering paragraph numbered twenty-five (25) of the Complaint, Defendant is without sufficient information or knowledge upon which to form a belief as to the truth of the allegations contained therein, and, therefore, denies the same.

26. Answering paragraph numbered twenty-six (26) of the Complaint, Defendant states that the amendment speaks for itself. To the extent Plaintiff's representations of the amendment are inaccurate or otherwise incorrect, Defendant denies the allegations regarding the same.

27. Answering paragraph numbered twenty-seven (27) of the Complaint, Defendant denies the allegations contained therein.

28. Answering paragraph numbered twenty-eight (28) of the Complaint, Defendant denies the allegations contained therein as stated.

29. Answering paragraph numbered twenty-nine (29) of the Complaint, Defendant denies the allegations contained therein as stated.

30. Answering paragraph numbered thirty (30) of the Complaint, Defendant denies the allegations contained therein as stated.

31. Answering paragraph numbered thirty-one (31) of the Complaint, Defendant states that the Chapter 11 bankruptcy filing speaks for itself. To the extent Plaintiff's representations of the bankruptcy proceeding are inaccurate or otherwise incorrect, Defendant denies the allegations regarding the same.

32. Answering paragraph numbered thirty-two (32) of the Complaint, Defendant is without sufficient information or knowledge upon which to form a belief as to the truth of the allegations contained therein, and, therefore, denies the same.

33. Answering paragraph numbered thirty-three (33) of the Complaint, Defendant is without sufficient information or knowledge upon which to form a belief as to the truth of the allegations contained therein, and, therefore, denies the same.

34. Answering paragraph numbered thirty-four (34) of the Complaint, Defendant is without sufficient information or knowledge upon which to form a belief as to the truth of the allegations contained therein, and, therefore, denies the same.

35. Answering paragraph numbered thirty-five (35) of the Complaint, Defendant is without sufficient information or knowledge upon which to form a belief as to the truth of the allegations contained therein, and, therefore, denies the same.

36. Answering paragraph numbered thirty-six (36) of the Complaint, Defendant is without sufficient information or knowledge upon which to form a belief as to the truth of the allegations contained therein, and, therefore, denies the same.

37. Answering paragraph numbered thirty-seven (37) of the Complaint, Defendant is without sufficient information or knowledge upon which to form a belief as to the truth of the allegations contained therein, and, therefore, denies the same.

38. Answering paragraph numbered thirty-eight (38) of the Complaint, Defendant is without sufficient information or knowledge upon which to form a belief as to the truth of the allegations contained therein, and, therefore, denies the same.

39. Answering paragraph numbered thirty-nine (39) of the Complaint, Defendant is without sufficient information or knowledge upon which to form a belief as to the truth of the allegations contained therein, and, therefore, denies the same.

40. Answering paragraph numbered forty (40) of the Complaint, Defendant states that the order speaks for itself. To the extent Plaintiff's representations of the order are inaccurate or otherwise incorrect, Defendant denies the allegations regarding the same.

40. (sic) Answering paragraph incorrectly numbered forty (40) of the Complaint, Defendant is without sufficient information or knowledge upon which to form a belief as to the truth of the allegations contained therein, and, therefore, denies the same.

41. Answering paragraph numbered forty-one (41) of the Complaint, Defendant states that the order speaks for itself. To the extent Plaintiff's representations of the order are inaccurate or otherwise incorrect, Defendant denies the allegations regarding the same.

42. Answering paragraph numbered forty-two (42) of the Complaint, Defendant states that the order speaks for itself. To the extent Plaintiff's representations of the order are inaccurate or otherwise incorrect, Defendant denies the allegations regarding the same.

43. Answering paragraph numbered forty-three (43) of the Complaint, Defendant states that the reorganization speaks for itself. To the extent Plaintiff's representations of the reorganization are inaccurate or otherwise incorrect, Defendant denies the allegations regarding the same.

44. Answering paragraph numbered forty-four (44) of the Complaint, Defendant states that the reorganization speaks for itself. To the extent Plaintiff's representations of the reorganization are inaccurate or otherwise incorrect, Defendant denies the allegations regarding the same.

45. Answering paragraph numbered forty-five (45) of the Complaint, Defendant is without sufficient information or knowledge upon which to form a belief as to the truth of the allegations contained therein, and, therefore, denies the same.

46. Answering paragraph numbered forty-six (46) of the Complaint, Defendant is without sufficient information or knowledge upon which to form a belief as to the truth of the allegations contained therein, and, therefore, denies the same.

#### **I. PROFESSIONAL LIABILITY**

47. Answering paragraph numbered forty-seven (47) of the Complaint, Defendant repeats and reasserts its response to the allegations contained in Paragraphs 1 through 46 of the Complaint as if fully set forth herein verbatim.

48. Answering paragraph numbered forty-eight (48) of the Complaint, Defendant denies the allegations contained therein.

49. Answering paragraph numbered forty-nine (49) of the Complaint, Defendant denies the allegations contained therein, as stated.

50. Answering paragraph numbered fifty (50) of the Complaint, Defendant states this paragraph calls for a legal conclusion to which no response is required. To the extent a response is required, Defendant is without sufficient information or knowledge upon which to form a belief as to the truth of the allegations contained therein, and, therefore, denies the same.

51. Answering paragraph numbered fifty-one (51) and subparts (a) through (g) of the Complaint, Defendant denies the allegations contained therein.

52. Answering paragraph numbered fifty-two (52) of the Complaint, Defendant denies the allegations contained therein.

53. Answering paragraph numbered fifty-three (53) of the Complaint, Defendant denies the allegations contained therein.

54. Answering paragraph numbered fifty-four (54) of the Complaint, Defendant denies the allegations contained therein. Defendant further denies that Plaintiff is entitled to any relief sought in the "WHEREFORE" paragraph of the Complaint immediately following paragraph numbered fifty-four (54) of the Complaint.

## II. BREACH OF CONTRACT

55. Answering paragraph numbered fifty-five (55) of the Complaint, Defendant repeats and reasserts its response to the allegations contained in Paragraphs 1 through 54 of the Complaint as if fully set forth herein verbatim.

56. Answering paragraph numbered fifty-six (56) of the Complaint, Defendant states this paragraph calls for a legal conclusion to which no response is required. To the extent a response is required, Defendant is without sufficient information or knowledge upon which to form a belief as to the truth of the allegations contained therein, and, therefore, denies the same.

57. Answering paragraph numbered fifty-seven (57) of the Complaint, Defendant denies the allegations contained therein.

58. Answering paragraph numbered fifty-eight (58) of the Complaint, Defendant denies the allegations contained therein.

59. Answering paragraph numbered fifty-nine (59) of the Complaint, Defendant denies the allegations contained therein.

60. Answering paragraph numbered sixty (60) of the Complaint, Defendant denies the allegations contained therein. Defendant further denies that Plaintiff is entitled to any relief sought in the "WHEREFORE" paragraph of the Complaint immediately following paragraph numbered sixty (60) of the Complaint.

### **III. LIABILITY FOR ACTS AND OMISSIONS OF MEMBERS**

61. Answering paragraph numbered sixty-one (61) of the Complaint, Defendant repeats and reasserts its response to the allegations contained in Paragraphs 1 through 60 of the Complaint as if fully set forth herein verbatim.

62. Answering paragraph numbered sixty-two (62) of the Complaint, Defendant admits the allegations contained therein.

63. Answering paragraph numbered sixty-three (63) of the Complaint, Defendant states this paragraph calls for a legal conclusion to which no response is required. To the extent a response is required, Defendant is without sufficient information or knowledge upon which to form a belief as to the truth of the allegations contained therein, and, therefore, denies the same.

64. Answering paragraph numbered sixty-four (64) of the Complaint, Defendant states this paragraph calls for a legal conclusion to which no response is required. To the extent a response is required, Defendant is without sufficient

information or knowledge upon which to form a belief as to the truth of the allegations contained therein, and, therefore, denies the same.

65. Answering paragraph numbered sixty-five (65) of the Complaint, Defendant admits that Lawrence E. Morhous and Jerry J. Cameron were members of Defendant. Defendant denies that Lawrence E. Morhous and Jerry J. Cameron were employees of Defendant.

66. Answering paragraph numbered sixty-six (66) of the Complaint, Defendant denies the allegations contained therein.

67. Answering paragraph numbered sixty-seven (67) of the Complaint, Defendant denies the allegations contained therein.

68. Answering paragraph numbered sixty-eight (68) of the Complaint, Defendant denies the allegations contained therein.

69. Answering paragraph numbered sixty-nine (69) of the Complaint, Defendant denies the allegations contained therein. Defendant further denies that Plaintiff is entitled to any relief sought in the "WHEREFORE" paragraph of the Complaint immediately following paragraph numbered sixty-nine (69) of the Complaint.

### **THIRD DEFENSE**

All or a portion of the claims contained in the Complaint may be barred by the applicable statute of limitations and/or the doctrine of laches.

### **FOURTH DEFENSE**

To the extent applicable, Defendant asserts the defenses of waiver and estoppel and the doctrine of unclean hands.

### **FIFTH DEFENSE**

To the extent applicable, Defendant asserts the defenses of comparative negligence and comparative assumption of risk.

**SIXTH DEFENSE**

Plaintiff has failed to mitigate its damages, if any.

**SEVENTH DEFENSE**

Plaintiff's alleged damages are the result of Plaintiff's own conduct, or by the conduct of its own agents and representatives, or by the conduct of a person(s), firm(s), or corporation(s), other than Defendant, which was either the sole proximate cause or approximately contributed to the damages allegedly sustained by Plaintiff.

**EIGHTH DEFENSE**

Defendant denies that Plaintiff is entitled to a judgment against it and further denies that Plaintiff is entitled to an award of attorney fees or costs as alleged in the Complaint.

**NINTH DEFENSE**

Not being fully advised as to all the facts and circumstances surrounding the allegations contained in the Complaint, Defendant hereby invokes and asserts all other affirmative defenses which may prove applicable including, but not necessarily limited to, those specifically set forth in Rule 8(c) of the West Virginia Rules of Civil Procedure.

**DEFENDANT DEMANDS A TRIAL BY JURY.**

**BREWSTER, MORHOUS, CAMERON,  
CARUTH, MOORE, KERSEY & STAFFORD,  
PLLC**

**By Counsel**



Peter T. DeMasters (W. Va. Bar No. 7153)

John T. McCartney (W. Va. Bar No. 12242)

Flaherty Sensabaugh Bonasso PLLC

48 Donley Street, Suite 501

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[jmccartney@flahertylegal.com](mailto:jmccartney@flahertylegal.com)

IN THE CIRCUIT COURT OF MERCER COUNTY, WEST VIRGINIA

Meral, Inc.,  
A West Virginia Corporation.

Plaintiff.

v.

Civil Action No. 17-C-303-DS

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

Defendants.

CERTIFICATE OF SERVICE

I, John T. McCartney, do hereby certify that on the 11<sup>th</sup> day of September 2017, I served the foregoing "Answer of Brewster, Morhous, Cameron, Caruth, Moore, Kersey & Stafford, PLLC" upon the parties hereto by depositing a true copy thereof in the United States mail, postage pre-paid, addressed to the following counsel of record.

William J. Leon, Esquire  
William J. Leon, LC  
1200 Dorsey Avenue, Suite III  
Morgantown, WV 26501  
**Counsel for Plaintiff**



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John T. McCartney (W. Va. Bar No. 12242)

MERAL INC

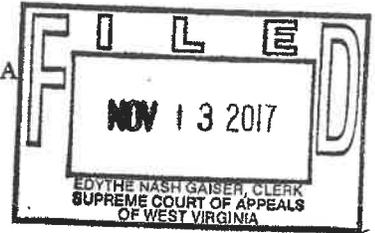
VS. BREWSTER, MORHOUS, CAMERON

LINE	DATE	ACTION
1	08/04/17	COMPLAINT FILED, SUMMONS ISSUED (ATTY PREP) SER BY CW COMP/SUMM
2		BY ATTY FOR ALL DEF'S, COPY TO JUDGE;
3	08/16/17	COS FOR PLTF'S FIRST SET OF DISCOVERY TO DEFT
4		BREWSTER, MORHOUS, CAMERON, MOORE, KERSEY &
5		STAFFORD; COS FOR PLTF'S FIRST SET OF DISCOVERY
6		TO LAWRENCE MORHOUS; BY PT COS
7	07/17/17	NOTICE OF BONA FIDE DEFENSE OF LAWRENCE E MORHOUS
8		W/COS; NOTICE OF BONA FIDE DEFENSE OF JERRY J
9		CAMERON W/COS; BY PT NOT
10	08/28/17	PROOFS OF SERVICE CONCERNING DEFENDANTS BM&M BY CB SERVICE
11		ACCEPTANCE OF SERVICE OBO DEFENDANT L. MORHOUS SERVICE
12		ON 8/10/17
13		ACCEPTANCE OF SERVICE OBO BREWSTER MORHOUS SERVICE
14		CAMERON CARUTH MOORE KERSEY & STAFFORD ON 8/9/17
15		COS PLTF'S 1ST SET OF DISCOVERY TO DEFENDANT JERRY COS
16		CAMERON ON 8/14/17
17	09/13/17	ANSWER OF LAWRENCE E MORHOUS W/COS; BY PT ANS
18	09/14/17	ANSWER OF JERRY J CAMERON W/COS; BY PT ANS

**Exhibit C**

SUPREME COURT OF APPEALS OF WEST VIRGINIA

*Office of the Clerk*  
RORY L. PERRY II, Clerk of Court  
State Capitol, Room E-317  
Charleston, WV 25305



**NOTICE OF FILING OF MOTION TO REFER  
TO THE BUSINESS COURT DIVISION**

October 24, 2017

**Meral, Inc.,  
Plaintiff**

**Mercer County  
No. 17-C-303  
Swope, Judge**

vs.

**Brewster, Morhous, Cameron, Caruth, Moore, Kersey & Stafford, PLLC;  
Lawrence E. Morhous, and Jerry J. Cameron,  
Defendants**

This is a courtesy notice of the filing of a Motion to Refer to the Business Court Division in the above-captioned case. The Motion to Refer was filed on October 23, 2017, and has been docketed in this office pursuant to Trial Court Rule 29.06(a)(1) (revised effective July 1, 2014).

Pursuant to Trial Court Rule 29.06(a)(4), "any party or affected judge" may file a reply memorandum. Any party may file a reply memorandum in this office on or before **November 13, 2017**. This matter will thereafter be presented to the Chief Justice for consideration.

You will be advised of the Chief Justice's decision by receiving a copy of an order.

NOTICE PROVIDED TO: The Central Office of the Business Court Division, the Mercer County Circuit Clerk, and to the following:

Judge:

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

Counsel for Plaintiff:

William J. Leon, Esq.  
William J. Leon, LC  
1200 Dorsey Ave., Suite III  
Morgantown, WV 26501

Counsel for Defendants:

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

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

Meral, Inc.,  
A West Virginia Corporation.

Plaintiff.

v.

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.

**DEFENDANT BREWSTER, MORHOUS, CAMERON, CARUTH,  
MOORE, KERSEY & STAFFORD, LAWRENCE E. MORHOUS, AND JERRY J.  
CAMERON'S REPLY IN OPPOSITION TO MERAL, INC.'S MOTION TO  
REFER ACTION TO THE BUSINESS COURT DIVISION**

COME NOW Defendants Brewster, Morhous, Cameron, Caruth, Moore, Kersey & Stafford ("Brewster Morhous"), Lawrence E. Morhous ("Morhous"), and Jerry J. Cameron ("Cameron") (collectively "Defendants"), by counsel, Peter T. DeMasters, John T. McCartney, and the law firm of Flaherty Sensabaugh Bonasso, PLLC, and pursuant to Trial Court Rule 29.06(a)(1), submit their Reply in Opposition to Meral, Inc.'s Motion to Refer Action to the Business Court Division ("Reply"). Meral, Inc.'s ("Plaintiff") claims of attorney malpractice and breach of contract in the instant litigation do not involve complex business issues; to the contrary, the major inquiries in this case are rather simple and straight forward, requiring no intricate or expert knowledge of complex commercial issues. Thus, the present case does not warrant referral to the business court division and should remain in the Circuit Court of Mercer County. In support of this Reply, Defendants state the following:

**FACTS AND ALLEGATIONS**

Plaintiff, as lessee of certain real property mineral rights in Greenbrier County, West Virginia, entered an Asset Purchase Agreement ("APA") on January 31, 2011 with South Fork



Mining Company, LLC ("South Fork"). *See Complaint* at ¶14. Per the APA, Plaintiff was to be paid certain purchase price and royalty payments in exchange for South Fork's right to mine and sell coal. *See Id.* at ¶¶15-18. During the negotiations, preparation, and execution of the APA, Plaintiff was represented by Defendant Morhous. *See Id.* at ¶¶19-20. After timely payments by South Fork, Plaintiff and South Fork entered an amendment to the APA ("Amendment") on March 17, 2014, allowing the final purchase price payment to be made in several installments. *See Id.* at ¶¶24-26. It is alleged that Defendant Morhous also represented Plaintiff during its negotiations and preparation of the Amendment, a point which Defendants have since denied. *See Id.* at ¶27.

After entering the Amendment, South Fork filed for Chapter 11 bankruptcy in the United States Bankruptcy Court for the West District of Virginia. *See Id.* at ¶31. It is alleged that at the time of the bankruptcy proceeding, South Fork owed \$671,812.14 of the \$5.2 million purchase price and \$109,920.55 in overriding royalty payments. *See Id.* at ¶¶32-33. Subsequent to filing bankruptcy, South Fork failed to make payments per the APA and Amendment. Based upon its failure to pay, Plaintiff sought to eject South Fork from the subject property. *See Id.* at ¶¶36; 38. The bankruptcy court, affirmed by the United States District Court for the Western District of Virginia, held that the APA was an executory contract with Plaintiff having "no right to retake possession of the WPP leasehold and loadout facility under West Virginia law." *See Id.* at ¶40. It is alleged that while "South Fork continues to mine and sell coal," Plaintiff has "received no overriding royalty payments from South Fork on coal mined and sold[.]" *See Id.* at ¶¶45-46.

After erroneously filing an action against Defendants in Greenbrier County West Virginia, Plaintiff filed the present action on August 4, 2017 in Mercer County, West Virginia. In the Complaint, Plaintiff alleges that Defendants' conduct in their representation of Plaintiff, as outlined above, "fell below" the applicable standard of care. Plaintiff's Complaint provides three causes of action: Count I--Professional Liability; Count II--Breach of Contract; and Count III--Liability for Acts and Omissions of Members. All three counts are based upon Defendants'

alleged "fail[ure] to exercise ordinary professional skill and knowledge in their rendition of professional services to Plaintiff Meral in its dealings with South Fork[.]"

## ARGUMENT

### **I. The Instant Action is Not a Proper Case for Referral to Business Court.**

Pursuant to West Virginia Trial Court Rule 29.06(a)(1), "[a]ny party or judge may seek a referral of Business Litigation to the Division by filing a Motion to Refer to the Business Court Division with the Clerk of the Supreme Court of Appeals of West Virginia." Under Trial Court 29.04(a), "Business Litigation" is defined as one or more pending actions in circuit in which:

- (1) the principal claim or claims involve matters of significance to the transactions, operations, or governance between business entities; and
- (2) the dispute presents commercial and/or technology issues in which specialized treatment is likely to improve the expectation of a fair and reasonable resolution of the controversy because of the need for specialized knowledge or expertise in the subject matter or familiarity with some specific law or legal principles that may be applicable; and
- (3) the principal claim or claims do not involve: consumer litigation, such as products liability, personal injury, wrongful death, consumer class actions, actions arising under the West Virginia Consumer Credit Act and consumer insurance coverage disputes; non-commercial insurance disputes relating to bad faith, or disputes in which an individual may be covered under a commercial policy, but is involved in the dispute in an individual capacity; employee suits; consumer environmental actions; consumer malpractice actions; consumer and residential real estate, such as landlord-tenant disputes; domestic relations; criminal cases; eminent domain or condemnation; and administrative disputes with government organizations and regulatory agencies, provided, however, that complex tax appeals are eligible to be referred to the Business Court Division.

Accordingly, in order for a case to be transferred to the Business Court under Trial Court rule 29.04, the pending action must meet the requirements set forth in subsections one and two, and not involve a claim under subsection three. Based upon the principal claims and allegations in the Complaint, the present matter fails to satisfy subsections one and two.

- a. **Plaintiff's Claims Do Not Involve Matters of Significance to the Transactions, Operations, or Governance Between Business Entities.**

Without explanation or further clarification, Plaintiff argues that T.C.R. 29.04(a)(1) is

satisfied by describing this action as one which "involves matters of significance to transactions between business entities as required by Trial Court Rule 29.04(a)(1)." This is a gross mischaracterization of the present action. The present matter is between Meral, Inc., a West Virginia corporation, two individual defendants, attorneys Lawrence E. Morhous and Jerry J. Cameron, and the law firm of Brewster Morhous. Notably, the main issue in this litigation is whether Defendants Morhous and Cameron met the applicable standard of care in their capacity as attorneys providing services to Plaintiff. As noted above, the substantive allegations in the Complaint are based upon Morhous and Cameron's alleged "fail[ure] to exercise ordinary professional skill and knowledge in their rendition of professional services to Plaintiff Meral in its dealings with South Fork[.]" While aspects of contractual negotiations and drafting are involved in the substantive work performed by Morhous and Cameron, this is a malpractice action at its core. Whether the counts in the Complaint are couched as professional negligence claims or breach of contract, the critical issue in this matter continues to revolve around standard of care for attorneys Morhous and Cameron. Because this is a malpractice action between a business and its individual attorneys, as opposed to a claim based upon "transactions, operations, or governance between business entities," this case is more appropriately suited for its current venue and Plaintiff's Motion should be denied.

- b. Plaintiff's Claims Do Not Present Commercial and/or Technology Issues In Which Specialized Treatment is Likely to Improve the Expectation of a Fair Resolution Because of the Need for Specialized Knowledge or Expertise.

In an effort to argue that T.C.R. 29.04(a)(2) is satisfied, Plaintiff provides a general statement mirroring the language of trial court rule 29.04(a)(2) that "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 principal that may be applicable." Again, this characterization of the case is false. The issues presented in this case

do not require "specialized treatment" or "specialized knowledge and expertise" as described by Plaintiff. Discovery will focus on conversations between Defendants Morhous, Cameron, and Plaintiffs, and the circumstances surrounding the APA and Amendment. Testimony will be provided regarding work performed by Defendants, Plaintiff, and South Fork in negotiating and entering the APA and Amendment. A determination of whether Defendants breached the requisite standard of care will be based upon the aforementioned written documents and testimony provided. While some of the issues may have nuances which require some explanation and clarification, these issues are not complex and require no specialized business knowledge to handle any potential disputes between the parties.

In sum, a referral of this case to business court would be contrary to the business court's stated purpose and intent. It would further be a waste of time, as the case is properly in Mercer County Circuit Court before the honorable Derek C. Swope, and there should be no issues moving this case through discovery and to trial.

#### CONCLUSION

For all the foregoing reasons, the Defendants respectfully requests that this Court deny Plaintiff's Motion to Refer Action to Business Court Division and allow this case to properly remain in Mercer County Circuit Court.

**BREWSTER, MORHOUS, CAMERON,  
CARUTH, MOORE, KERSEY & STAFFORD,  
PLLC, LAWRENCE E. MORHOUS, and JERRY J.  
CAMERON**

**By Counsel**

*John T. McCartney (by Kaitlynn M. PyHak (13034) with permission)*

Peter T. DeMasters (W. Va. Bar No. 7153)  
John T. McCartney (W. Va. Bar No. 12242)  
Flaherty Sensabaugh Bonasso PLLC  
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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

**Meral, Inc.,  
A West Virginia Corporation.**

**Plaintiff.**

v.

**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.**

**CERTIFICATE OF SERVICE**

I, John T. McCartney, do hereby certify that I have served the foregoing "BREWSTER MORHOUS, CAMERON, CARUTH, MOORE, KERSEY & STAFFORD, LAWRENCE E. MORHOUS, AND JERRY J. CAMERON'S REPLY I IN OPPOSITION TO MERAL, INC.'S MOTION TO REFER ACTION TO THE BUSINESS COURT DIVISION" upon the following individuals on this 13<sup>th</sup> day of November 2017, by U.S. Mail:

William J. Leon, Esquire  
William J. Leon, LC  
1200 Dorsey Avenue, Suite III  
Morgantown, WV 26501  
***Counsel for Plaintiff***

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

Julie Ball, Clerk of the Circuit Court  
Circuit Court of Mercer County  
Mercer County Courthouse  
1501 Main Street, Suite 200  
Princeton, WV 24740

Carol Miller, Executive Director  
Central Office of Business Court Division  
Berkeley County Judicial Center  
380 W. South Street, Suite 2100  
Martinsburg, WV 25401

*John T. McCartney* (by Kathryn Pittak  
13054 w/ permission  
John T. McCartney (W. Va. Bar No. 12242)

IN THE CIRCUIT COURT OF GREENBRIER COUNTY, WEST VIRGINIA

Meral, Inc.,  
a West Virginia Corporation,  
Plaintiff,

v.

Civil Action No. 17-C-72 (D)

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

A True Copy:  
ATTEST:

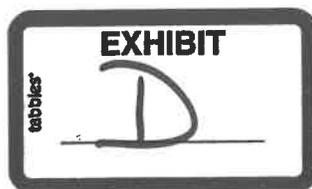
*Lauronne Orlockle*  
Clerk, Circuit Court  
Greenbrier County, WV  
By *BEY* Deputy

**ORDER GRANTING DEFENDANTS' MOTION TO DISMISS**  
**AMENDED COMPLAINT**

On the 10<sup>th</sup> day of July, 2017, came the Defendants, by counsel, Wesley P. Page, and the Plaintiff, by counsel, William J. Leon, before the Court for a hearing on the Defendants' Motion to Dismiss Amended Complaint pursuant to West Virginia Rule of Civil Procedure 12(b)(3) and Motion for Protective Order. Prior to the hearing, Defendants filed a written Motion with citation to legal authority in support of their position. The Plaintiff subsequently filed a legal Memorandum in Opposition to Defendants' Motion.

Having considered the pleadings, the argument of counsel, the applicable statutes and case law, the Court **GRANTS** the Defendants' Motion to Dismiss for the following reasons.

Venue is not proper in Greenbrier County pursuant to West Virginia Code §56-1-1 because the Defendants do not reside or maintain their principal place of business in Greenbrier County and because the cause of action did not arise in Greenbrier County. As stated in the Amended Complaint, the individual Defendants reside in Mercer County, and their professional



limited liability company has its principal place of business in that county. Pursuant to McGuire v. Fitzsimmons, 197 W.Va. 132, 475 S.E.2d 132 (1996) and Thornhill Group, Inc. v. King, 233 W.Va. 564, 759 S.E.2d 795 (2014), the Plaintiff's "cause of action" did not arise in Greenbrier County. For purposes of establishing venue, "in a legal malpractice suit the "cause of action" refers to the present, that is the malpractice suit, and not to past or the underlying suit," and "a legal malpractice action arises solely in the county where the allegedly negligent representation occurred." *See McGuire*, at 136. "Venue arises in a legal malpractice action: (1) where the attorney's employment is contracted, that is, where the duty came into existence; or (2) where the breach or violation of the duty occurs; or (3) where the manifestation of the breach, i.e. substantial damage, occurs." *See McGuire*, at 137.

The Plaintiff, a corporation with its principal office in Tennessee, entered into a contract of legal representation with the Defendants in Mercer County, and in the Amended Complaint, alleges breach of contract and deficiencies in legal representation. Paragraph 49 of the Amended Complaint alleges the following; That during their representation of Meral, the Defendants 1) failed to recommend and require that Meral's right to receive purchase price payments under the Asset Purchase Agreement be secured by assets owned or subsequently acquired by South Fork; 2) failed to prepare a deed of trust, security agreement, financing statement or other documents necessary to create a security interest in favor of Meral securing payment of the purchase price due Meral under the Asset Purchase Agreement; 3) failed to cause a deed of trust, security agreement, financing statement or other appropriate documents creating a security interest in favor of Meral and securing payment of the purchase price due Meral under the Asset Purchase Agreement to be recorded by the Clerk of the County Commission of Greenbrier County, West Virginia, thereby perfecting such security interest; 4) erroneously advised Meral that the terms of

the Asset Purchase Agreement gave Meral the right to take possession of the WPP leasehold and Load-Out facility if South Fork failed to pay the purchase price and royalty payments due Meral or otherwise failed to meet its obligations under the Asset Purchase Agreement; 5) failed to prepare and record with the Clerk of the County Commission of Greenbrier County documents containing language sufficient to preserve Meral's reversionary interest in the WPP leasehold exercisable by Meral upon South Fork's failure to pay the amount owed Meral pursuant to the Asset Purchase Agreement; 6) failed to prepare and record with the Clerk of the County Commission of Greenbrier County documents of the type typically prepared and recorded in transactions in West Virginia whereby a party receives or retains an overriding royalty interest in minerals; and 7) failed to consider, conduct legal research and take such steps as are reasonably prudent and necessary to protect Meral's rights under the Asset Purchase Agreement in the event of South Fork's bankruptcy or insolvency.

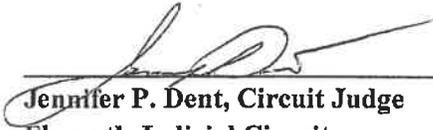
The Defendants were located in Mercer County, were contracted in Mercer County, made legal decisions concerning Meral in Mercer County and, the alleged violations of duty as enumerated in the Amended Complaint occurred in Mercer County. The results of the alleged violations of duty (the breach) manifested in the Bankruptcy Court as it was at that time, that the Plaintiff became aware of its unsecured creditor status, its financial loss and its inability to reenter the property. The situs of the breach of the contract between the Plaintiff and the Defendants was Mercer County. The Plaintiff asserts only monetary damages, which are not felt in Greenbrier County as Plaintiff was, and is, in Tennessee. Therefore, this matter is **DISMISSED** pursuant to West Virginia Rule of Civil Procedure 12(b)(3) for improper venue.

Having granted the Defendants' Motion to Dismiss, the Defendants' Motion for Protective Order is moot.

Finding it proper to so to do, all of the above is hereby **ORDERED, ADJUDGED** and **DECREED**.

The Clerk is directed to provide a copy of this Order to all counsel of record by regular US mail.

Entered this 27 day of July 2017.

  
Jennifer P. Dent, Circuit Judge  
Eleventh Judicial Circuit

**FILED**

**JUL 28 2017**

**CIRCUIT COURT GREENBRIER COUNTY, WV  
LOUVONNE ARBUCKLE, CLERK**

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

Meral, Inc.,  
A West Virginia Corporation.

Plaintiff.

v.

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.

CERTIFICATE OF SERVICE

I, John T. McCartney, do hereby certify that I have served the foregoing "BREWSTER MORHOUS, CAMERON, CARUTH, MOORE, KERSEY & STAFFORD, LAWRENCE E. MORHOUS, AND JERRY J. CAMERON'S REPLY IN OPPOSITION TO MERAL, INC.'S RENEWED MOTION TO REFER ACTION TO THE BUSINESS COURT DIVISION" upon the following individuals on this 22<sup>nd</sup> day of February 2019, by U.S. Mail:

William J. Leon, Esquire  
William J. Leon, LC  
1200 Dorsey Avenue, Suite III  
Morgantown, WV 26501

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

Julie Ball, Clerk of the Circuit Court  
Circuit Court of Mercer County  
Mercer County Courthouse  
1501 Main Street, Suite 200  
Princeton, WV 24740

Carol Miller, Executive Director  
Central Office of Business Court Division  
Berkeley County Judicial Center  
380 W. South Street, Suite 2100  
Martinsburg, WV 25401

 w/ permission   
John T. McCartney (W. Va. Bar No. 12242)  
