



May 28, 2020

Edythe Nash Gaiser, Clerk of Court
State Capitol Room E-317
1900 Kanawha Boulevard, East
Charleston, WV 25305

Dear Clerk Gaiser::

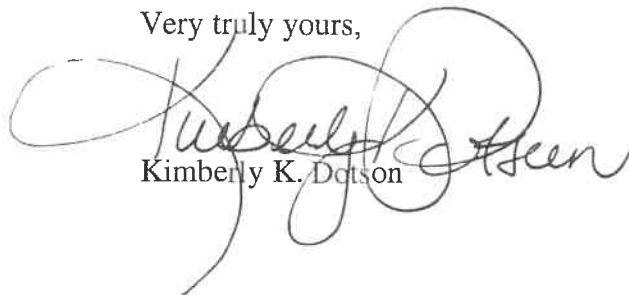
Subject: James K. Abcouwer v. Trans Energy, Inc.
Civil Action No. 12-C-46, and;

James K. Abcouwer v. EQT Corporation, William F. Woodburn and Loren E.
Bagley
Civil Action No. 13-C-56

Enclosed please find "Plaintiff's Response in Opposition to Defendants' Renewed Motion to Refer Cases to the Business Court Division" for filing in the above-subject civil action. Copies of the same have this day been mailed to counsel of record and forwarded to the Judge of record.

Thank you for your cooperation and assistance in this matter.

Very truly yours,



Kimberly K. Dotson

KKD:hv

Enclosure

cc: Honorable Carrie L. Webster
Honorable Charles E. King
Cathy Gatson, Clerk
Berkeley County Judicial Center
Michael B. Hissam/Andrew C. Robey/Kayla S. Reynolds
Scott P. Drake

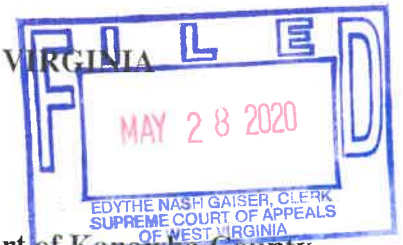
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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

JAMES K. ABCOUWER,
Plaintiff

v.

TRANS ENERGY, INC.,
Defendant



Circuit Court of Kanawha County
Civil Action No. 12-C-416
Honorable Judge Charles E. King

JAMES K. ABCOUWER,
Plaintiff

v.

EQT CORPORATION,
WILLIAM F. WOODBURN,
and LOREN E. BAGLEY,

Defendants

Circuit Court of Kanawha County
Civil Action No. 13-C-56
Honorable Carrie L. Webster

**PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANTS'
RENEWED MOTION TO REFER CASES TO THE BUSINESS COURT DIVISION**

Contrary to Defendants' assertion, the parties did not jointly seek referral of both cases to the Business Court Division in the past. While the parties did jointly move to refer the case before Judge King (the "first case") - the motion denied by on April 13, 2018 - the plaintiff, through counsel, *objected* to the Defendants' motion to refer the case before Judge Webster (the "second case"). That motion was denied on April 30, 2018. Denial of the motions was based upon a finding that neither case required specialized treatment to improve the expectation of a fair and reasonable resolution, and, therefore, neither met the criteria for referral under Rule 29.04(a)(2) of the West Virginia Trial Court Rules. The validity of that finding is not changed by the judicial emergency created by COVID-19. If it were, all

pending civil litigation that could conceivably fall under the definition of business litigation would be referred to the Business Court Division. Neither is it affected by the fact that the cases are pending before different judges nor that they remain pending several years after filing. Referral to the Business Court Division was not intended as a method for achieving the consolidation of separate and distinct litigation¹ or for “speeding” the resolution of litigation already postured, and scheduled, for trial.

These cases simply to not, as Defendants argue, “fit squarely within the parameters of “business litigation.” The Business Court Division was created to provide efficient and specialized treatment to litigation involving “commercial issues and disputes between businesses,” due to a recognition by the West Virginia Legislature of the “complex nature of litigation involving highly technical commercial issues.” W. Va. Code §51-2-15(a). Neither of these matters are the type anticipated for referral to the Business Court Division.

First, neither case involves matters of significance to the “transactions, operations, or governance between business entities.” *See* W. Va. T.C.R. 29.04(a)(1). Both are cases brought by an individual, Mr. Abcouwer, not a business entity. And the second case, while brought against Trans Energy², is also brought against two individuals, Mr. Bagley and Mr. Woodburn, former officers and board members of Trans Energy. The first case involves the breach of a stock option agreement which was given as part of the compensation Mr. Abcouwer was entitled to for his services to the company. The second case involves the negotiations, and resulting agreements, between Mr. Abcouwer, Mr. Bagley, and Mr. Woodburn that led to Mr. Abcouwer’s employment by Trans Energy as President and CEO.

¹ It is important to note that the Defendants filed a motion to consolidate in the first case in March 2013 but withdrew that motion in May 2013. *See* Ex. A, Renewed Motion to Refer Cases to the Business Court Division, at p.3.

² Now EQT Corporation.

Second, neither case presents any “commercial issues” requiring specialized treatment or a need for “specialized knowledge or expertise.” *See* W. Va. T.C.R. 29.04(a)(2). The issues presented in these cases do not require a deep understanding of corporate governance, the oil and gas industry, or stock market valuations and market assumptions. They involve nothing more than the facts and circumstances surrounding the negotiation of Mr. Abcouwer’s employment with Trans Energy, the terms under which he was employed, and the preparation and effect of various written agreements setting forth those terms and the terms of various components of Mr. Abcouwer’s compensation. Defendants themselves, in their summary judgment memorandum, describe the first case as revolving around “one simple question” - the meaning of the termination clause in a stock option agreement. Judge King found the clause ambiguous therefore requiring a jury to consider the facts and circumstances surrounding the preparation of the agreement and similar agreements entered into between the company and its employees as part of their compensation packages. The second case turns on the facts and circumstances surrounding the negotiation of Mr. Abcouwer’s employment with Trans Energy and whether Mr. Bagley and Mr. Woodburn intentionally misled Mr. Abcouwer to secure his agreement to work for the company. Defendants’ attempt to pin referral on the complexities of ‘varying market assumptions’ and their impact on the calculation of damages is also without merit. Both sides have retained expert witnesses who will be readily able to assist the jury in valuing the damages at issue – a valuation no more difficult than in any other civil case.

Moreover, not only do these cases not involve matters of significance to the transactions, operations or governance between business entities or present any complex commercial issues requiring special treatment, they are, at their core, “employee suits” of the

type intended to be exempted from reference to the Business Court Division by Rule 29.04(c) of the West Virginia Trial Court Rules. In a nutshell, these are cases brought by Mr. Abcouwer to enforce the terms of compensation agreed to in exchange for his work for Trans Energy.

Finally, these matters have been pending in circuit court since 2012 and 2013, respectively. Discovery has long been completed in both cases, except for one, or potentially two, out of state depositions which have been delayed by concerns over COVID-19. Mediation has been attempted in both cases numerous times. The first case was already tried once, and pretrial motions and other filings were already prepared in anticipation of a previous trial date in the second case. In fact, the first case is scheduled to begin trial, for the second time, on August 3, 2020 (*see* **Ex. A**) and the second case is set for trial on October 26, 2020 (*see* **Ex. B**). While Defendants' motion may have been filed after time to answer the complaint expired as required by Rule 29, that does not make it timely. Surely, there can be no benefit in referring cases to the Business Court Division after all the pre-trial litigation has been completed. A transfer of cases fully ready for trial is nonsensical. Such a transfer would require that newly appointed judges familiarize themselves with cases that Judge King and Judge Webster are already intimately familiar with – a waste of judicial time and resources.

For the foregoing reasons, Plaintiff respectfully opposes referral to the Business Court and asks this Court to deny Defendants' renewed motion requesting the same.

JAMES K. ABCOUWER

By Counsel

A handwritten signature in black ink, appearing to read 'Marvin W. Masters', is written over a horizontal line.

Marvin W. Masters
West Virginia State Bar No. 2359
Kimberly K. Dotson
West Virginia State Bar No. 9093
The Masters Law Firm lc
181 Summers Street
Charleston, West Virginia 25301
304-342-3106
Counsel for Plaintiffs
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CERTIFICATE OF SERVICE

I, Kimberly G. Dotson, counsel for plaintiff, do hereby certify that true and exact copies of the foregoing "Plaintiff's Response in Opposition to Defendants' Renewed Motion to Refer Cases to the Business Court Division" were served upon:

Judge Carrie L. Webster
Kanawha County Judicial Building
P.O. Box 2351
111 Court Street
Charleston, WV 25301

Judge Charles E. King
Kanawha County Judicial Building
P.O. Box 2351
111 Court Street
Charleston, WV 25301

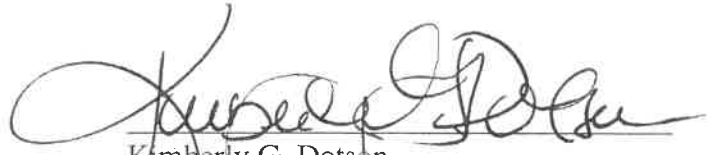
Clerk Cathy S. Gatson
Kanawha County Judicial Building
P.O. Box 2351 111 Court Street
Charleston, WV 25301

Berkeley County Judicial Center
Business Court Division, Suite 2100
380 W. South Street
Martinsburg, WV 25401

Michael B. Hissam
Andrew C. Robey
Kayla S. Reynolds
Hissam Forman Donovan Ritchie PLLC
Post Office Box 3983
Charleston, West Virginia 25339
Counsel or Defendants

Rebecca O. Powell
Scott P. Drake
Norton Rose Fulbright LLP
2200 Ross Avenue, Suite 2800
Dallas, Texas 75201-2784
Pro Hac Vice Counsel for Defendant

in envelopes properly addressed, stamped and deposited in the regular course of the United States
Mail this 28th day of May, 2020.



Kimberly G. Dotson
West Virginia State Bar No. 9093

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IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA
SCHEDULING ORDER - CIVIL ACTION

James Abcouwer

FILED

2019 DEC 19 PM 3:13

JANET S. SAMPSON, CLERK
KANAWHA COUNTY CIRCUIT COURT

v.

Civil Action No. 12-C-416

Trans Energy

ORDER

The following shall apply to and govern the above captioned action and activities conducted in connection with it. In the absence of a specific date or deadline for a given activity, it is anticipated that such activity will be scheduled and conducted within a reasonable time prior to trial and prior to any scheduled activity which should logically proceed it.

The parties may not amend, modify or adjust any provision of this Order except by leave of the Court.

1. Trial Date: August 3, 2020 Time: 9:30 a.m.
2. Dispositive Motions to be filed by {at least 60 days prior to trial date} June 1, 2020
3. Discovery Completed on or before: May 29, 2020
4. Plaintiffs to identify expert witnesses by: March 2, 2020
5. Defendants to disclose expert witnesses by: March 30, 2020
6. All parties to identify fact witnesses by: January 17, 2020
7. All IME's, physical or scientific tests or similar examinations, tests or studies shall be conducted by: N/A
8. Third party complaints to be filed and served on or before: January 17, 2020
9. Mediation to be completed on or before: May 29, 2020

(MANDATORY. Must be completed at least 14 days prior to trial. The costs shall be split between the parties.)

Enter this 19th day of December, 2019.

Charles E. King, Jr.
Charles E. King, Jr. Circuit Judge

****IN ORDER TO RECEIVE YOUR COPY PROMPTLY, PLEASE PRINT NAME AND ADDRESS LEGIBLY****

COUNSEL FOR PLAINTIFF:

Marvin Masters
Kimberly Dotson
181 Summers St.
Charleston, WV 25301

COUNSEL FOR DEFENDANT:

Mitchell J. Rhein
Spilman Thomas & Buthe
200 Kanawha Blvd. E.
Charleston, WV 25301

STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, SS
I, JANET S. SAMPSON, CLERK OF THE CIRCUIT COURT OF SAID COUNTY
DO HEREBY CERTIFY THAT THE FOREGOING
A TRUE COPY OF THE RECORDS OF SAID COURT
GIVEN TO ME BY THE CLERK OF SAID COURT THIS
DAY OF December, 2019.
JANET S. SAMPSON, CLERK
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

EXHIBIT

A

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

FILED
2020 FEB 26 PM 1:06

SHIRLEY S. BAISON, CLERK
KANAWHA COUNTY CIRCUIT COURT

JAMES K. ABCOUWER,

Plaintiff,

v.

Civil Action No. 13-C-56
Honorable Carrie L. Webster

TRANS ENERGY, INC.,
a foreign corporation,
WILLIAM F. WOODBURN,
and LOREN E. BAGLEY,

Defendants.

AMENDED SCHEDULING ORDER

1. Discovery completed by: April 22, 2020.
2. Supplemental Motion for Summary Judgment filed by: July 22, 2020
with responses filed within 14 days: August 5, 2020
and replies filed: August 14, 2020
3. Hearing on Motion for Summary Judgment: August 27, 2020 Time: 9:00 a.m.
4. Pretrial Memoranda to be filed by: September 24, 2020
5. Pretrial Conference: October 8, 2020 Time: 9:00 a.m.
6. All parties shall exchange a copy of proposed jury instructions by: October 16, 2020

All instructions agreed to by the parties and any other proposed instructions shall be submitted to the court and also transmitted in electronic format (WordPerfect or Microsoft Word) to the court at Guyla.Black@courtswv.gov by (at least three days prior to trial):

7. Jury Selection: October 23, 2020 Time: 10:00 a.m.
8. Trial Date: October 26, 2020 Time: 9:00 a.m. Days needed for trial: 7

The Court directs the Clerk to send a certified copy of this Order to all counsel of record.



Enter this 24 day of Aug 2020.

Judge Carrie L. Webster
Circuit Court of Kanawha County, West Virginia

PREPARED BY:

Kevin L. Carr with permission by S.C.K. WVS #13007
Kevin L. Carr (WVS # 6872)
Mitchell J. Rhein (WVS # 12804)
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Scott P. Drake (*pro hac vice*)
Norton Rose Fulbright US L.L.P.
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Dallas, Texas 75201
(214) 855-8000

Counsel for Defendants

REVIEWED AND APPROVED BY:

Kimberly K. Dotson with permission
Marvin W. Masters (WVS # 2359)
Kimberly K. Dotson (WVS # 9093) by S.C.K. WVS #13007
The Masters Law Firm LC
181 Summers Street
Charleston, West Virginia 25301
(304) 342-3106
Counsel for Plaintiff

STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, SS
I, CATHY B. QATSON, CLERK OF CIRCUIT COURT OF SAID COUNTY
AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING
IS A TRUE COPY FROM THE RECORDS OF SAID COURT.
GIVEN UNDER MY HAND AND SEAL OF SAID COURT, THIS 28
DAY OF August, 2020.
Cathy B. Qatson, CLERK
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA