

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

PACHIRA ENERGY LLC,

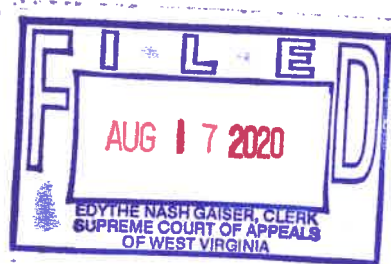
PLAINTIFF,

v.

NORTHEAST NATURAL ENERGY LLC AND  
NNE WATER SYSTEMS LLC,

DEFENDANTS.

MONONGALIA COUNTY  
CIRCUIT COURT  
CASE NO. 18-C-369  
(HON. JUDGE SCOTT)



**TO: THE HONORABLE CHIEF JUSTICE**

**MOTION TO REFER CASE TO THE BUSINESS COURT DIVISION**

Defendants Northeast Natural Energy LLC (“NNE”) and NNE Water Systems LLC (together, “Defendants”), by counsel, pursuant Tr. Ct. R. 29.06(a), respectfully request that this Court refer this matter to the Business Court Division, stating as follows in support:

1. This matter involves complex commercial litigation between business entities over oil and gas production and development operations centered in northern West Virginia.

2. On September 11, 2012, the Supreme Court of Appeals approved Trial Court Rule 29 creating a Business Court Division, effective October 12, 2012, to resolve the types of claims raised in this lawsuit. **Exhibit A.**

3. Tr. Ct. R. 29.01 provides “a process for efficiently managing and resolving litigation involving commercial issues and disputes between businesses that includes the establishment of a Business Court Division to handle a specialized court docket within the circuit courts.”

4. Tr. Ct. R. 29.04(a) defines “business litigation” as litigation 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.

5. “Any 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. The motion shall identify the nature of the action(s) sought to be referred, the basis for the request, and, if known, whether additional related actions are pending or may be filed in the future. A copy of the Complaint, answer, docket sheet and any other documents that support referral under Trial Court Rule 29.04(a) shall be attached to the motion.” Tr. Ct. R. 29.06(a)

6. This litigation clearly meets the definition of “business litigation” set forth in the Trial Court Rules and should be referred to the Business Court Division.

7. First, “the principal claim or claims involve matters of significance to the transactions, operations, or governance between business entities.” Tr. Ct. R. 29.04(a)(1).

8. Second, “the dispute presents commercial . . . 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.” Tr. Ct. R. 29.04(a)(2). The claims involve issues of complex commercial agreements and legal principles of business relationship law.

9. Third, none of the claims are the type of non-commercial, consumer litigation or personal injury causes of action contemplated by Tr. Ct. R. 29.04(a)(3).

10. Pachira commenced this action by filing a Complaint, as amended, alleging claims for Breach of Contract, Commercial Torts, and seeking Declaratory and Injunctive Relief. **Exhibit B.** Defendants’ Answer to the Second Amended Complaint and the Docket Sheet are attached as **Exhibit C** and **Exhibit D**, respectively.

11. The parties are business entities. The plaintiff, Pachira Energy LLC (“Pachira”), is a Delaware limited liability company, and the defendants, NNE and NNE Water Systems LLC, are Delaware limited liability companies. 2d Amend. Compl. ¶¶ 14 – 16.

12. Pachira and NNE began their business relationship by entering into two written agreements on January 20, 2011: (i) an area of mutual interest agreement that governs the right to jointly acquire leases and other property rights within a defined area (“AMI Agreement”); and (ii) a joint operating agreement that governs the rights and obligations of the parties to jointly develop the acreage that they jointly own within a defined area (“JOA”).

13. Under those agreements, Pachira and NNE co-own oil and gas leases and mineral interests covering more than 30,000 acres with rights to become co-owners in oil and gas leases and mineral interests in lands comprising approximately 65,000 acres in total. 2d Amend. Compl. ¶ 2.

14. At the time Pachira filed its Second Amended Complaint, Pachira and NNE jointly owned sixty-five (65) unconventional natural gas wells producing from the Marcellus Shale formation on the leased acreage. 2d Amend. Compl. ¶ 3. NNE and Pachira have completed additional jointly owned wells under the agreements since that time.

15. To date, NNE and Pachira have invested capital in excess of \$800,000,000 in this natural gas and exploration development project.

16. NNE, designated by the parties as the “operator” under the JOA, directs the technical and logistical aspects of drilling and completing the jointly owned unconventional natural gas wells. 2d Amend. Compl. Ex. B (JOA Art. V § A).

17. The process of drilling and completing unconventional natural gas wells requires significant amounts of water. NNE recognized that both NNE and Pachira would benefit by drawing water from a local source and piping it to and from the jointly owned natural gas wells.

18. NNE and Pachira incrementally built-out and paid for a water line, infrastructure and facilities (collectively, “Water Line and Handling Facilities”) as they developed jointly owned wells.

19. In its Second Amended Complaint, Pachira alleges that the parties formed a *de facto* joint venture or joint partnership—a separate business relationship from that formed under the AMI Agreement and JOA—regarding the Water Line and Handling Facilities. *See* 2d Amend. Compl. ¶57.

20. The parties dispute (i) the nature of their business relationship, if any, as to the Water Line and Handling Facilities; and (ii) what type of ownership interests they have in the Water Line and Handling Facilities.

21. These questions about the nature of the relationship and the nature of the property turn on complex legal analysis.

22. Furthermore, the claims strike at the core of the operation of the Water Line and Handling Facilities and the governance of the relationship between the parties.

23. Pachira seeks to enjoin Defendants' use of the Water Line and Handling Facilities. 2d Amend. Compl. Counts IV and V, Prayers for Relief.

24. Pachira now seeks to either dissolve the "joint venture" by judicial determination under the West Virginia Uniform Partnership Act, W. Va. Code § 47BN-8-1(5) or partition the Water Line and Handling Facilities by sale pursuant to W. Va. Code § 37-4-1. 2d Amend. Compl. Count II and III, Prayers for Relief.

25. The parties' relationship to the Water Line and Handling Facilities is on trial. Without disclosing the substance of the parties' settlement negotiations, the parties' positions on valuing the Water Line and Handling Facilities are many tens of millions of dollars apart. Undeniably, the claims "involve matters of significance to the transactions, operations, or governance between business entities." Tr. Ct. R. 29.04(a)(1).

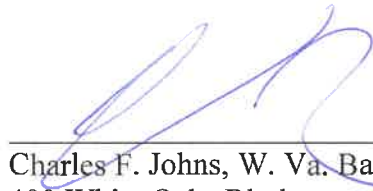
26. The claims in this litigation involve the precise commercial issues and disputes between businesses the Supreme Court of Appeals created the Business Court Division to hear. *See* Tr. Ct. R. 29.01.

27. Counsel for the parties have discussed the issues presented in this Motion. Counsel for Pachira needs to confer with their client to determine if Pachira will join in, consent to or object to the Motion, but indicated they will do so prior to any hearing on the Motion before this Honorable Court.

WHEREFORE, Defendants Northeast Natural Energy LLC and NNE Water Systems LLC, hereby move, pursuant to W.Va. Trial Court Rule 29, the Chief Justice of the West Virginia Supreme Court of Appeals to refer this case to the Business Court Division.

Dated this 13 day of August 2020.

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 13<sup>th</sup> day of August, 2020, I served the foregoing "***Motion to Refer Case to Business Court Division***" via electronic mail to the parties of record in this civil action and by placing a copy in the United States mail, first class, postage prepaid, to all individuals listed below in envelopes addressed as follows:

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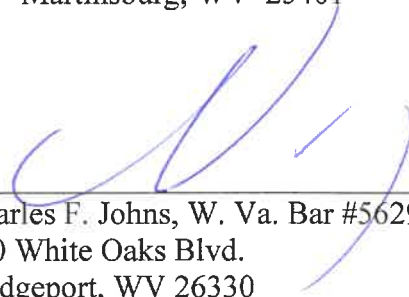
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