IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

SHONK LAND COMPANY LLC,

Plaintiff,

v.

Kanawha County Circuit Court
Civil Action No. 20-C-613
Judge Jennifer F. Bailey

CARBON ENERGY CORPORATION, and CARBON WEST VIRGINIA COMPANY LLC n/k/a DP BLUEGRASS LLC,

Defendants.

TO: THE HONORABLE CHIEF JUSTICE

DEFENDANTS' JOINT MOTION TO REFER CASE TO THE BUSINESS COURT DIVISION

Pursuant to Rule 29.06 of the West Virginia Trial Court Rules, Defendants, DP Bluegrass LLC, f/k/a Carbon West Virginia Company LLC ("DP Bluegrass") and Carbon Energy Corporation ("Carbon Energy") request that the above-styled case be referred to the Business Court Division and assigned to Judge Christopher C. Wilkes as the Presiding Judge. In support of this motion, Defendants state as follows:

1. This case involves a dispute arising from the sale of certain ownership interests that control two oil and gas leases as part of a large corporate transaction involving hundreds of other leases and associated infrastructure for oil and gas related operations in southern West Virginia. *Complaint* ¶¶1 – 8 (Exh. 1). The leases are generally referred to by the parties as the "Larner Lease" and the "Williams Lease," which together govern natural gas extraction on approximately 27,000 acres located in Kanawha County and Boone County, West Virginia. *Id.* Plaintiff Shonk Land Company, LLC ("Shonk") is the lessor/landowner under both oil and gas leases. *Id.* The lessee/operator under the leases has changed over time. *Id.* at ¶¶16 -64. The current lessee/operator

as a result of the transaction at issue is DP Bluegrass, which was formerly known as Carbon West Virginia Company, LLC ("Carbon West Virginia"). *Id.* at ¶53.

2. Two of the three parties named in this case were also parties to prior litigation before the Business Court Division involving the same two leases. *Shonk Land Company, LLC v. Cabot Oil & Gas Corporation and Carbon West Virginia Company, LLC.*, No. 18-C-193 ("Prior Litigation"). In the Prior Litigation, Shonk challenged the sale by then-lessee Cabot Oil & Gas Corporation ("Cabot") of its interests in the leases to Carbon West Virginia as part of Cabot's sale of all its operating assets located in West Virginia. *Complaint* at ¶¶30 – 36. Shonk claimed that Cabot was required to obtain Shonk's consent to the sale, and Cabot claimed that Shonk unreasonably withheld its consent to the sale. That case was resolved by settlement agreement dated May 6, 2019. *Compliant* at ¶¶36 – 43. Judge Wilkes presided over that case.

3. As part of the settlement agreement to resolve the Prior Litigation, Shonk and Carbon West Virginia executed amendments to both leases that granted a "right of first refusal" to Shonk in the event Carbon West Virginia proposed to sell the lessee rights to an unaffiliated third party. *Complaint* at ¶¶36 – 43. Carbon West Virginia's parent company, Carbon Energy, also executed a guarantee agreement whereby Carbon Energy guaranteed Carbon West Virginia's performance under the leases. *Complaint* at ¶42.

4. The present dispute arises from a subsequent sale by Carbon Energy of the equity membership interests in Carbon West Virginia to Diversified Gas and Oil Corporation ("Diversified") at the end of May, 2020. *Complaint* ¶44 – 64. This transaction involved transfer of ownership interests controlling approximately 6,100 wells and 4,700 miles of pipelines and associated infrastructure. *Diversified May 27, 2020 Press Release* (Exh. 2). Shonk's leases were

a small part of this transaction. Carbon West Virginia changed its name to DP Bluegrass following the closing.

5. According to Shonk's Complaint, Shonk received notice of the proposed sale from Carbon Energy and Carbon West Virginia. *Complaint* at ¶46. Shonk then notified Carbon Energy and Carbon West Virginia that Shonk wished to exercise its right to purchase the lease interests. *Complaint* at ¶48. Shonk alleges that (a) Carbon Energy and Carbon West Virginia did not provide sufficient information to enable Shonk to evaluate the proposed purchase price; (b) the proposed purchase price was inflated; and (c) that Carbon Energy breached the leases by later selling the ownership interests in Carbon West Virginia to Diversified. *Complaint* at ¶¶65 – 110.

6. DP Bluegrass has asserted counterclaims against Shonk. DP Bluegrass alleges that Shonk breached the leases by reneging on its commitment to purchase the lease interests for the price offered by Diversified, and by continually requesting more information concerning the value assigned to the leases in an effort to leverage a lower price. *Answer and Counterclaim* at p. 14 – 16 (Exh. 3). DP Bluegrass has also asserted a slander of title counterclaim arising from Shonk's declaration that the leases have been forfeited. *Id.* at p. 17 – 18.

7. Resolution of these claims involves evaluation of complex corporate structures, complex transactional documents, and an assessment of the value placed on the lease interests and associated infrastructure in the context of a complex commercial transaction. The specialized knowledge and experience of the judges assigned to the Business Court Division are likely to improve the likelihood of a fair and reasonable resolution of these issues. Judge Wilkes would be an ideal Presiding Judge in light of his experience with the Prior Litigation.

8. No related actions are currently pending. As noted above, the Prior Litigation was resolved by settlement agreement in 2019.

9. In order to obtain a referral to the Business Court Division, the proceedings must involve "Business Litigation," a term defined by Trial Court Rule 29.04(a) as one or more pending actions 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.

10. This case meets the definition of "Business Litigation." First, the claims and defenses arise from transactions between multiple businesses. Second, the claims and defenses involve complex commercial transactions and associated documentation. The specialized knowledge and expertise of judges in the Business Court Division, particularly Judge Wilkes, would aid in resolving the dispute and are likely to improve the expectation of a fair and reasonable resolution of the case. Third, the claims and defenses do not qualify as any of the prohibited types of disputes set forth in Rule 29.04(a)(3).

For all the reasons stated above, Defendants request that this case be referred to the Business Court Division and Judge Wilkes be assigned as Presiding Judge.

DP BLUEGRASS LLC f/k/a Carbon West Virginia Company, LLC

By Counsel

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EXHIBIT 1

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

SHONK LAND COMPANY LLC

Plaintiff,

v. **Civil Action No.:**

CARBON ENERGY CORPORATION, and
CARBON WEST VIRGINIA COMPANY LLC
N/K/A DP BLUEGRASS LLC,

Defendants.

COMPLAINT

Shonk Land Company LLC ("Shonk" or "Lessor"), Plaintiff, by counsel, Bailey & Glasser, LLP, for its Complaint against Carbon Energy Corporation ("CEC") and Carbon West Virginia Company LLC n/k/a DP Bluegrass LLC ("Carbon West Virginia" or "Lessee"), states the following:

I. Nature of the Dispute

1. Shonk is the Lessor and Carbon West Virginia is the Lessee under two leases, the Larner Lease and Williams Lease (defined below and collectively referred to herein as the "Leases"). CEC is the guarantor of Carbon West Virginia's obligations under the Leases and is primarily liable to Shonk pursuant to the Guaranty agreement between Shonk and CEC (defined below).

2. On May 6, 2019, Shonk, Carbon West Virginia and CEC entered into a Second Lease Amendment and Ratification ("Second Lease Amendment") for each of the Leases.

3. The Second Lease Amendments added a section referred to as the Right of First Refusal ("ROFR") to both the Larner and Williams Leases.

4. Under both the Larner and Williams Leases, the ROFR section states the following:

> **Right of First Refusal.** In the event that Lessee seeks to Transfer (as defined herein) all or any portion of its interest in any well under the Lease or all or any portion of its interest under the Lease (the "Transferred Interest"), Lessee shall promptly provide written notice (the "Notice of Intent to Transfer") to Lessor and include information concerning the purported transferee of the Transferred Interest and the value Lessee expects to receive in exchange for transferring the Transferred Interest. Lessor shall keep all information provided by Lessee pursuant to this provision confidential and shall not disclose such information to any person or use such information for any purpose other than as contemplated by this paragraph 1.a. without Lessee's prior written consent. At any time within thirty (30) days after actual receipt (notwithstanding any application of the "mailbox rule") of the Notice of Intent to Transfer, Lessor may elect to purchase the Transferred Interest for the value and upon the terms set out in the Notice of Intent to Transfer and shall give written notice of such election to Lessee. If Lessor fails to give such written notice of election to purchase within thirty (30) days of receipt of the Notice of Intent to Transfer or earlier provides Lessee with written notice that it declines to exercise its Right of First Refusal, Lessee shall have the right to proceed with the Transfer of the Transferred Interest in accordance with the Notice of Intent to Transfer. Lessor's waiver of its Right of First Refusal for any specific Transfer shall be effective only for that specific Transfer and shall not constitute a waiver of its Right of First Refusal to purchase Lessee's interest upon any future Transfer. "Transfer" as used in this Section 9 means any sale, assignment, merger, mortgage, sale of all or a controlling equity interest in Carbon West Virginia Company, LLC or any successor entity, including any of the above undertaken by operation of law (including by bankruptcy); provided, however, that a Transfer to a wholly-owned affiliate or subsidiary of Carbon Energy Corporation shall not be a "Transfer" under the terms of this Second Lease Amendment and Ratification. In the event that Lessee breaches any material aspect of Lessor's Right of First Refusal, the Parties specifically agree that the Lease shall be forfeited and forever cease and terminate without further notice by Lessor as of the date of such breach regardless of any argument under law or equity against such forfeiture. Upon a material breach of Lessor's Right of First Refusal, Lessor shall have the right to enter upon, use and take possession of the leased premises and all machinery and equipment thereon which is necessary for the continued production of gas on the leased premises (this specifically exclude vehicles and other mobile equipment and machinery) and hold and possess the same free and acquit from any claims of Carbon West Virginia Company, LLC thereto in like manner as if this Lease had not been made. No forfeiture, reentry, or termination by Lessor shall in any way impair Lessor's ability or right to collect royalties or any other payment then owing under the terms of the Lease. The Parties, aware of this specific remedy and its potential effect, nonetheless specifically agree to impose it in the Lease as a consequence for breach of the foregoing Right of First Refusal provision.

* * *

A "material breach" as used herein is defined as a breach of contract that deprives the other party of a substantial benefit that the other party reasonably expected to receive under the terms of the contract.

5. On April 8, 2020, Carbon West Virginia and CEC provided Shonk with Notice of Intent to Transfer their interests in the Larner and Williams Leases to Diversified Gas and Oil Corporation ("DGO").

6. On May 5, 2020, Shonk provided appropriate notice to CEC and Carbon West Virginia of its election to exercise its rights of first refusal.

7. On May 26, 2020, notwithstanding Shonk's election, CEC and Carbon West Virginia closed on a transaction with DGO, breaching the ROFR.

8. Through this case, Shonk seeks a declaratory judgment proclaiming that the Leases are forfeited and terminated as a result of Carbon West Virginia's and CEC's material breaches of the Second Lease Amendments and Guaranty, as well as an award of compensatory damages and attorneys' fees.

II. The Parties

9. Shonk is a West Virginia limited liability company.

10. Shonk's member is Shonk-Del, LLC.

11. Shonk-Del, LLC's members include persons residing in various states, including members who reside in Delaware.

12. CEC is a publicly-traded Delaware corporation trading under the symbol CRBO with its principal place of business in Denver, Colorado.

13. Carbon West Virginia is a Delaware limited liability company and is the Lessee under the Larner and Williams Leases. Following completion of the transaction with DGO, Carbon West Virginia is now ultimately owned by DGO, a Delaware company.

III. Jurisdiction and Venue

14. This Court has jurisdiction to hear this action under W. Va. Code § 51-2-2, which grants circuit courts original and general jurisdiction over "all matters at law where the amount in controversy, excluding interest, exceeds $7,500" as well as "all cases in equity, including jurisdiction in equity to remove any cloud on the title to real property, or any part of a cloud, or any estate, right or interest in the real property, and to determine questions of title with respect to the real property without requiring allegations or proof of actual possession of the real property."

15. Venue is proper in this Court since this matter involves oil and gas leases pertaining to land located within Kanawha and Boone Counties.

IV. History of the Larner and Williams Leases

16. On May 20, 1930, Shonk executed an Agreement of Lease with Larner Gas Company ("Larner"), granting Larner certain rights to oil and gas in and under certain land, together with the exclusive right to drill for, produce and market said oil and gas underlying sixteen thousand (16,000) acres of property situated in Kanawha and Boone Counties (the "Larner Lease").

17. By court orders set out in a suit in the United States District Court for the Southern District of West Virginia arising from the receivership of Larner, all of Larner's interest in the Larner Lease was conveyed to Donald C. Shonk by deed dated February 11, 1939.

18. By deed dated April 27, 1939, Donald C. Shonk conveyed and assigned the Lessee's interest in the Larner Lease to Godfrey L. Cabot, Inc.

19. Upon information and belief, at some point thereafter, Godfrey L. Cabot, Inc. merged with other corporations to be known as Cabot Corporation, a corporation organized and existing under Delaware law.

20. By various mesne intra-company assignments and mergers, in or around 1991, Cabot Oil & Gas Corporation became the Lessee under the Larner Lease.

21. On or about September 29, 2017, Cabot conveyed to Carbon West Virginia all of its right, title and interest in the Larner Lease, effective as of April 1, 2017, and Carbon West Virginia became the Lessee under the Larner Lease.

22. Shonk Land Company and Union Oil Company of California ("Union Oil") are the successors in interest of the lessors and the lessee to an oil and gas lease dated August 31, 1914 ("1914 Lease") and a lease dated January 8, 1981 ("1981 Lease").

23. On October 1, 1986, Shonk and Union Oil executed a new lease that amended and consolidated the 1914 Lease and 1981 Lease into a single consolidated lease covering eleven thousand (11,000) acres of property situated in Kanawha County (the "Williams Lease").

24. Cabot became the Lessee under the Williams Lease on January 15, 1993 by purchasing Union Oil's interests in the Williams Lease.

25. By letter dated September 13, 1993 and agreed to on September 27, 1993, Cabot and Shonk amended the Williams Lease to provide time for Cabot to recomplete certain existing well(s) and to evaluate the feasibility of additional drilling completions.

26. On or about September 29, 2017, Cabot conveyed to Carbon West Virginia all of its right, title and interest in the Williams Lease, effective as of April 1, 2017, and Carbon West Virginia became the Lessee under the Williams Lease.

V. Disputes and Settlements Between Shonk and Cabot

27. In or around 2007, a dispute arose between Shonk and Cabot regarding royalty calculations and payments under the Larner and Williams Leases, which resulted in litigation.

28. After years of litigation, on December 23, 2015, Shonk and Cabot entered into a Confidential Settlement Agreement (the "First Settlement") whereby the parties agreed to a mutual release of claims in exchange for certain amendments to the Larner Lease (the "First Larner Lease Amendment and Ratification") and the Williams Lease (the "First Williams Lease Amendment and Ratification").

29. On December 31, 2015, Shonk and Cabot executed the First Larner Lease Ratification and the First Williams Lease Ratification (collectively, "the First Amendments and Ratifications"), in which Shonk obtained, among other things, the right to consent to any assignment of the Leases (the "Consent to Assign Provision"). Specifically, the Consent to Assign Provision provided that "Lessee shall not assign all or a portion of this Lease without the prior written consent of Lessor."

30. On July 12, 2017, less than two years after Shonk and Cabot executed the First Amendments and Ratification, Cabot informed Shonk of its intention to assign the Leases to Carbon West Virginia.

31. Pursuant to the terms of the Consent to Assign Provision, Shonk requested relevant non-public information regarding the credit-worthiness of Carbon West Virginia Company, the proposed assignee.

32. In response to Shonk's request, Cabot provided Shonk with the publicly-available 10-Q filing of Carbon Natural Gas Company ("Carbon Natural Gas"), the purported partial-owner of the proposed assignee, Carbon West Virginia.

33. By letter dated July 31, 2017, Shonk declined to grant consent to the assignment due in part to the complete lack of information about the proposed assignee as well as information from the 10-Q that revealed numerous financial problems of Carbon Natural Gas that could

impact its ability or willingness to prudently and safely perform its obligations under the Leases, assuming that Carbon Natural Gas—a partial owner of Carbon West Virginia—was somehow responsible for the proposed assignee's performance under the Larner Lease.

34. Shonk sent Cabot multiple letters in which it objected to the assignment to Carbon West Virginia.

35. In the face of Shonk's objections, on September 29, 2017, Cabot conveyed to Carbon West Virginia all of its right, title and interest in the Larner and Williams Leases, effective as of April 1, 2017.

VI. Assignment Litigation and Settlement

36. In part because Cabot conveyed the Larner and Williams Leases to Carbon West Virginia over Shonk's objections and in violation of the Leases' provisions restricting such an assignment, Shonk initiated litigation against Cabot and Carbon West Virginia (the "Assignment Litigation").

37. On May 6, 2019, the parties entered into a Confidential Settlement Agreement and a Second Lease Amendment and Ratification to both the Larner and Williams Leases (collectively, the "Second Lease Amendments") in the Assignment Litigation.

38. As part of the settlement in the Assignment Litigation, Shonk specifically negotiated for the Right of First Refusal ("ROFR") in the event that the Lessee seeks to transfer all or any portion of its interests under the Leases.

39. The ROFR was important to Shonk, because, among other reasons, it gave Shonk assurances that it could purchase the Lessee's interests in the Leases should the Lessee seek to transfer the Leases.

40. The ROFR was a material term of the Second Lease Amendments and a key condition in settling the Assignment Litigation.

41. Accordingly, the parties specifically agreed that in the event of a material breach of the ROFR, the Leases would be forfeited and terminated as of the date of the breach regardless of any argument under law or equity against forfeiture.

42. On May 6, 2019, along with the Second Lease Amendments, Shonk and CEC entered into a Guaranty whereby CEC unconditionally guaranteed Carbon West Virginia's performance of all covenants, terms, agreements and obligations under the Leases and agreed to accept primary liability under the Leases (the "Guaranty").

43. Pursuant to the Second Lease Amendments and the Guaranty, the parties specifically agreed that the Leases would be forfeited upon a breach of any material aspect of the Guaranty, regardless of any argument under law or equity against forfeiture.

VII. Breach of the Second Lease Amendments and Guaranty

44. Less than one year later, on April 8, 2020, Carbon West Virginia, with CEC, issued a Notice of Intent to Transfer both the Larner and Williams Leases, in which they informed Shonk that they entered a purchase and sale agreement with DGO dated April 7, 2020 with an effective date of January 1, 2020 whereby CEC agreed to sell one hundred (100) percent of the equity in Carbon Appalachian Company, LLC, which indirectly owns all of the membership interests of Carbon West Virginia, for $110 million.

45. Under the Leases, Lessee is required to provide Lessor with information concerning both the purported transferee and the value Lessee expects to receive in exchange for the transferred interests in the Leases so Lessor may evaluate whether to exercise its ROFR to purchase the transferred interests upon the terms being offered to the purported transferee.

46. In the April 8 Notice of Intent to Transfer the Leases, CEC and Carbon West Virginia offered to sell the transferred interests in the Leases (the "Shonk Transferred Interest") to Shonk for approximately $2.6 million, but provided no documents to allow Shonk to verify the valuation and allocation of the $110 million total purchase price on the CEC-DGO transaction.

47. On April 14, 2020, Shonk sent Carbon West Virginia and CEC a written request for information necessary to evaluate the fairness and accuracy of the purchase price allocated to the Shonk Transferred Interest.

48. On May 5, 2020, Shonk formally exercised its ROFR and reiterated its previous requests to Carbon West Virginia and CEC for information, including the schedules and exhibits for the proposed sale agreement with DGO, to support the allocation and valuation of the Shonk Transferred Interest.

49. On May 14, 2020, Carbon West Virginia provided draft conveyance documents to counsel for Shonk for a closing that was unilaterally scheduled by Carbon West Virginia to occur on May 26, 2020, just twelve days later.

50. Carbon West Virginia gave Shonk less than two weeks to review and negotiate the conveyance documents and, notwithstanding multiple requests, refused to provide Shonk access to any documents that could or would verify the valuation and allocation of the approximately $2.6 million purchase price.

51. Despite the lack of information about the purchase price and the unreasonable time frame dictated by Carbon West Virginia, Shonk continued to work in good faith to negotiate the conveyance documents.

52. On May 21, 2020, although substantial progress had been made toward reaching an agreement acceptable to both parties, five days before the scheduled closing date, Carbon West

Virginia's and CEC's counsel ignored Shonk's offer to work through the Memorial Day holiday weekend to finalize the transaction documents and simply ceased all communication.

53. On May 26, 2020, without further communication to Shonk and without Shonk's knowledge or participation, Carbon West Virginia and CEC closed the transaction transferring the Shonk Transferred Interest to DGO by conveyance of Carbon West Virginia's related membership interests, notwithstanding Shonk's election to exercise its ROFR.

54. On May 29, 2020, Shonk issued Notices of Default and Forfeiture to Carbon West Virginia and CEC, formally declaring a default under the Second Lease Amendments and Guaranty and asserting its right to recover its assets via forfeiture of the Leases.

55. Shonk simultaneously offered to forebear on the exercise of its rights pursuant to the Notices of Default and Forfeiture for a period of thirty (30) days in order to give Carbon West Virginia and CEC an opportunity to cure the breaches of the ROFR.

56. Immediately thereafter, DGO offered to sell the Shonk Transferred Interest to Shonk under the terms of the ROFR.

57. On June 10, 2020, Shonk, CEC, Carbon West Virginia, and DGO entered into an authorization letter (the "Standstill Agreement") that allowed, without prejudicing, waiving, or otherwise affecting any rights of Shonk, resumption of efforts to transfer the Shonk Transferred Interest to Shonk, while specifically preserving the rights and remedies of all parties as they then existed.

58. For more than a month, Shonk made good faith efforts to verify and validate the purchase price allocation of the Shonk Transferred Interest in proportion with the overall price paid by DGO for the membership interests in Carbon West Virginia.

59. DGO provided certain information, but it never provided a definitive computation or calculation that demonstrated the methodology of determining the purchase price allocation of the Shonk Transferred Interest.

60. With the information provided by DGO and publicly available information, Shonk conducted its own analysis and valuation modeling and concluded that there was a significant discrepancy in the valuation provided by Carbon West Virginia and CEC of the Shonk Transferred Interest.

61. Based on its analysis, Shonk developed significant concern regarding the fairness and veracity of the purchase price allocation of the Shonk Transferred Interest.

62. On July 20, 2020, Shonk sent a letter to Carbon West Virginia and CEC informing them that Shonk intends to exercise its rights and remedies as provided for in the Second Lease Amendments and Guaranty.

63. In the letter dated July 20, 2020, Shonk stated that Carbon West Virginia and CEC did not provide sufficient information to validate the valuation and allocation of the price placed upon the Shonk Transferred Interest as part of the overall price DGO paid for the Carbon West Virginia related membership interests.

64. In the letter dated July 20, 2020, Shonk stated that the information Carbon West Virginia and CEC provided supports only a substantially lower allocation for the Shonk Transferred Interest when the analysis comparatively takes into account the overall sale to DGO.

COUNT I - Breach of Leases for conveying the Shonk Transferred Interest to DGO in violation of the ROFR

65. Shonk incorporates the allegations in Paragraphs 1 – 64 as if fully set forth here.

66. Under Section 1 of the Second Lease Amendments, Shonk has the Right of First Refusal in the event that Lessee seeks to transfer all or any portion of its interest in any well under the Larner or Williams Leases.

67. At Shonk's election, Lessee is contractually obligated to sell to Shonk any interests under the Leases it was intending to transfer for the value Lessee expected to receive for the interests.

68. Under Section 1 of the Second Lease Amendments, "[i]n the event that Lessee seeks to Transfer (as defined herein) all or any portion of its interest in any well under the Lease or all or any portion of its interest under the Lease (the "Transferred Interest"), Lessee shall promptly provide written notice (the "Notice of Intent to Transfer") to Lessor and include details on the purported transferee of the Transferred Interest and the value Lessee expects to receive in exchange for transferring the Transferred Interest... Lessor may elect to purchase the Transferred Interest for the value and upon the terms set out in the Notice of Intent to Transfer and shall give written notice of such election to Lessee."

69. Carbon West Virginia materially breached the Leases by transferring the Shonk Transferred Interest to DGO after receiving timely notice from Shonk that it was formally exercising its ROFR.

70. CEC was the direct beneficiary of the transfer of the Shonk Transferred Interest to DGO by virtue of CEC being the seller of the membership interests in Carbon West Virginia.

71. Under Section 1 of the Second Lease Amendments, "[i]n the event that Lessee breaches any aspect of Lessor's Right of First Refusal, the Parties specifically agree that the Lease shall be forfeited and forever cease and terminate without further notice by Lessor as of the date of such breach, regardless of any argument under law or equity against such forfeiture. Upon a breach

of Lessor's Right of First Refusal, Lessor shall have the right to enter upon, use and take possession of the leased premises and all machinery and equipment thereon, and hold and possess the same free and acquit from any claims of Carbon West Virginia Company, LLC, thereto in like manner as if this Lease had not been made."

72. Carbon West Virginia materially breached Shonk's ROFR, and pursuant to the Second Lease Amendments, the Leases are forfeited and forever cease and terminate.

73. Under Section 4 of the Guaranty, titled "Primary Liability of Guarantor," CEC agreed to accept primary liability under the Leases and waived "the right to require Shonk to proceed against Carbon West Virginia or any other person (including a co-guarantor) or to require Shonk to pursue any other remedy or enforce any other right."

74. Pursuant to the Guaranty, CEC is primarily liable to Shonk for Carbon West Virginia's breach of the Leases.

75. Following the breach, Carbon West Virginia and CEC allowed the Shonk Transferred Interest to become encumbered with a mortgage and/or security interest, further impairing Shonk's title.

76. As a result of the foregoing, Shonk has been damaged, and hereby requests that the Court issue a declaratory judgment proclaiming that the Leases are hereby forfeited and terminated.

COUNT II – Breach of Leases for failure to provide Lessor with information regarding the value of the Shonk Transferred Interest

77. Shonk incorporates the allegations in Paragraphs 1 – 76 as if fully set forth here.

78. Carbon West Virginia owes a duty to Shonk under Section 1 of the Second Lease Amendments to "provide written notice (the "Notice of Intent to Transfer") to Lessor and include details on the purported transferee of the Transferred Interest and the value Lessee expects to receive in exchange for transferring the Transferred Interest."

79. Carbon West Virginia materially breached its duty to Shonk by failing to provide information necessary to evaluate the fairness and accuracy of the computation of the purchase price allocated to the Shonk Transferred Interest.

80. Pursuant to the Second Lease Amendments, Carbon West Virginia materially breached the Leases by failing to provide necessary information concerning the value of the transferred interests, and accordingly, the Leases are forfeited and forever cease and terminate.

81. Pursuant to the Guaranty, CEC is primarily liable to Shonk for Carbon West Virginia's breach of the Leases.

82. Under the Leases and the Guaranty, CEC and Carbon West Virginia have an implied covenant of good faith and fair dealing in their contractual relationship with Shonk to provide information on both the purported transferee and value Lessee expected to receive for the interests they sought to transfer to allow Shonk to objectively and reasonably evaluate whether to exercise the ROFR.

83. CEC and Carbon West Virginia acted in bad faith, and have breached their duty of good faith and fair dealing by:

a. Refusing to provide Shonk access to any documents that could or would verify the valuation and allocation of the approximately $2.6 million purchase price;

b. Providing Shonk less than two weeks to review and negotiate the conveyance documents of the Shonk Transferred Interest;

c. Closing the transaction transferring the Shonk Transferred Interest to DGO without Shonk's knowledge or participation, notwithstanding Shonk's election to exercise its ROFR.

84. Each of these breaches were flagrant, willful, and wanton, and were undertaken to protect CEC's and Carbon West Virginia's own pecuniary interests without regard to their obligations under the Leases or the Guaranty.

85. As a result of these breaches, CEC and Carbon West Virginia are liable to Shonk for compensatory damages, as well as for attorneys' fees.

86. As a result of the foregoing, Shonk has been damaged, and hereby requests that the Court issue a declaratory judgment proclaiming that the Leases are hereby forfeited and terminated, and award compensatory damages and attorneys' fees.

Count III – Breach of Leases for failure to offer Lessor the Shonk Transferred Interest at the value Lessee would receive in exchange for the interests

87. Shonk incorporates the allegations in Paragraphs 1 – 86 as if fully set forth here.

88. Pursuant to Section 1 of the Second Lease Amendments, Carbon West Virginia is contractually obligated to sell to Shonk, if Shonk so elects, any interest under the Leases it was intending to transfer for the value it expected to receive for the interests.

89. Carbon West Virginia owes a duty to Shonk under Section 1 of the Second Lease Amendments to "provide written notice (the "Notice of Intent to Transfer") to Lessor and include details on the purported transferee of the Transferred Interest and the value Lessee expects to receive in exchange for transferring the Transferred Interest."

90. Upon information and belief, Carbon West Virginia materially breached the Leases by–rather than offering Shonk the ability to exercise the ROFR for the value determined in good faith for the interests–offering to sell the Shonk Transferred Interest to Shonk for an inflated value.

91. As a result of Carbon West Virginia's material breach of the Leases by failing to offer and sell to Shonk the Shonk Transferred Interest for the value, determined in good faith, that it expected to receive for the interests, the Leases are forfeited and forever cease and terminate.

92. Pursuant to the Guaranty, CEC is primarily liable to Shonk for Carbon West Virginia's breach of the Leases.

93. Under the Leases and the Guaranty, CEC and Carbon West Virginia have an implied covenant of good faith and fair dealing in their contractual relationship with Shonk to sell to Shonk, if Shonk so elects, any interest under the Leases they were intending to transfer for the value they expected to receive for the interests.

94. CEC and Carbon West Virginia acted in bad faith, and have breached their duty of good faith and fair dealing by:

a. Offering the Shonk Transferred Interest to Shonk at an inflated value that does not reflect the accurate purchase price allocation of the Shonk Transferred Interest in proportion with the overall price paid by DGO for the membership interests in Carbon West Virginia;

b. Closing the transaction transferring the Shonk Transferred Interest to DGO without Shonk's knowledge or participation, notwithstanding Shonk's election to exercise its ROFR.

95. Each of these breaches were flagrant, willful, and wanton, and were undertaken to protect CEC's and Carbon West Virginia's own pecuniary interests without regard to their obligations under the Leases or the Guaranty.

96. As a result of these breaches, CEC and Carbon West Virginia are liable to Shonk for compensatory damages, as well as for attorneys' fees.

97. As a result of the foregoing, Shonk has been damaged, and hereby requests that the Court issue a declaratory judgment proclaiming that the Leases are hereby forfeited and terminated, and award compensatory damages and attorneys' fees.

Count IV – Breaches of Guarantee

98. Shonk incorporates the allegations in Paragraphs 1 – 97 as if fully set forth here.

99. CEC owes a duty to Shonk under the Guaranty to guarantee the full and prompt payment and performance of all covenants, terms, agreements and obligations of Carbon West Virginia under the Leases.

100. Under Section 1 of the Guaranty, "Guarantee does hereby unconditionally guarantee to Shonk the full and prompt and performance when due, whether by acceleration or otherwise, of all covenants, terms, agreements and obligations of Carbon West Virginia under the Leases, or otherwise under the law applicable to Carbon West Virginia's obligations under the Leases[.]"

101. CEC materially breached the Guaranty by transferring the Shonk Transferred Interest to DGO after receiving timely notice from Shonk that it was formally exercising its ROFR.

102. CEC materially breached the Guaranty by failing provide information necessary to evaluate the fairness and accuracy of the computation of the purchase price allocated to the Shonk Transferred Interest.

103. CEC materially breached the Guaranty by offering to sell the Shonk Transferred Interest to Shonk for a substantially higher price than it would have received for the interests based on an allocation of those interests in relation to the overall sale to DGO.

104. Under Section 4 of the Guaranty, titled "Primary Liability of Guarantor," CEC agreed to accept primary liability under the Leases and waived "the right to require Shonk to proceed against Carbon West Virginia or any other person (including a co-guarantor) or to require Shonk to pursue any other remedy or enforce any other right."

105. Pursuant to the Guaranty, CEC is primarily liable to Shonk for all of Carbon West Virginia's breaches of the Leases.

106. Pursuant to Section 12 of the Guaranty titled "Forfeiture of Lease for Default; No Waiver; Time of Essence," in the event that Guarantor breaches any material aspect of this Guaranty, "[t]he parties further specifically agree that if the material breach is not cured within such thirty (30) day period, the Leases shall be forfeited and forever cease and terminate without further notice by Shonk as of the expiration of such cure period, regardless of any argument under law or equity against such forfeiture...The Parties, aware of this specific remedy and its potential effect, nonetheless specifically agree to impose it in this Guaranty and in the Leases as a consequence for breach of this Guaranty." Under Section 3 of the Second Lease Amendments titled "Forfeiture of Lease For Breach of Guaranty," in the event that Guarantor breaches any material aspect of this Guaranty, "[t]he Parties further specifically agree that if the material breach is not cured within such thirty (30) day period, [the Leases] shall be forfeited and forever cease and terminate without further notice by Lessor as of the expiration of such cure period, regardless of any argument under law or equity against such forfeiture...The Parties and Guarantor, aware of this specific remedy and its potential effect, nonetheless specifically agree to impose it in [the Leases] as a consequence for breach of the Guaranty."

107. On May 29, 2020, Shonk provided notice to CEC and Carbon West Virginia of default under the Second Lease Amendments and Guaranty.

108. CEC did not cure its material breaches of the Guaranty within the thirty (30) day cure period provided in the Second Lease Amendments and Guaranty.

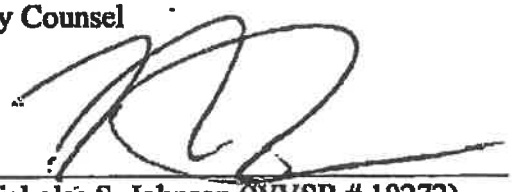
109. As a result of CEC's material breaches of the Guaranty, the Leases are forfeited and forever cease and terminate.

110. As a result of the foregoing, Shonk has been damaged, and hereby requests that the Court issue a declaratory judgment proclaiming that the Leases are hereby forfeited and terminated.

WHEREFORE, based upon all of the foregoing, Shonk respectfully demands judgment against CEC and Carbon West Virginia declaring that the Larner and Williams Leases are forfeited and terminated as set forth above, as well as compensatory damages and attorneys' fees.

SHONK LAND COMPANY LLC,

By Counsel



Nicholas S. Johnson (WVSB # 10272)
Bailey & Glasser LLP
1055 Thomas Jefferson Street, NW
Suite 540
Washington, DC 20007
(202) 463-2101

EXHIBIT 2

May 27, 2020

DIVERSIFIED GAS & OIL
PLC

Diversified Gas & Oil Plc Completes Acquisition of Carbon Energy Assets and 10-Year Amortizing Term-Loan Financing

BIRMINGHAM, AL / ACCESSWIRE / May 27, 2020 /London-LSE quoted Diversified Gas & Oil Plc (LSE:DGOC), "DGO" or the "Company"), the U.S. based owner and operator of natural gas, natural gas liquids, and oil wells as well as midstream assets, confirms that further to the announcements made by the Company on April 8, 2020 and May 12, 2020, it has completed the purchase of certain upstream and midstream assets from Carbon Energy Corporation ("Carbon") (the "Acquisition"). Concurrent with the Acquisition, DGO also closed on a 10-year amortizing $160 million gross senior secured term loan ($155 million net of fees and a $3 million interest and principal reserve account) underwritten and funded by Munich Re Reserve Risk Financing, Inc. ("MRRF") that includes a 6.5% fixed coupon and a 10-year hedge portfolio to stabilize cash flows (the "Financing").

Acquisition Highlights:

- PDP reserves of ~74 MMBoe (444 Bcfe) with pretax PV10 of ~$189 million on recent NYMEX strip
- Estimated next twelve months Adjusted EBITDA of ~$29-$31 million
- Net consideration represents a 3.2x-3.4x cash multiple
- ~9,100 Boepd (~54,600 Mcfe) of adjusted 2019 net production (~97% gas)
- Average 92% working interest / 82% net revenue interest
- ~6,100 net conventional wells with an average decline rate of ~4%/year
- ~4,700 miles of midstream providing flow optionality and margin-enhancing opportunities:
    - Significant future cost and operational optimization opportunities with >200 common intersects with existing DGO gathering systems
    - Direct connections to favorably priced interstate pipelines
    - Revenue-generating opportunities with direct connections to large commercial/industrial and utility customers as well as two active gas storage fields with ~3.5 Bcf of working capacity
- Immediate realizable synergies in field operating expenses and G&A achieved by retaining ~80% of existing Carbon workforce
- Inclusive of the assets acquired from both Carbon and EQT Corporation ("EQT"), DGO's average daily net production is 112 Mboepd

For the Acquisition and at closing, DGO paid net consideration of approximately $98 million ($110 million, gross) after customary purchase price adjustments with a January 1, 2020 effective date. Depending on future natural gas prices and measured on an annual basis over the next three years, Carbon may earn additional contingent consideration of up to $15

million in aggregate if actual NYMEX natural gas prices exceed certain established thresholds. Based on forward NYMEX natural gas prices at the time of closing, total estimated contingent consideration is less than $5 million.

The Financing:

Using the Financing proceeds, DGO funded the Acquisition and repaid the short-term draw on its revolving credit facility used to fund a portion of the EQT asset acquisition announced on May 26, 2020. DGO collateralized the Financing primarily with working interest in certain of its newly acquired upstream assets and related landholdings from EQT and Carbon (together, the "Collateral Assets"). As with the Company's previous securitized financing transactions, DGO created a wholly owned and fully consolidating special purpose vehicle ("SPV") to hold the Collateral Assets, which DGO will operate.

The Financing represents the Company's second transaction with MRRF, the sole investor in the Company's inaugural $200 million asset-backed securitized financing arrangement completed in November 2019. Combined, MRRF has underwritten and funded $360 million (gross) since November 2019, validating the quality of the Company's assets, cash flows and operating capabilities.

Financing Highlights:

- 6.5% coupon
- 10-year amortizing repayment
- No corporate covenants or recourse outside the SPV
- 10-year hedge protection on specified volumes
    - Hedged volumes are shaped to fit the natural expected production decline from the assets over time
    - Swap prices of $2.20/MMBtu for the remainder of 2020 and $2.70/MMBtu and $2.65/MMBtu in 2021 and 2022, respectively
    - DGO will post an updated hedge supplement to its website in due course that reflects the entire hedge portfolio

Following the Financing, ~70% of DGO's debt now sits in long-term, fixed rate, amortizing structures through 2030 underpinned with long-term hedges and no redetermination risk and lessens DGO's reliance on its revolving credit facility during this period of heightened market volatility. The long-term Financing aligns with DGO's long-life assets, and its amortizing structure demonstrates commitment to continuous debt reduction while eliminating future "bullet payments" along with the associated refinancing risk.

Immediately following the Acquisition and Financing, the Company's consolidated net debt-to-Adjusted EBITDA approximates 2.3x. Additionally, DGO's total liquidity now approximates $213 million, inclusive of cash and availability on its revolving credit facility. The Company's liquidity reflects the impact of less cash needed at closing due to a larger than originally estimated downward purchase price adjustment for both acquisitions' effective date of January 1, 2020. DGO's borrowing base on its revolving credit facility remains $425 million as the Company begins working with its bank group to complete its semi-annual redetermination process during June 2020.

Commenting on the acquisition, Rusty Hutson, Jr., CEO of the Company said:

"Today's transactions continue our commitment to create long-term shareholder value through selective expansion of our upstream and strategically important midstream assets. Like our largely conventional legacy assets, Carbon's wells display the same long-life, low-decline profile and expand our base of stable production and Smarter Well Management opportunities. To that end, we welcome the members of Carbon's team who today join the Diversified family and partner with us to realize the full, combined potential of these wells and the complementary midstream assets. I would also like to thank Munich Re Reserve Risk Financing, Inc. for their commitment to fund our acquisition of assets from EQT and Carbon, increasing their total investment in Diversified to $360 million during a time when many lenders are reducing their exposure to the sector. We share a common belief in the low-risk profile and high-quality nature of the underlying assets and their associated cash flows, and believe this amortizing financing, in concert with proceeds from our successful equity fundraising, further demonstrates our commitment to maintain a healthy balance sheet and appropriate leverage profile relative to the strength, reliability and visibility of our cash flow."

Company Contact: Teresa Odom, VP Investor Relations | IR@dgoc.com | 205.408.0909

SOURCE: Diversified Gas & Oil PLC

EXHIBIT 3

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

SHONK LAND COMPANY LLC,

Plaintiff,

v.

Civil Action No. 20-C-613
Judge Bailey

CARBON ENERGY CORPORATION, and
CARBON WEST VIRGINIA COMPANY LLC
n/k/a DP BLUEGRASS LLC,

Defendants.

ANSWER AND COUNTERCLAIMS OF DP BLUEGRASS LLC

Defendant DP Bluegrass LLC, f/k/a Carbon West Virginia Company LLC (Defendant), for its Answer to the Complaint filed by Plaintiff Shonk Land Company LLC states as follows:

I. Nature of the Dispute

1. Defendant is without information or knowledge sufficient to form a belief as to the allegations in Paragraph No. 1 of Plaintiff's Complaint.

2. Defendant admits the allegations in Paragraph No. 2 of Plaintiff's Complaint.

3. Defendant admits the allegations in Paragraph No. 3 of Plaintiff's Complaint.

4. Defendant admits the allegations in Paragraph No. 4 of Plaintiff's Complaint but avers the Second Lease Amendments speak for themselves. Defendant denies any description in the Complaint that is contrary to the express terms of the Second Lease Amendment.

5. Defendant admits the allegations in Paragraph No. 5 of Plaintiff's Complaint.

6. As to the allegations in Paragraph No. 6, Defendant admits that Shonk provided notice of its election to Carbon West Virginia on May 5, 2020 but is without knowledge or information sufficient to form a belief regarding the truth of the remaining allegations of the paragraph.

7. Defendant denies the allegations in Paragraph No. 7 of Plaintiff's Complaint.

8. Defendant denies the allegations in Paragraph No. 8 of Plaintiff's Complaint and denies that Shonk is entitled to relief requested.

II. The Parties

9. Defendant is without information or knowledge sufficient to form a belief as to the allegations in Paragraph No. 9 of Plaintiff's Complaint.

10. Defendant is without information or knowledge sufficient to form a belief as to the allegations in Paragraph No. 10 of Plaintiff's Complaint.

11. Defendant is without information or knowledge sufficient to form a belief as to the allegations in Paragraph No. 11 of Plaintiff's Complaint.

12. Defendant is without information or knowledge sufficient to form a belief as to the allegations in Paragraph No. 12 of Plaintiff's Complaint.

13. In response to Paragraph 13 of Plaintiff's Complaint, Defendant admits that DP Bluegrass LLC is the lessee under the subject leases. Defendant denies the remainder of the paragraph.

III. Jurisdiction and Venue

14. Defendant admits the allegations in Paragraph No. 14 of Plaintiff's Complaint.

15. Defendant admits the allegations in Paragraph No. 15 of Plaintiff's Complaint.

IV. History of the Larner and Williams Leases

16. Defendant admits the allegations in Paragraph No. 16 of Plaintiff's Complaint.

17. Defendant is without information or knowledge sufficient to form a belief as to the allegations in Paragraph No. 17 of Plaintiff's Complaint.

18. Defendant admits the allegations in Paragraph 18 of Plaintiff's Complaint.

19. Defendant is without information or knowledge sufficient to form a belief as to the allegations in Paragraph No. 19 of Plaintiff's Complaint.

20. Defendant is without information or knowledge sufficient to form a belief as to the allegations in Paragraph 20 of Plaintiff's Complaint.

21. Defendant is without information or knowledge sufficient to form a belief as to the allegations in Paragraph No. 21 of Plaintiff's Complaint.

22. Upon information and belief, Defendant admits the allegations in Paragraph 22 of Plaintiff's Complaint.

23. Defendant admits the allegations in Paragraph 23 of Plaintiff's Complaint.

24. Defendant admits the allegations in Paragraph 24 of Plaintiff's Complaint.

25. Defendant is without information or knowledge sufficient to form a belief as to the allegations in Paragraph No. 25 of Plaintiff's Complaint.

26. Defendant admits the allegations in Paragraph No. 26 of Plaintiff's Complaint.

V. Disputes and Settlements Between Shonk and Cabot

27. Defendant is without information or knowledge sufficient to form a belief as to the allegations in Paragraph No. 27 of Plaintiff's Complaint.

28. Defendant is without information or knowledge sufficient to form a belief as to the allegations in Paragraph No. 28 of Plaintiff's Complaint.

29. Defendant admits that the Larner and Williams Coal leases were amended as alleged in Paragraph No. 29 of Plaintiff's Complaint, but the documents speak for themselves and the provisions cited are incomplete statements of the contents of the amendments.

30. Defendant is without information or knowledge sufficient to form a belief as to the allegations in Paragraph No. 30 of Plaintiff's Complaint.

31. Defendant is without information or knowledge sufficient to form a belief as to the allegations in Paragraph No. 31 of Plaintiff's Complaint.

32. Defendant is without information or knowledge sufficient to form a belief as to the allegations in Paragraph No. 32 of Plaintiff's Complaint.

33. Defendant is without information or knowledge sufficient to form a belief as to the allegations in Paragraph No. 33 of Plaintiff's Complaint and therefore denies same.

34. Defendant is without information or knowledge sufficient to form a belief as to the allegations in Paragraph No. 34 of Plaintiff's Complaint.

35. Defendant is without information or knowledge sufficient to form a belief as to the allegations in Paragraph No. 35 of Plaintiff's Complaint and therefore denies same.

VI. Assignment Litigation and Settlement

36. Defendant is without information or knowledge sufficient to form a belief as to the allegations in Paragraph No. 36 of Plaintiff's Complaint and therefore denies same.

37. Defendant is without information or knowledge sufficient to form a belief as to the allegations in Paragraph No. 37 of Plaintiff's Complaint, except that Defendant admits the Larner and Williams Coal Leases were amended.

38. Defendant is without information or knowledge sufficient to form a belief as to the allegations in Paragraph No. 38 of Plaintiff's Complaint, except that Defendant admits that the lease amendments included a right of first refusal clause (ROFR).

39. Defendant is without information or knowledge sufficient to form a belief as to the allegations in Paragraph No. 39 of Plaintiff's Complaint.

40. Defendant is without information or knowledge sufficient to form a belief as to the allegations in Paragraph No. 40 of Plaintiff's Complaint.

41. Defendant is without information or knowledge sufficient to form a belief as to the allegations in Paragraph No. 41 of Plaintiff's Complaint and the lease amendments speak for themselves.

42. Defendant is without information or knowledge sufficient to form a belief regarding the allegations in Paragraph 42 of Plaintiff's Complaint.

43. In response to Paragraph 43 of Plaintiff's Complaint, Defendant states that the referenced documents speak for themselves. To the extent the Complaint misstates or mischaracterizes the documents, Defendants deny the allegations. Defendant denies the allegations that any arguments in law or equity against forfeiture are waived as it is for a court to determine.

VII. Breach of the Second Lease Amendments and Guaranty

44. In response to Paragraph 44 of Plaintiff's Complaint, Defendant admits sending to Plaintiff a notice of intent to transfer the Larner and Williams Leases. Defendant states that the referenced document speaks for itself. To the extent the Complaint misstates or mischaracterizes the documents, Defendants deny the allegations.

45. In response to Paragraph 45 of Plaintiff's Complaint, Defendant states that the referenced documents speak for themselves. To the extent the Complaint misstates or mischaracterizes the documents, Defendants deny the allegations.

46. In response to Paragraph 46 of Plaintiff's Complaint, Defendant states that the referenced document speaks for itself. To the extent the Complaint misstates or mischaracterizes the documents, Defendant denies the allegations. Defendant denies that the lease amendments required Defendant to provide any documents regarding the transaction other than the allocated value. Defendant denies the remaining allegations in Paragraph 46.

47. Defendant admits Shonk sent a request dated April 12, 2020 as alleged in Paragraph 47 of Plaintiff's Complaint buy denies Shonk was entitled to the information requested and denies such was required by the terms of the ROFR.

48. Defendant admits the allegations in Paragraph 48 of Plaintiff's Complaint that Shonk sent notice of the election to exercise the ROFR to Defendant dated May 5, 2020 as alleged in Paragraph 48 of Plaintiff's Complaint, but Defendant denies Shonk was entitled to any of the information requested by the terms of the ROFR.

49. Defendant admits it provided draft conveyance documents to Shonk on May 14, 2020 as alleged in Paragraph 49 of Plaintiff's Complaint but denies the remaining allegation that the closing was unilaterally scheduled.

50. Defendant denies the allegations in Paragraph 50 of Plaintiff's Complaint.

51. Defendant denies the allegations of Paragraph 51 of Plaintiff's Complaint.

52. Defendant denies the allegations of Paragraph 52 of Plaintiff's Complaint.

53. In response to Paragraph 53 of the Plaintiff's Complaint, Defendant admits that a transaction was closed to transfer the membership interests in Carbon West Virginia Company LLC. Defendant is without sufficient information or knowledge sufficient to form a belief as to the remaining allegations in Paragraph 53 of Plaintiff's Complaint.

54. Defendant admits Shonk issued notices on May 29, 2020, but denies there was any event of default as alleged in Paragraph 54 of Plaintiff's Complaint.

55. Defendant admits Shonk offered a time forbearance, but denies the denies the remaining allegations of Paragraph 55 of Plaintiff's Complaint as there were no breaches of the lease amendments and thus there was no basis for alleging a right to cure.

56. In response to Paragraph 56 of the Complaint, Defendant admits Diversified Gas and Oil Corporation offered Shonk the opportunity to purchase the interests. Defendant denies the remaining allegations in Paragraph 56.

57. Defendant admits the allegation in Paragraph 57 of the Plaintiffs' Complaint that certain entities entered into a Standstill Agreement. Defendant states that the referenced document speaks for itself. To the extent the Complaint misstates or mischaracterizes the document, Defendant denies the allegations.

58. Defendant denies the allegations in Paragraph 58 of Plaintiff's Complaint.

59. In response to Paragraph 59 of Plaintiff's Complaint, Defendant admits that DP Bluegrass LLC provided Shonk with information concerning calculation of the purchase price. Defendant denies the remainder of the allegations in Paragraph 59.

60. Defendant is without information or knowledge sufficient to form a belief as to the allegations in Paragraph No. 60 of Plaintiff's Complaint, and therefore denies same.

61. Defendant is without information or knowledge sufficient to form a belief as to the allegations in Paragraph No. 61 of Plaintiff's Complaint, and therefore denies same.

62. Defendant admits the allegation in Paragraph 62 of Plaintiff's Complaint that Shonk sent a letter dated July 20, 2020 but denies the remaining allegations of the paragraph.

63. Defendant admits Shonk asserted claims in the letter dated July 20, 2020 as alleged in Paragraph 63 of Plaintiff's Complaint but denies the truth of the allegations.

64. Defendant admits the allegation in Paragraph 64 of Plaintiff's Complaint that a July 20, 2020 letter was sent, but the letter speaks for itself. Defendant denies the truth of the allegations contained in the letter.

COUNT I – Breach of Leases for Conveying the Shonk Transferred Interest to DGO in violation of the ROFR

65. In response to Paragraph 65 of the Complaint, Defendant incorporates by reference its responses to Paragraphs 1 through 64 as if it were set forth fully herein.

66. Defendant admits the allegations in Paragraph 66 of Plaintiff's Complaint.

67. Defendant denies the allegations in Paragraph 67 of Plaintiff's Complaint.

68. Defendant admits that a portion of the terms of Section 1 of the Second Lease Amendments is quoted in Paragraph 68 of Plaintiff's Complaint, but the entire agreement speaks for itself. To the extent the Complaint misstates or mischaracterizes the document, Defendant denies the allegations.

69. Defendant denies the allegations in Paragraph 69 of Plaintiff's Complaint.

70. Defendant is without information or knowledge sufficient to form a belief as to the allegations in Paragraph No. 70 of Plaintiff's Complaint.

71. Defendant admits that a portion of the terms of Section 1 of the Second Lease Amendments is quoted in Paragraph 71 of Plaintiff's Complaint, but the entire agreement speaks for itself. To the extent the Complaint misstates or mischaracterizes the document, Defendant denies the allegations.

72. Defendant denies the allegations in Paragraph 72 of Plaintiff's Complaint.

73. Defendant is without information or knowledge sufficient to form a belief as to the allegations in Paragraph No. 73 of Plaintiff's Complaint.

74. The allegations in Paragraph No. 74 of Plaintiff's Complaint state legal conclusions rather than allegations of fact, and as such no response is required. To the extent a response is required, Defendant states that the referenced document speaks for itself. To the extent the Complaint misstates or mischaracterizes the document, Defendant denies the allegations.

75. Defendant denies the allegations in Paragraph 75 of Plaintiff's Complaint.

76. Defendant denies the allegations in Paragraph 76 of Plaintiff's Complaint.

COUNT II – Breach of Leases for Failure to Provide Lessor with Information regarding the value of the Shonk Transferred interest

77. In response to Paragraph 77 of the Complaint, Defendant incorporates by reference its responses to Paragraphs 1 through 76 as if it were set forth fully herein.

78. In response to Paragraph 78 of the Complaint, Defendant states that the document speaks for itself. To the extent the Complaint misstates or mischaracterizes the document, Defendant denies the allegations.

79. Defendant denies the allegations in Paragraph 79 of Plaintiff's Complaint.

80. Defendant denies the allegations in Paragraph 80 of Plaintiff's Complaint.

81. Defendant denies there has been any breach of the lease amendments and is otherwise without information or knowledge sufficient to form a belief as to the allegations in Paragraph No. 81 of Plaintiff's Complaint.

82. Defendant denies the allegations in Paragraph 82 of Plaintiff's Complaint.

83. Defendant denies the allegations in Paragraph 83 and each subparagraph of Plaintiff's Complaint.

84. Defendant denies the allegations in Paragraph 84 of Plaintiff's Complaint.

85. Defendant denies the allegations in Paragraph 85 of Plaintiff's Complaint.

86. Defendant denies the allegations in Paragraph 86 of Plaintiff's Complaint.

COUNT III – Breach of Leases for failure to offer lessor the Shonk transferred Interest at the value Lessee would receive in exchange for the interests

87. In response to Paragraph 87 of the Complaint, Defendant incorporates by reference its responses to Paragraphs 1 through 86 as if it were set forth fully herein.

88. Defendant admits the allegations in Paragraph 88 of Plaintiff's Complaint that Section 1 of the lease amendments contains a ROFR, but Defendant denies the remaining allegations of the paragraph as the agreement speaks for itself.

89. Defendant admits the allegations in Paragraph 89 of Plaintiff's Complaint that Section 1 of the lease amendments contains a ROFR, but Defendant denies the remaining allegations of the paragraph as the agreement speaks for itself.

90. Defendant denies the allegations in Paragraph 90 of Plaintiff's Complaint.

91. Defendant denies the allegations in Paragraph 91 of Plaintiff's Complaint.

92. Defendant denies the allegations in Paragraph 92 of Plaintiff's Complaint.

93. Defendant denies the allegations in Paragraph 93 of Plaintiff's Complaint.

94. Defendant denies the allegations in Paragraph 94 and each subparagraph thereof in Plaintiff's Complaint.

95. Defendant denies the allegations in Paragraph 95 of Plaintiff's Complaint.

96. Defendant denies the allegations in Paragraph 96 of Plaintiff's Complaint.

97. Defendant denies the allegations in Paragraph 97 of Plaintiff's Complaint.

COUNT IV – Breaches of Guarantee

98. In response to Paragraph 98 of the Complaint, Defendant incorporates by reference its responses to Paragraphs 1 through 97 as if it were set forth fully herein.

99. Defendant is without information or knowledge sufficient to form a belief as to the allegations in Paragraph No. 99 of Plaintiff's Complaint but denies there has been any breach of the leases or amendments.

100. Defendant is without information or knowledge sufficient to form a belief as to the allegations in Paragraph No. 100 of Plaintiff's Complaint but denies there has been any breach of the leases or amendments.

101. Defendant denies the allegations in Paragraph 101 of Plaintiff's Complaint, as there has not been any breach of the leases or amendments.

102. Defendant denies the allegations in Paragraph 102 of Plaintiff's Complaint, as there has not been any breach of the leases or amendments.

103. Defendant is without information or knowledge sufficient to form a belief regarding the allegations in Paragraph 103 of Plaintiff's Complaint but denies there has been any breach of the leases or amendments.

104. Defendant is without information or knowledge sufficient to form a belief as to the allegations in Paragraph No. 104 of Plaintiff's Complaint but denies there has been any breach of the leases or amendments.

105. Defendant is without information or knowledge sufficient to form a belief as to the allegations in Paragraph No. 105 of Plaintiff's Complaint but denies there has been any breach of the leases or amendments.

106. Defendant is without information or knowledge sufficient to form a belief as to the allegations in Paragraph No. 106 of Plaintiff's Complaint but denies there has been any breach of the leases or amendments.

107. Defendant admits Shonk provided a notice as alleged in Paragraph 107 of Plaintiff's Complaint but denies the remaining allegations and denies there was any default as alleged in Paragraph 107 of Plaintiff's Complaint.

108. Defendant denies the allegations in Paragraph 108 of Plaintiff's Complaint, as there was no default so there was no duty to cure.

109. Defendant denies the allegations in Paragraph 109 of Plaintiff's Complaint.

110. Defendant denies the allegations in Paragraph 110 of Plaintiff's Complaint.

111. Defendant denies each and every allegation of the Complaint that was not expressly admitted in answer to each paragraph of the Complaint. Defendant also denies that Plaintiff is entitled to any of the relief requested in the WHEREFORE paragraph following Paragraph 110 of the Complaint.

112. Defendant states as an affirmative defense that it at all times acted in good faith and without malice or any intent to cause any harm to Plaintiff.

113. Defendant states as an affirmative defense that to the extent Plaintiff has suffered any damages and/or losses, which Defendant denies, such damages or losses were the result of, and caused by, its own conduct or omissions or the actions of another person.

114. Defendant states as an affirmative defense that Plaintiff had adequate time to perform its own investigation of the relevant circumstances in order to exercise its rights under the Second Lease Amendments.

115. Defendant states as an affirmative defense that delays in negotiations concerning Plaintiff's purported desire to purchase the lease rights at issue were caused by Plaintiff.

116. Defendant states as an affirmative defense that Plaintiff did not comply with the time limitations set forth in the Second Lease Amendments to exercise its right of first refusal.

117. Defendant states as an affirmative defense that Shonk failed to agree to purchase the lease rights at issue for the value set forth in the notice of intent to transfer provided to Plaintiff, and therefore no breach of the Second Lease Amendments occurred.

118. Defendant states as an affirmative defense that it fully complied with the provisions of the Second Lease Amendments governing Plaintiff's right of first refusal.

119. Defendant states as an affirmative defense the harm, if any, suffered by Plaintiff is not irreparable, and therefore Plaintiff is not entitled to any equitable relief.

120. Defendant states as an affirmative defense that Plaintiff has "unclean hands" and is therefore not entitled to any equitable relief.

121. Defendant states as an affirmative defense that equity does not favor lease forfeiture when other remedies are available.

122. Defendant states as an affirmative defense that assessment of punitive damages or attorney fees against Defendant under the circumstances would violate Defendant's rights under the Constitution of the United States of America and the Constitution of the State of West Virginia, including without limitation, Defendant's substantive due process rights and the prohibition against taking property without just compensation.

123. Defendant reserves the right to assert any defenses that may apply or may become applicable as the case progresses.

Having answered the Complaint, Defendant requests that the Complaint be dismissed and that Defendant recover the costs and fees incurred in connection with the defense of this matter.

COUNTERCLAIMS

For its counterclaims against Shonk, Defendant states as follows:

Factual Background

1. Shonk and DP Bluegrass LLC ("DP Bluegrass") (formerly known as Carbon West Virginia Company LLC ("Carbon WV")) are parties to a Second Lease Amendment and Ratification for the Larner Lease and a Second Lease Amendment and Ratification for the Williams Lease, which leases are described in Plaintiff's Complaint (collectively "Second Amended Leases").
2. Carbon Energy Corporation ("Carbon Energy") formerly controlled ownership interests Carbon WV by virtue of Carbon Energy's former ownership interests in one or more companies that indirectly held 100% of the ownership interests in Carbon WV.
3. The Second Lease Amendments contain a provision addressing the circumstances under which Shonk may exercise a "right of first refusal" (ROFR) in the event the lessee seeks to "transfer" its interests in either lease. The ROFR provision allows Shonk to purchase the lessee's lease interest "for the value and upon the terms set out in the Notice of Intent to Transfer."
4. On or about April 8, 2020, Shonk was provided notice of the intent to transfer rights in the Larner and Williams leases through the sale of ownership interests in Carbon West Virginia Company LLC. The April 8, 2020 notice identified the value being paid for the interests in the leases as $2,665,707.00.
5. On or about May 5, 2020, Shonk formally exercised its ROFR for the leases.
6. By exercising the ROFR, Shonk became contractually obligated to purchase the lease interests "for the value and upon the terms set out in the Notice of Intent to Transfer."

7. In violation of the provisions triggered by Shonk's execution of the ROFR, Shonk refused to execute the necessary documents to complete the transaction by which the lease interests would be transferred to Shonk in exchange for a payment by Shonk of $2,665,707.
8. On or about May 26, 2020, Carbon Energy closed a transaction under which 100% of the ownership interests in Carbon WV would be transferred to an entity owned or controlled by Diversified Gas and Oil Corporation ("Diversified").
9. Following the May 26, 2020 closing, Carbon WV changed its name to DP Bluegrass.
10. On or about May 29, 2020, Shonk declared a default under leases as a result of Carbon Energy's sale of the ownership interests of Carbon WV. Shonk did so despite having refused to execute the necessary documents to complete the transaction by which the lease interests would be transferred to Shonk in exchange for a payment by Shonk of $2,665,707.
11. Shonk has declared the Larner and Williams leases to be forfeited.
12. Following the May 29, 2020 closing, DP Bluegrass offered to allow Shonk to purchase the interests in the Larner and Williams leases for the same value amount previously offered to Shonk: $2,665,707.
13. DP Bluegrass provided Shonk with information concerning calculation of the $2,665,707 value amount.
14. Shonk later notified DP Bluegrass that Shonk believed the $2,665,707 value amount was too high and did not reflect an accurate value of the lease interests.

Counterclaim No.1 – Breach of Lease by Reneging on ROFR

15. DP Bluegrass restates the allegations set forth above.

16. Shonk breached the Second Amendment Leases by refusing to execute the necessary documents to complete the transaction by which the lease interests would be transferred to Shonk in exchange for a payment by Shonk of $2,665,707.

17. DP Bluegrass has been damaged by Shonk's breach in an amount to be determined at trial.

Counterclaim No. 2 – Breach of Implied Covenant of Good Faith and Fair Dealing

18. DP Bluegrass restates the allegations set forth above.

19. Prior to the May 29, 2020 closing, Shonk was provided with sufficient information to ascertain the basis for the value allocated to the Williams and Larner leases.

20. Upon information and belief, Shonk continued to request additional information in an effort to leverage a lower price for which it could purchase the lease interests despite having agreed to pay $2,665,707 to purchase the lease interests.

21. Despite receiving sufficient information to ascertain the basis for the value allocated to the leases in the April 8, 2020 notice, Shonk refused to execute the necessary documents to complete the transaction before May 29, 2020 by which the lease interests would be transferred to Shonk in exchange for a payment by Shonk of $2,665,707.

22. Following the May 29, 2020 closing, DP Bluegrass offered to allow Shonk to purchase the lease interests for the same allocated purchase price.

23. Upon information and belief, Shonk continued to request additional information in an effort to leverage a lower price for which it could purchase the lease interests despite having agreed to pay $2,665,707 to purchase the lease interests.

24. Shonk acted in bad faith, and breached its duty of good faith and fair dealing, by asserting a purported lack of information as a pretext to attempt to leverage a lower purchase price.

25. DP Bluegrass has been damaged by Shonk's breach in an amount to be determined at trial.

Counterclaim No. 3 – Slander of Title

26. DP Bluegrass restates the allegations set forth above.

27. Shonk has published a false statement derogatory to DP Bluegrass' title to the leases – namely that the leases have been forfeited as a result of a breach of the lease terms.

28. Upon information and belief, Shonk acted with malice in doing so and with intent to adversely affect the value of the leases.

29. Shonk's actions have caused DP Bluegrass to suffer damages as a result of the diminished value of the leases in the eyes of third parties. The amount of damages will be determined at trial.

DP Bluegrass demands judgment against Shonk in an amount to be determined at trial. DP Bluegrass demands a jury trial.

DP BLUEGRASS LLC f/k/a Carbon West Virginia Company, LLC

By Counsel

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IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

SHONK LAND COMPANY LLC,

Plaintiff,

v.

Civil Action No. 20-C-613
Judge Bailey

CARBON ENERGY CORPORATION, and
CARBON WEST VIRGINIA COMPANY LLC
n/k/a DP BLUEGRASS, LLC,

Defendants.

CERTIFICATE OF SERVICE

The undersigned counsel for Defendant DP Bluegrass, LLC f/k/a Carbon West Virginia Company LLC does hereby certify that on 31st day of August, 2020, I caused service of a true and correct copy of the foregoing **ANSWER AND COUNTERCLAIMS OF DP BLUEGRASS LLC,** to be served on counsel of record by depositing true and accurate copies of the same in the regular course of the United States mail, postage prepaid, in envelopes addressed as follows:

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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

SHONK LAND COMPANY LLC,

Plaintiff,

v.

Kanawha County Circuit Court
Civil Action No. 20-C-613
Judge Jennifer F. Bailey

CARBON ENERGY CORPORATION, and
CARBON WEST VIRGINIA COMPANY LLC
n/k/a DP BLUEGRASS LLC,

Defendants.

CERTIFICATE OF SERVICE

The undersigned counsel for Defendant DP Bluegrass, LLC f/k/a Carbon West Virginia Company LLC does hereby certify that on the 17th day of September, 2020, I caused service of a true and correct copy of the foregoing **DEFENDANTS' JOINT MOTION TO REFER CASE TO THE BUSINESS COURT DIVISION,** to be served on counsel of record by depositing true and accurate copies of the same in the regular course of the United States mail, postage prepaid, in envelopes addressed as follows:

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Kanawha County Circuit Court
Kanawha County Judicial Building
111 Court Street
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Honorable Jennifer F. Bailey
Kanawha County Circuit Court
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