

**IN THE CIRCUIT COURT OF FAYETTE COUNTY, WEST VIRGINIA
BUSINESS COURT DIVISION**

**FRASURE CREEK MINING, LLC,
a West Virginia limited liability company,**

Petitioner and Counterclaim Defendant,

vs.

**Civil Action No.: 20-C-142
Presiding: Judge Dent
Resolution: Judge Nines**

**POLCAHONTAS LAND, LLC,
a Virginia limited liability company,
POCAHONTAS SURFACE INTERESTS, LLC,
a Virginia limited liability company,**

**Respondents, Counterclaim Plaintiffs and
Third-Party Plaintiffs,**

vs.

**DEEP WATER RESOURCES, LLC,
a West Virginia limited liability company, and
NEW TRINITY COAL, INC.,**

Third-Party Defendants.

**BRIEFING ORDER AND ORDER GRANTING MOTION FOR EXPEDITED
CONSIDERATION**

This matter comes before the Court upon Counterclaim Plaintiffs and Third-Party Plaintiffs, Pocahontas Land, LLC, and Pocahontas Surface Interests, LLC's Motion for Expedited Consideration and/or Hearing on Pocahontas Pending Motions.

On January 12, 2022, counsel for Frasure Creek Mining, LLC, Deep Water Resources, LLC, and New Trinity Coal, Inc. filed a Motion to Withdraw and Stay Proceedings. On January 21, 2022, a Response was filed. On January 24, 2022, this Court entered its Order granting said motion to withdraw and stay proceedings, staying the case for sixty days while the corporate

parties obtained new counsel, in accordance with *Shenandoah Sales & Serv., Inc. v. Assessor of Jefferson Cty.*, 228 W. Va. 762, 724 S.E.2d 733 (2012), which mandates that a corporate entity must be represented by a lawyer in a court of record. *See also* Trial Court Rule 4.03.

Meanwhile, on January 23, 2022, Pocahontas Land, LLC, and Pocahontas Surface Interests, LLC filed a Motion for Summary Judgment of Pocahontas Land, LLC, and Pocahontas Surface Interests, LLC. Further, on March 18, 2022, also during the pendency of the sixty-day stay, and during the time period in which no notice of appearance had been filed on behalf of Frasure Creek Mining, LLC, Deep Water Resources, LLC, and New Trinity Coal, Inc., Pocahontas Land, LLC, and Pocahontas Surface Interests, LLC filed a Motion for Leave to File an Amended Counterclaim and Third-Party Complaint, For Declaratory Relief, Order of Attachment, And Confirmation of Arbitration Award. These two motions constitute the pending motions discussed in the Motion for Expedited Consideration and/or Hearing on Pocahontas Pending Motions.

On March 24, 2022, new counsel for Frasure Creek Mining, LLC, Deep Water Resources, LLC, and New Trinity Coal, Inc. filed a Notice of Appearance. The Court, finding that the stay has expired¹ and the corporate entities have found new counsel pursuant to this Court's Order Granting Withdraw and Stay Proceedings, concludes good cause is shown to GRANT Counterclaim Plaintiffs and Third-Party Plaintiffs, Pocahontas Land, LLC, and Pocahontas Surface Interests, LLC's Motion for Expedited Consideration and/or Hearing on Pocahontas Pending Motions. It is hereby ADJUDGED and ORDERED that Counterclaim Plaintiffs and Third-Party Plaintiffs, Pocahontas Land, LLC, and Pocahontas Surface Interests,

¹ The Court notes that the last day of the sixty day stay would be Friday, March 25, 2022, and new counsel for Frasure Creek Mining, LLC, Deep Water Resources, LLC, and New Trinity Coal, Inc. filed their Notice of Appearance at 11:10 p.m. on Thursday March 24, 2022.

LLC's Motion for Expedited Consideration and/or Hearing on Pocahontas Pending Motions is hereby GRANTED.

Therefore, it appearing that Respondents, Counterclaim Plaintiffs and Third-Party Plaintiffs, Pocahontas Land, LLC, and Pocahontas Surface Interests, LLC, by counsel, have filed a *Motion for Leave to File an Amended Counterclaim and Third-Party Complaint, For Declaratory Relief, Order of Attachment, And Confirmation of Arbitration Award*, and a *Motion for Summary Judgment of Pocahontas Land, LLC, and Pocahontas Surface Interests, LLC*, it is ORDERED pursuant to Rule 22 of the West Virginia Trial Court Rules as follows:

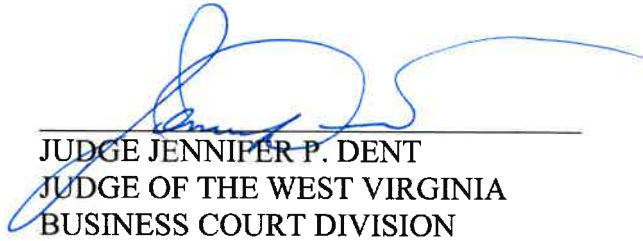
That movant will provide a proposed order (if not already done) and serve a copy upon all non-moving parties. Non-moving parties shall file written responses and proposed orders within fifteen (15) days of the entry of this Order, and serve copies of the same on the moving party. The moving party shall thereafter ten (10) days to file a rebuttal memorandum, if desired.

All original proposed orders and copies of motions and/or memoranda shall be sent directly to the Judge via Alison.Burke@courtswv.gov with a courtesy copy to Carol.Miller@courtswv.gov, Business.Court@courtswv.gov, and Tessa.Bowers@courtswv.gov. Copies of the proposed orders and the original motions and memoranda shall be filed with the Clerk of the Circuit Court. Recognizing that Fayette County is now an efilings jurisdiction, the parties are directed to continue to send courtesy copies to the email addresses listed above.

The Court will hold a hearing on the two aforementioned motions on Tuesday, May 3, 2022 at 10:00 a.m. via Microsoft Teams. A Microsoft Teams meeting invitation will be sent to counsel of record for said hearing.

The Clerk shall enter the foregoing and forward attested copies hereof to all counsel, to any *pro se* parties of record, and to the Business Court Central Office at Business Court Division, 380 West South Street, Suite 2100, Martinsburg, West Virginia, 25401.

March 29, 2022
date of entry


JUDGE JENNIPER P. DENT
JUDGE OF THE WEST VIRGINIA
BUSINESS COURT DIVISION