

In the Circuit Court of Fayette County, West Virginia

FRASURE CREEK MINING, LLC,
Plaintiff,

v.

Case No. CC-10-2020-C-142
Judge Jennifer P. Dent

**POCAHONTAS LAND, LLC,
POCAHONTAS SURFACE
INTERESTS, LLC,**
Defendants

AMENDED AGREED JUDGMENT ORDER

Petitioner and Counterclaim Defendant, Frasure Creek Mining, LLC (“Frasure Creek”), Respondents, Counterclaim Plaintiffs, and Third-Party Plaintiffs, Pocahontas Land, LLC and Pocahontas Surface Interest, LLC (“Pocahontas”), and Third-Party Defendants Deep Water Resources, LLC (“Deep Water”) and New Trinity Coal, Inc. (“New Trinity”) (collectively, the “Parties”), announced to this Court that the claims that were asserted or could have been asserted against the Parties in Civil Action No. 20-C-142(B) have been resolved. Based on this settlement and compromise, the Parties jointly file this Amended Agreed Judgment Order. The Parties agree as follows:

1. Pocahontas initiated an arbitration against Deep Water and New Trinity in relation to a coal lease on Pocahontas’ property and coal mining operations conducted by Frasure Creek.

2. On February 22, 2022, an Arbitration Panel consisting of G. Nicholas Casey, Christopher Pence, and John F. McCuskey entered an arbitration award in the amount of \$2,248,912.57, bearing interest of 4% until paid, against Deep Water and New Trinity, as guarantor, in favor of Pocahontas (“Arbitration Award”).

3. On March 18, 2022, Pocahontas moved to confirm the February 22, 2022

arbitration award.

4. Pursuant to West Virginia Code § 55-10-24, a party “may make a motion to the court for an order confirming [an arbitration] award” upon receiving notice of the award. Upon the motion, “the court shall issue an order confirming the award unless the award is modified or corrected pursuant to sections twenty-two or twenty-six of this article or is vacated pursuant to section twenty-five of this article.” *See also* W. Va. Code § 55-10-25(a)(1)-(6) (allowing vacation of an arbitrator’s award in six limited situations: (1) the award was procured through fraudulent means; (2) evident partiality, corruption, or misconduct by the arbitrator; (3) arbitrator’s refusal to postpone the hearing or consider material evidence as to substantially prejudice the rights of a party; (4) an arbitrator exceeded his or her powers; (5) there was no agreement to arbitrate; or (6) the arbitration was conducted without proper notice).

5. The Parties agree that the Arbitration Award should be confirmed pursuant to W. Va. Code § 55-10-24.

Having considered the parties’ filings and for the reasons stated above, this Court **GRANTS** Pocahontas’ *Motion to Confirm Arbitration Award* and **CONFIRMS** the Arbitration Award and enters **JUDGMENT** in the amount of \$2,248,912.57, with interest at 4% until entry of this judgment, and, thereafter, post-judgment interest at the statutory rate until paid, against Deep Water and New Trinity in favor of Pocahontas, consistent therewith. The Arbitration Award is fully enforceable in the State of West Virginia as if it had been entered by a West Virginia Circuit Court. This Court further **ORDERS** that the claims asserted by the Parties are hereby **DISMISSED**, with prejudice. There being nothing further, this Court does **ORDER** that the above-styled action be **DISMISSED** and **STRICKEN** from the docket of this Court.

ENTERED this 29th day of August, 2022.

/s/ Jennifer P. Dent
Circuit Court Judge
12th Judicial Circuit

Prepared by:

/s/ J. Mark Adkins

J. Thomas Lane (WVSB #2138)
Charles B. Dollison (WVSB #5499)
J. Mark Adkins (WVSB #7414)
Bowles Rice LLP
600 Quarrier Street
Post Office Box 1386
Charleston, West Virginia 25325
(304) 347-1100
tlane@bowlesrice.com
cdollison@bowlesrice.com
madkins@bowlesrice.com
*Counsel for Pocahontas Land, LLC and
Pocahontas Surface Interest, LLC*

Agreed to:

/s/ J. Miles Morgan

J. Miles Morgan (WVSB #5988)
J. Miles Morgan, PLLC
2442 Kanawha Blvd., East
(304) 342-3650
mounties@icloud.com
Counsel for New Trinity, Deep Water, and Frasure Creek

Note: The electronic signature on this order can be verified using the reference code that appears in the upper-left corner of the first page. Visit www.courtswv.gov/e-file/ for more details.