

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

EZRA SCHOOLCRAFT,

Plaintiff,

v.

JEFFREY ISNER and
PBC ENERGY, LLC,

Defendants.

Kanawha County Circuit Court
Civil Action No. 22-C-910

SCA EFiled: Jan 18 2023
03:14PM EST
Transaction ID 68920067

TO: THE HONORABLE CHIEF JUSTICE

MOTION TO REFER CASE TO THE BUSINESS COURT DIVISION

Pursuant to Rule 29.06 of the West Virginia Trial Court Rules, Defendant Jeffrey Isner, by counsel, Steven R. Ruby, Esq., David R. Pogue Esq., and the law firm of Carey, Douglas, Kessler & Ruby PLLC, respectfully requests the above-styled case be referred to the Business Court Division.

In regard to additional related actions:

- ☒ There are no known related actions.
- ☐ The following related actions could be the subject of consolidation, and are
- ☐ now pending
 - or
 - ☐ may be filed in the future. (Please list case style, number, and Court if any)
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This action involves: (Please check all that apply)

- | | |
|--|--|
| <input checked="" type="checkbox"/> Breach of Contract; | <input checked="" type="checkbox"/> Commercial Non-consumer debts; |
| <input type="checkbox"/> Sale or Purchase of Commercial Entity; | <input checked="" type="checkbox"/> Internal Affairs of a Commercial Entity; |
| <input type="checkbox"/> Sale or Purchase of Commercial Real Estate; | <input type="checkbox"/> Trade Secrets and Trademark Infringement; |
| <input type="checkbox"/> Sale or Purchase of Commercial Products Covered by the Uniform Commercial Code; | <input type="checkbox"/> Non-compete Agreements; |
| <input type="checkbox"/> Terms of a Commercial Lease; | <input type="checkbox"/> Intellectual Property, Securities, Technology Disputes; |
| | <input checked="" type="checkbox"/> Commercial Torts; |

(continued on next)

- | | |
|--|--|
| <input type="checkbox"/> Insurance Coverage Disputes in Commercial Insurance Policies; | <input checked="" type="checkbox"/> Mergers, Consolidations, Sale of Assets, Issuance of Debt, Equity and Like Interest; |
| <input type="checkbox"/> Professional Liability Claims in Connection with the Rendering of Professional Services to a Commercial Entity; | <input checked="" type="checkbox"/> Shareholders Derivative Claims; |
| <input type="checkbox"/> Anti-trust Actions between Commercial Entities; | <input type="checkbox"/> Commercial Bank Transactions; |
| <input type="checkbox"/> Injunctive and Declaratory Relief Between Commercial Entities; | <input type="checkbox"/> Franchisees/Franchisors; |
| <input checked="" type="checkbox"/> Liability of Shareholders, Directors, Officers, Partners, etc.; | <input type="checkbox"/> Internet, Electronic Commerce and Biotechnology |
| | <input checked="" type="checkbox"/> Disputes involving Commercial Entities; or |
| | <input type="checkbox"/> Other (Describe) _____ |

In support of this motion, this matter contains issues significant to businesses, and presents novel and/or complex commercial or technological issues for which specialized treatment will be helpful, as more fully described here:

Plaintiff Ezra Schoolcraft and Defendant Jeffrey Isner both were (and in most cases, still are) members of various related limited liability companies engaged in the oil and gas industry, including Pillar Energy, LLC ("Pillar Energy"); Pillar Enterprises, LLC ("Pillar Enterprises"); PBC Energy, LLC ("PBC"); Pillar Fund 1, LLC ("Pillar Fund 1"); Pillar Fund 2, LLC ("Pillar Fund 2"); and Sycamore Midstream LLC ("Sycamore").

In late 2020, the industry was down, and the companies were struggling. Isner managed to close a deal that would help sustain the companies during this difficult period, but Schoolcraft wanted to use the funds from this deal to enrich himself rather than to benefit the companies and their investors. Once the funds were committed to paying Pillar Energy's debts, Schoolcraft declared that he wanted out of the companies and began shirking his duties to them in favor of a burgeoning tomato farm business that he believed would be more lucrative. He also demanded millions of dollars for his interests—far more than his interests were worth and far more than the companies could pay. When the companies made clear to Schoolcraft that they could not pay him what he wanted for his interests—and notified him that they would exercise a contractual option to involuntarily transfer his interests in certain of the companies—he

fabricated a revisionist history, falsely claiming that he never said he wanted out, that he had always fully performed his duties, and that Isner had mismanaged the companies.

Ultimately, Isner and others exercised rights under the Pillar Energy, Pillar Enterprises, and Sycamore operating agreements to involuntarily transfer certain of Schoolcraft's interests and to remove him as a manager of Sycamore. Schoolcraft is now suing Isner for allegedly "freezing him out" of the companies, asserting causes of action for breach of fiduciary duties, aiding and abetting breach of fiduciary duties, breach of the Pillar Energy and Pillar Enterprises operating agreements, conversion, civil conspiracy, and unjust enrichment. He's also alleging that Isner exceeded his authority by entering into certain company transactions and incurring company debt over Schoolcraft's objections; that Isner impermissibly entered into and concealed a revised promissory note; and that Isner wrongfully transferred funds and assets from PBC and Pillar Fund 2 to Pillar Energy. Based on these allegations, Schoolcraft asserts various claims including conversion, fraud, statutory dissociation of Isner from PBC, statutory dissolution of PBC, and a derivative claim on behalf of PBC.

Isner denies that Schoolcraft's claims have merit, and he has filed a counterclaim seeking a declaratory judgment that (a) he had the right under Pillar Energy's operating agreement to involuntarily transfer Schoolcraft's units in Pillar Energy and properly exercised that right; and (b) Pillar Enterprises had the right under its operating agreement to involuntarily transfer Schoolcraft's Class B voting units of Pillar Enterprises and properly exercised that right. Isner has also filed a motion to stay and to compel arbitration of Schoolcraft's claims to the extent they involve Pillar Fund 1, Pillar Fund 2, or Sycamore because his claims regarding those entities fall within the scope of arbitration clauses in the entities' operating agreements.

Because this case involves myriad business issues including, but not limited to, the interpretation of multiple companies' operating agreements; the alleged breach of fiduciary duties owed to a member of

multiple limited liability companies; the purported liability of a limited liability company member and manager for multiple alleged commercial torts; and the validity of multiple commercial transactions, promissory notes, and intercompany transfers, Isner respectfully submits that the specialized treatment provided in the Business Court Division would help the parties reach a fair and reasonable resolution.


In further support of this Motion, please find attached hereto an accurate copy of the operative complaint, the operative answer, the docket sheet, and the following other documents: Defendant Jeffery Isner's Motion to Stay and to Compel Arbitration; Memorandum of Law in Support of Defendant Jeffrey Isner's Motion to Stay and to Compel Arbitration; Plaintiff Ezra Schoolcraft's Answer to Counterclaim.

In regard to expedited review, the Movant:

- ☒ DOES NOT request an expedited review under W.Va. Trial Court Rule 29.06(a)(4), and gives notice that all affected parties may file a memorandum stating their position, in accordance with W.Va. Trial Court Rule 29.
- ☐ hereby REQUESTS that the Chief Justice grant this Motion to Refer without responses, pursuant to W.Va. Trial Court Rule 29.06(a)(4), and contends that the following constitutes good cause to do so: _____.

WHEREFORE, the undersigned hereby MOVES, 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.

Respectfully submitted, this 18th day of January 2023,



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CERTIFICATE OF SERVICE

I, David R. Pogue, do hereby certify that on this 18th day of January, 2023, I have served the foregoing "Motion to Refer Case to Business Court Division," with attachments by either hand delivery, first class mail, or other agreed upon means to J. Zak Ritchie, Esq. and Max Gottlieb, Esq., Hissam Forman Donovan Richie PLLC, 707 Virginia Street, East, Suite 260, Charleston, WV 25301 (counsel for Plaintiff Ezra Schoolcraft); the Kanawha County Circuit Clerk's Office; and the Business Court Division Central Office, Berkeley County Judicial Center, 380 West South Street, Suite 2100, Martinsburg, WV 25401.



David R. Pogue (WVSB No. 10806)