

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

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JAY-BEE OIL & GAS, INC.,
JAY-BEE PRODUCTION CO., and
JB EXPLORATION I, LLC
a/k/a JAY-BEE EXPLORATION I, LLC,

Plaintiffs,

v.

Supreme Court Docket No. 22-865
Civil Action No. 20-C-5
Honorable Jeffrey Cramer

PANTHER DRILLING SYSTEMS, LLC,
PROTOTYPE WELL PLANNING, LLC,
and JAMES RIVER INSURANCE
COMPANY,

Defendants.

**RESPONSE TO JAMES RIVER INSURANCE COMPANY'S
MOTION TO REFER THIS MATTER TO THE BUSINESS COURT DIVISION**

NOW COMES, Plaintiffs, Jay-Bee Oil & Gas, Inc., Jay-Bee Production Co., and JB Exploration I, LLC a/k/a Jay-Bee Exploration I, LLC, (hereinafter collectively referred to as Jay-Bee), through counsel Charles R. Bailey, Jason S. Hammond and the law firm of Bailey & Wyant, PLLC, and for its Response to James River Insurance Company's Motion to Refer this Matter to the Business Court Division, states and avers as follows:

- 1) This underlying dispute to this Civil Action emanates from drilling services that Panther Drilling Services, LLC ("Panther") performed upon thirteen (13) natural gas wells for Jay-Bee in Tyler County, West Virginia.
- 2) As part of its work for Jay-Bee, Panther contracted with Prototype Well Planning, LLC ("Prototype") to prepare drilling plans for the Sneezy 10 and Sneezy 11 wells (hereinafter collectively referred to as "Sneezy wells").

- 3) Following the attempted drilling of the Sneezy wells, a dispute erupted between Jay-Bee and Panther regarding Panther's drilling of the Sneezy wells. This dispute developed into a payment dispute regarding the other wells, when Panther and Jay-Bee were unable to resolve the issues around the Sneezy Wells.
- 4) On June 5, 2015, Panther initiated the underlying Civil Action, 15-P-9, by filing a Petition in the Circuit Court of Tyler County, West Virginia, to enforce Notices of Mechanic's Liens against the Jay-Bee wells. In its Petition, Panther plead claims for enforcement of the Notices of Mechanic's Liens, breach of Contract and unjust enrichment, seeking to recover Seven Hundred Eighty Three Thousand Three Hundred Seventy Three dollars and Seventy Five cents (\$783,373.75), for work and labor performed for Jay-Bee.
- 5) On July 13, 2015, Jay-Bee filed its Answer, Affirmative Defenses, and Counterclaim. Additionally, Jay-Bee filed a Partial Motion to Dismiss, arguing that Panther's Notices of Mechanic's Liens are defective.
- 6) The instant civil action, Civil Action Number 20-C-5, is a Declaratory Judgment Action involving the same parties as Civil Action No. 15-P-9, and Panther's insurers, including James River. The Declaratory Judgment Action was filed on January 31, 2020, and seeks a determination of what rights and duties Panther and its insurers have to defend and indemnify Prototype, in Civil Action 15-P-9. In the Declaratory Judgment Action, both Panther and James River filed Motions to Dismiss. Judge Cramer has issued Orders Denying Panther and James River's Motions to Dismiss.

- 7) The parties worked together to mediate both Civil Actions. After agreeing to mediate this action with Mediator Stephen Dalesio on October 19, 2022, Panther and James River, unilaterally elected not to participate in the mediation and cancelled the mediation.
- 8) A Scheduling Conference was conducted on October 17, 2022. The hearing for Summary Judgment Motions regarding this action will commence on May 3, 2023. Discovery regarding the matter is to be completed by February 15, 2023.
- 9) Pursuant to Rule 29.04 (a) of the West Virginia Trial Court Rules, Business Litigation is defined as:
 - (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) Initially, James River's Motion to Refer is woefully untimely. James River has waited over two years before filing this Motion. It was not until after it received a denial of its Motion to Dismiss and subsequently balked at attending a Mediation that it agreed to, that it filed the instant Motion.
- 11) The instant Motion to Refer is similar to one filed in *Larry Lovins, D/B/A Appalachian Home Center, et.al., v. Jai Sai, LLC, et.al.*, BCD Case Number 13-C-1796 KAN. In *Lovins*, the Motion to Refer was denied because the dispute had been pending for several years and the Circuit Court of Kanawha County, West Virginia, had already made multiple substantive rulings. *Lovins* was pending in the Circuit Court of Kanawha County for approximately 4 years at the time of the denial. Herein, the subject action has been pending for two (2) years and there have been substantive rulings made by the Circuit Court of Tyler County. There is no basis to grant such an untimely motion.
- 12) Secondly specialized treatment from the Business Court is unnecessary. Jay-Bee's claims against James River are a Declaratory Judgment to determine whether James River and Panther have a contractual duty to defend and indemnify Prototype. There is nothing inherently complicated or technical regarding these legal theories. It is not even expected that the parties will have expert witnesses. Judge Cramer is already familiar with the issues regarding this Civil Action, as well as the underlying action, has made substantive rulings regarding this matter and will be prepared to further litigate the matters. Consequently, the Motion to Refer must be denied.

13) Finally, despite cancelling the recent mediation, James River seems concerned with obtaining an expeditious resolution of this action. However, the Declaratory Judgment Action, Civil Action Number 20-C-5, is set for a hearing on upcoming Summary Judgment Motions on May 3, 2023, which will determine the indemnity issues and insurance coverage issues involving claims against Prototype. Consequently, James River will have resolution of this matter following the May 3, 2023, Hearing. Referral to the Business Court will not expedite this resolution any more than the current Scheduling Order.

WHEREFORE, Plaintiffs, Jay-Bee Oil & Gas, Inc., Jay-Bee Production Co., and JB Exploration I, LLC a/k/a Jay-Bee Exploration I, LLC, respectfully request that James River Insurance Company's Motion to Refer this Matter to the Business Court Division be denied, and requests all further relief deemed just and appropriate.

Respectfully submitted,

**Jay-Bee Oil & Gas, Inc.,
Jay-Bee Production Co
JB Exploration I, LLC
a/k/a Jay-Bee Exploration I, LLC**

By Counsel,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of foregoing “**Response to James River Insurance Company’s Motion to Refer This Matter to The Business Court Division**” was served upon the following parties by U.S. Mail on this day, December 13, 2022:

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Honorable Judge Jeffrey D. Cramer
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Moundsville, WV 26041
Civil Action No. 20-C-5

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Civil Action No. 20-C-5

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