

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

PEOPLES BANK, NATIONAL ASSOCIATION,  
a national banking association,

Plaintiff,

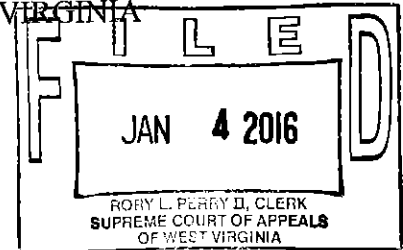
v.

APPALACHIAN MINING AND RECLAMATION,  
L.L.C., a Kentucky limited liability company,  
DJWV2, LLC, a West Virginia limited liability company,  
GREEN COAL, LLC, a Kentucky limited liability company,  
JOINT VENTURE DEVELOPMENT, LLC, a Kentucky  
limited liability company,  
PRODUCER'S COAL, INC., a Kentucky corporation  
formerly known as Producer's Dock, Inc.,  
PRODUCER'S LAND, LLC, a Kentucky limited liability  
company,  
REDBUD DOCK, LLC, a Kentucky limited liability  
company,  
SOUTHERN MARINE SERVICES LIMITED  
LIABILITY COMPANY, a Kentucky limited liability  
company,  
SOUTHERN MARINE TERMINAL, LLC, a Kentucky  
limited liability company,  
DENISE DAWN JOHNSON, Trustee of the Denise  
Johnson Real Estate Trust,  
DENNIS JOHNSON, a West Virginia resident, and  
MARK PINSON, a West Virginia resident,

Defendants.

**MOTION OF PEOPLES BANK, NATIONAL ASSOCIATION,  
TO REFER CASE TO THE BUSINESS COURT DIVISION**

Pursuant to Trial Court Rule 29.06, Plaintiff, Peoples Bank, National Association (the "**Bank**"), by counsel, Bowles Rice LLP, hereby moves this Court to refer the above-captioned civil action to the Business Court Division of the West Virginia Circuit Courts (this "**Motion**"). In support of this Motion, the Bank states as follows:



Cabell County Circuit Court  
Civil Action No. 15-C-807  
Honorable Christopher D.  
Chiles, Circuit Judge

**I. The Business Court Division Has Jurisdiction over This Civil Action.**

1. West Virginia Code § 51-2-15 and Rule 29 of the West Virginia Trial Court Rules provide that civil actions that constitute “Business Litigation” are eligible for transfer to the West Virginia Business Court Division.

2. “Business Litigation” is defined by Rule 29 as a civil action 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.

W. Va. T.C.R. 29.04(a)(1)-(3).

3. Any party may seek a referral of “Business Litigation” to the Business Court Division by filing a Motion to Refer in the Supreme Court of Appeals. W. Va. T.C.R. 29.06(a)(1).

4. The Bank currently has a civil action pending before the Cabell County Circuit Court in which the principal claims between the parties fall within the subject matter

jurisdiction of the Business Court Division. [See Pl's Compl., attached to and made a part of this Motion as Exhibit A.] More specifically, the Bank's Complaint meets each of the three criteria provided in W. Va. T.C.R. 29.04(a)(1)-(3).

5. First, pursuant to W. Va. T.C.R. 29.04(a)(1), the "principal claims" stated in the Bank's Complaint involve "matters of significance" among the Bank and nine (9) different business entities and three (3) different individuals. Namely, the Bank seeks recovery of a sum over Seventeen Million Dollars (\$17,000,000.00), with that sum representing the amounts due and owing on a variety of loans made in furtherance of the business operations of entities owned and/or operated by two (2) individual-defendants. Further, each of the business entity and individual defendants entered into various notes and guaranty agreements with the Bank, each of which notes and guaranties is directly at issue in this matter. Moreover, in addition to a judgment for a sum certain, the Bank seeks, among other things, certain other relief with respect to the business operations of these business entity defendants and certain relief with respect to repossession of business personal property collateral pledged by such business entity defendants. Accordingly, the "principal claims" in this case relate to matters of significance to the transactions among various business entities.

6. Second, pursuant to W. Va. T.C.R. 29.04(a)(2), "specialized treatment" of the parties' claims is likely to "improve the expectation" of a fair and reasonable resolution of their controversy. Resolution of the Bank's claims will require the court to inspect and evaluate voluminous loan documentation covering a four (4) year period. Resolution of the Bank's claims will benefit from a familiarity with, or specialization in, laws related to secured commercial loans, business collateral, commercial guarantees, and the use of "cross default" and

“cross-collateralization” language within the banking industry. Additionally, the defendants’ claims require an understanding of fraudulent transfer law and lender liability.

7. Finally, pursuant to W. Va. T.C.R. 29.04(a)(3), none of the Bank’s claims falls within the categorical exclusions from Business Court Division subject matter jurisdiction:

[1] 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; [2] 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; [3] consumer environmental actions; [4] consumer malpractice actions; [5] consumer and residential real estate, such as landlord-tenant disputes; [6] domestic relations; [7] criminal cases; [8] eminent domain or condemnation; and [9] administrative disputes with government organizations and regulatory agencies, provided, however, that complex tax appeals are eligible to be referred to the Business Court Division.

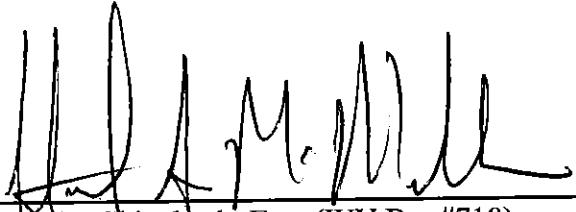
8. Notably, the defendants have now filed counterclaims in this matter. [See Defendants’ Answer to Complaint and Counterclaim, attached to and made a part of this Motion as Exhibit B.] The Defendants assert relief for, among other things: (1) breach of contract; (2) breach of the duty of good faith and fair dealing; (3) violation of the Uniform Fraudulent Transfers Act; and (4) unlawful setoff/conversion. While these counterclaims do not fall within the categorical exceptions stated above, they also merit “specialized treatment” under W. Va. T.C.R. 29.04(a)(2) such that familiarity with, or specialization in, banking practices will improve the expectation of a fair and reasonable result with respect to these counterclaims.

9. Therefore, in light of the commercial nature of this dispute, as well as the need for specialized treatment, the principal claims in this matter fall within the jurisdiction of the Business Court Division.

**II. Transfer of This Civil Action to the Business Court Division Will Not Affect the Litigation of Any Related Pending or Future Actions.**

10. As required by W. Va. T.C.R. 29.06(a)(1), the Bank states that it is unaware of any related pending or future actions related to the parties' controversy.<sup>1</sup>

WHEREFORE, Plaintiff, Peoples Bank, National Association, respectfully requests that the Chief Justice enter an order granting its Motion to Refer and transferring its civil action to the Business Court Division, along with granting any additional relief this Court deems just and proper.



Julia A. Chincheck, Esq. (WV Bar #718)  
Stuart A. McMillan, Esq. (WV Bar #6352)  
Daniel J. Cohn, Esq. (WV Bar #11916)  
BOWLES RICE LLP  
600 Quarrier Street  
Post Office Box 1386  
Charleston, West Virginia 25325-1386  
304-347-1100

PEOPLES BANK, NATIONAL  
ASSOCIATION

By Counsel

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<sup>1</sup> Pursuant to Trial Court Rule 29.06(a)(1), the docket sheet is attached to and made a part of this Motion as Exhibit C.

Exhibit A

Complaint

[See attached.]

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DENISE DAWN JOHNSON, Trustee of the Denise  
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DENNIS JOHNSON, a West Virginia resident, and  
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Defendants.

**CERTIFICATE OF SERVICE**

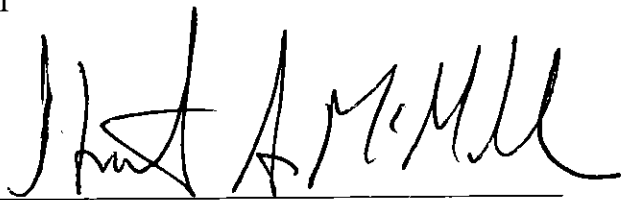
I, Stuart A. McMillan, counsel for Plaintiff Peoples Bank, National Association,  
do hereby certify that service of **Plaintiff Peoples Bank, National Association's Motion to  
Refer Case to the Business Court Division** has been made upon the following parties via U.S.  
Mail, postage prepaid, on this 4th day of January, 2016:

James R. Bailes, Esq.  
Melissa Eakle Leasure, Esq.  
Bailes, Craig & Yon, PLLC  
Post Office Box 1926  
Huntington, West Virginia 25750-1926  
***Counsel for Defendants***

Honorable Christopher D. Chiles  
Cabell County Circuit Judge  
Cabell County Courthouse  
750 Fifth Avenue  
Huntington, West Virginia 25701

Jeffrey E. Hood  
Cabell County Circuit Clerk  
Cabell County Courthouse  
750 Fifth Avenue  
Huntington, West Virginia 25701

Carol Miller, Executive Director  
Central Office of Business Court Division  
Berkeley County Judicial Center  
380 W. South Street, Suite 2100  
Martinsburg, WV 25401



Stuart A. McMillan, Esq. (WV Bar #6352)