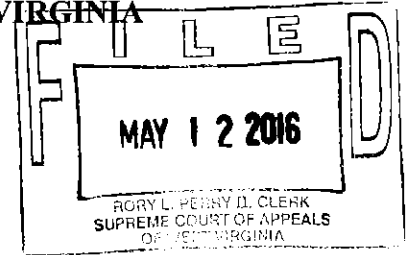


IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA  
BUSINESS COURT DIVISION



**The Bruce McDonald Holding Company, et al.,**

**Plaintiffs,**

**v.**

**Logan County Circuit Court**

**No. 16-C-70**

**Hon. William D. Witten**

**Addington, Inc., and The Brink's Company,**

**Defendants.**

**TO: THE HONORABLE CHIEF JUSTICE**

**Reply in Support of Motion to Refer Case to the Business Court Division**

Plaintiffs agree that this dispute presents commercial and/or technological issues in which specialized treatment is likely to improve the likelihood of a fair and reasonable resolution. As noted in Defendants' Motion to Refer, this case involves not only a 60-page coal mining Agreement of Lease executed in 1978, but also involves later amendments, supplements, assignments, partial surrenders, reaffirmations, as well as a parent company Guaranty Agreement.

Discovery and proof at trial will largely consist of complicated historical analyses of the coal production and sales from Logan County preparation plants. In addition to identifying the quantity and quality of historical sales through specified plants, the case may require a comparison of the operations of those preparation plants to the operations that should have been accomplished through use of the Plaintiffs' properties. As alleged in the Complaint (attached to Defendants' Motion to Refer) at Paragraphs 96 – 106, multiple, multi-million dollar, complex transactions between non-parties to this litigation occurred during the relevant time period, and

those transactions may also require detailed examination for similarity to what should have been accomplished on the Plaintiffs' properties.

Finally, much proof will be obtained from third parties, at least one of whom has already informed Plaintiffs that it may file a motion to quash Plaintiffs' subpoena based upon its status in bankruptcy proceedings, as well as its perception that certain information subject to the subpoena constitutes "confidential commercial information." Other third parties may well resist subpoenas on similar "confidential commercial" grounds, and while Plaintiffs may ultimately disagree regarding the nature of the evidence sought, its production and presentation at trial may involve complex application of protective and/or confidentiality orders. Thus, the Court's role in this litigation could very well involve review of voluminous, complex transactional documents; pricing and accounting records; and potentially the application of the bankruptcy code or bankruptcy agreements to third-party discovery obligations.

In light of these complicated commercial issues, the Plaintiffs agree that this case would immensely benefit from the specialized treatment offered by the Business Court Division, and that this case meets the criteria for referral under Rule 29.04(a) of the West Virginia Trial Court Rules. Plaintiffs therefore join the Defendants' motion, and ask that this matter be referred to the Business Court Division.

### **Legal Standard**

In order to obtain a referral to the Business Court Division, the proceedings must involve "Business Litigation," a term defined by Trial Court Rule 29.04(a) as one or more pending actions 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.

### **Argument**

Rule 29 of the West Virginia Trial Court Rules permits referral to the Business Court Division of any dispute which presents commercial and/or technology issues “in which specialized treatment is likely to improve the expectation of a fair and reasonable resolution . . . because of the need for specialized knowledge or expertise in the subject matter . . .” W. Va. T.C.R. 29.04(a)(2). For the reasons stated above, the Plaintiffs submit that this case presents complicated commercial issues in which specialized treatment is likely to improve the expectation of a reasonable outcome. Furthermore, Plaintiffs agree that this case would benefit immensely from the specialized treatment provided by the Business Court Division. Accordingly, Plaintiffs join in the Defendants’ request and ask that this matter be referred to the Business Court Division.

### **Conclusion**

Plaintiffs agree that the specialized treatment of the Business Court Division would improve the expectation of a reasonable resolution, and that this matter therefore meets the criteria for referral under Rule 29.04(a) of the West Virginia Trial Court Rules.

**THE BRUCE MCDONALD HOLDING  
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COMPANY, OAKLEY, LLC, S.E.  
MCDONALD, LLC, C.B. MORRIS, LLC,  
L.O.U., LLC, GLENN T. YOST as attorney-in-  
fact for ERNEST PHIPPS CREDIT SHELTER  
TRUST, AND CDC REAL ESTATE, LLC,**

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**Addington, Inc., and The Brink's Company,**

**Defendants.**

**Certificate of Service**

I, Isaac R. Forman, the undersigned counsel for Plaintiffs, hereby certify that on this 12<sup>th</sup> day of May, 2016, I served a true copy of the foregoing **Reply in Support of Motion to Refer Case to the Business Court Division** by first class mail and email to:

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