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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

**STATOIL USA ONSHORE
PROPERTIES, INC.,**

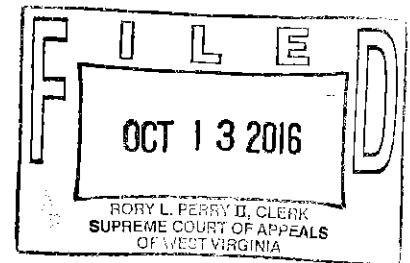
Petitioner,

v.

**Marshall County Circuit Court
Civil Action No. 16-C-140
Honorable Jeffrey D. Cramer**

**THE HONORABLE MARK MATKOVICH,
West Virginia State Tax Commissioner,
THE HONORABLE CHRISTOPHER J. KESSLER,
Assessor of Marshall County, and
THE COUNTY COMMISSION OF MARSHALL COUNTY,**

Respondents.



**REPLY MEMORANDUM OF
WEST VIRGINIA STATE TAX COMMISSIONER
TO STATOIL USA ONSHORE PROPERTIES, INC.'S
MOTION TO REFER CASE TO BUSINESS COURT DIVISION**

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REPLY MEMORANDUM OF
WEST VIRGINIA STATE TAX COMMISSIONER
TO STATOIL USA ONSHORE PROPERTIES, INC.'S
MOTION TO REFER EXONERATION APPEAL
TO BUSINESS COURT DIVISION

COMES NOW the West Virginia State Tax Commissioner, by counsel, and hereby files in accord with Trial Court Rule 29.06(a)(4) this reply memorandum to Statoil USA Onshore Properties, Inc.'s *Motion to Refer Case to the Business Court Division*. The referral should be denied because this matter is a simple appeal of an exoneration denial that requires no specialized knowledge or expertise to fairly and reasonably resolve the controversy. In support of this response, the Tax Commissioner states as follows:

Facts and Procedural History

On February 1, 2016, Statoil sought property tax relief from the Marshall County Commission for its 2015 property taxes on the basis that it submitted erroneous data to the third party operator of Marshall County wells in which it had an interest. On May 24, 2016, the Marshall County Commission held an evidentiary hearing on Statoil's application for exoneration. On June 7, 2016, the County Commission denied Statoil's request.

On July 26, 2016, Statoil appealed the exoneration denial to Marshall County Circuit Court.¹ On September 30, 2016, Statoil filed the currently pending *Motion to Refer Case to the Business Court Division*.

Applicable Law

"Business Litigation" is defined by Rule 29.04 of the West Virginia Trial Court Rules. Specifically, "Business Litigation" is defined as:

[O]ne or more pending actions in circuit court 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,

¹ On August 16, 2016, the Tax Commissioner filed a Motion to Dismiss himself as an inappropriate party on the basis that Statoil failed to state a claim against him. Specifically, Statoil appealed an exoneration denial that was deliberated and decided solely by the Marshall County Commission. The motion was noticed for hearing on October 7, 2016, but the Circuit Court continued the hearing as a result of this pending Business Court referral.

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.

Analysis

Statoil's appeal of a tax exoneration denial, which was deliberated and decided by the Marshall County Commission, does not meet the requirements of the Business Court Division. Specifically, the appeal does not raise complex legal issues, require specialized treatment due to commercial or technological issues, or involve complicated facts, as required in order to qualify for referral to the Business Court Division. *See* Rule 29.04 of the West Virginia State Trial Court Rules.

The underlying case involves the limited issue of whether or not the Marshall County Commission erred when it applied West Virginia Code § 11-3-27 and denied Statoil's exoneration request. Specifically, the appeal will be limited to whether or not the Marshall County Commission erroneously concluded that Statoil was negligent and no clerical error occurred. The Marshall County Circuit Court has ample legal experience to resolve this simple matter.

Statoil's assertion that this matter is complex due to its need to produce a variety of evidence and expert testimony to demonstrate that it did not breach the standard of care is inconsistent with controlling legal authority. The appeal of the exoneration denial is limited to the currently existing factual record. *See* W.Va. Code § 29A-5-4(f). Statoil previously presented evidence and testimony in support of its request for exoneration during the May 24, 2016 hearing

before the Marshall County Commission. As a result, Statoil's assertion that this matter must be referred to the Business Court to develop a factual record is incorrect.

Conclusion

WHEREFORE, the West Virginia State Tax Commissioner prays the West Virginia Supreme Court of Appeals deny Statoil USA Onshore Properties, Inc.'s *Motion to Refer Case to the Business Court Division*.

Respectfully submitted,

MARK W. MATKOVICH,
STATE TAX COMMISSIONER
OF WEST VIRGINIA,

By counsel

PATRICK MORRISEY
ATTORNEY GENERAL

A handwritten signature in cursive script, reading "Cassandra L. Means".

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CERTIFICATE OF SERVICE

I, Cassandra L. Means, Assistant Attorney General and counsel for Respondent Mark W. Matkovich, State Tax Commissioner, do hereby certify that a true copy of the foregoing *Reply Memorandum Of West Virginia State Tax Commissioner To Statoil USA Onshore Properties, Inc.'s Motion To Refer Case To Business Court Division* was served upon the following by depositing a copy of the same in the United States mail, first-class postage prepaid, this 13th day of October, 2016, addressed as follows:


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Craig Griffith, Esq.
Steptoe & Johnson PLLC
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The Honorable David Ealy
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Moundville, WV 26041

Rhonda Wade, Esq.
Marshall County Prosecuting Attorney
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The Honorable Jeffrey Cramer
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Business Court Division
Berkeley County Judicial Center
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CASSANDRA L. MEANS