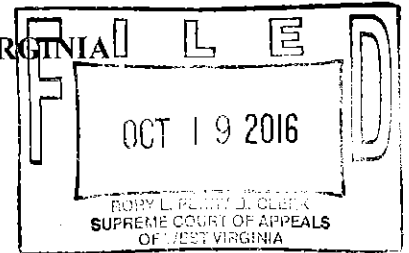


IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA



STATOIL USA ONSHORE PROPERTIES, INC.,

Petitioner,

vs.

Brooke County Circuit Court

Civil Action No. 16-AA-2

The Honorable Judge Mazzone

THE HONORABLE MARK MATKOVICH,  
West Virginia State Tax Commissioner,

THE HONORABLE THOMAS A. OUGHTON,  
Assessor of Brooke County, and

THE COUNTY COMMISSION OF BROOKE COUNTY,

Respondents.

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, the Petitioner, Statoil USA Onshore Properties Inc. ("Statoil"), by counsel, John Meadows, Craig Griffith, and the law firm of Steptoe & Johnson, PLLC, respectfully requests the above-styled case be referred to the Business Court Division for all further proceedings. Trial Court Rule 29.04 expressly provides that "complex tax appeals are eligible to be referred to the Business Court Division." W. Va. Trial Ct. R. 29.04. This matter constitutes a complex tax appeal, and involves issues for which specialized treatment will be helpful. For these reasons, the Court should grant Statoil's Motion to Refer Case to Business Court Division.

Additionally, the following related actions should be the subject of consolidation, and are currently pending:

- *Statoil USA Onshore Properties, Inc., v. The Honorable Mark Matkovich, et al.*, Civil Action Number 16-C-84, Wetzel County Circuit Court (Judge Cramer).
- *Statoil USA Onshore Properties, Inc., v. The Honorable Mark Matkovich, et al.*, Civil Action Number 16-C-246, Ohio County Circuit Court (Judge Sims).
- *Statoil USA Onshore Properties, Inc., v. The Honorable Mark Matkovich, et al.*, Civil Action Number 16-C-140, Marshall County Circuit Court (Judge Cramer).

The above-styled cases present identical claims and issues of law as those in this case. In the interest of judicial economy, these cases should be consolidated and heard by the Business Court Division. If these cases are not consolidated, four different circuit judges will have to hear and decide the same issue, possibly reaching inconsistent results. Thus, not only is this precisely the type of case suited to the Business Court Division, but, here, granting the Motion to Refer will also accomplish the important goal of judicial economy and consistency.

## **I. INTRODUCTION AND BACKGROUND**

Statoil holds non-operating working interests in natural gas wells in Brooke, Wetzel, Ohio, and Marshall Counties. These non-operating working interests are “take-in-kind” interests, under which Statoil receives a portion of the natural gas produced by a well’s third-party operator, and then markets and sells that natural gas to its customers.

The West Virginia State Tax Department (the “Tax Department”) allows only the operator of the wells to file property tax returns, and values all economic interests in a particular well based on the operator’s returns. For the 2015 tax year, Statoil provided revenue data to the third-party operator of the wells in which it had a “take-in-kind” interest. The Tax Department valued Statoil’s “take-in-kind” interest in the wells based on the returns filed by the operators of

the wells. Statoil later discovered that, due to a clerical error, it had submitted data to the third-party operator based on “estimated revenue” instead of “actual revenue.”

On February 1, 2016, Statoil filed a protest of its 2015 property taxes, seeking relief under the principle of exoneration, codified in West Virginia Code Section 11-3-27. Statoil presented its case to the Brooke County Commission (“County Commission”).<sup>1</sup> At the hearing, Statoil presented clear and convincing evidence that it overpaid its taxes as a result of an error that was clerical, unintentional, and inadvertent. Statoil demonstrated that it deserved exoneration and was entitled to tax relief in the amount of \$1,845,823.77. On August 11, 2016, although in no way disagreeing that Statoil had overpaid, the County Commission denied Statoil’s request for exoneration. Statoil timely filed an appeal from the County Commission’s decision in the Brooke County Circuit Court.

## II. ANALYSIS

West Virginia Trial Court Rule 29.06 provides that “[a]ny party . . . may seek a referral of Business Litigation to the [Business Court] Division by filing a Motion to Refer to the Business Court Division with the Clerk of the Supreme Court of Appeals of West Virginia.” Tr. Ct. R. 29.06(a). “Business Litigation” is defined as follows:

(a) “Business Litigation”-- one 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

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<sup>1</sup> Statoil also filed exoneration requests with the Ohio County Commission, Marshall County Commission, and Wetzel County Commission.

(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. Trial Ct. R., 29.04 (emphasis added).

This is a complex tax appeal that should be referred to the Business Court Division. The Tax Department appraises natural resources based on a mass appraisal system, where only the operator of the wells files a return with the Tax Department. In providing revenue data for tax year 2015 to the well operator, Statoil inadvertently used the wrong data set. As a result, Statoil overpaid its taxes by \$1,845,823.77. On appeal, pursuant to *Bayer Corp.*, Statoil must show that it did not breach the standard of care in providing the revenue data, notwithstanding that an error occurred. *State ex rel. Prosecuting Atty. of Kanawaha County v. Bayer Corp.*, 223 W. Va. 146, 672 S.E.2d 282, 294 (2008). To make such a showing, Statoil will be required to produce evidence of its accounting methods and its tax compliance efforts, including, but not limited to, the procedures it has in place to discover and prevent error prior to its submission of data. Additionally, Statoil will present expert testimony from an accountant to demonstrate that it did not breach the standard of care. Statoil's tax compliance is complicated, and the expert will explain the procedures it has in place to prevent taxing errors.

The tax compliance issues in this case are technical, and are precisely the type of issues that should be referred to the Business Court Division. See Trial Ct. R., 29.04(a)(3) (providing that "complex tax appeals are eligible to be referred to the Business Court Division."). As

explained above, this case also “involve[s] matters of significance to the transactions, operations, or governance between business entities,” and “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.” *See* Trial Ct. R., 29.04(a)(1)-(2). In addition, almost \$2 million in overpaid tax dollars are at stake in this litigation. Under these circumstances, all parties would benefit from the Business Court Division’s specialized knowledge of tax compliance issues.

Furthermore, several tax matters have been referred to the Business Court Division. *See e.g., Lee Trace LLC v. Berkeley County Council as Board of Review and Equalization, et al.*, Case Nos. 11-AA-2 and 14-AA-1, 2015 WL 7628718 (W. Va. Nov. 20, 2015) (deciding Lee Trace LLC’s appeal of the Business Court Division’s decision related to its challenge of its property tax assessments, including that it did not receive proper notice of its right to appeal its assessment, that the assessor did not consider the requisite depreciation factors, and that the assessor failed to consider income information); *University Healthcare Foundation, Inc. v. Larry A. Hess, et al.*, Case Number 16-AA-3, Berkeley County Circuit Court, Business Court Division (contending that a parcel of real property is exempt from *ad valorem* property tax); *John Skidmore Trucking, Inc. v. Mark W. Matkovich*, Case No. 14-C-27, Braxton County Circuit Court, Business Court Division (involving assessment for sales and use tax in the amount of \$2,387.33, plus interest, and issues related to transactions between Enrolled Agents and businesses they perform taxes for).

Finally, because this case is in the early stages of litigation, referral to the business court would not prejudice Respondents or waste judicial resources. Instead, it is in the interest of the parties and judicial economy for the above-referenced related cases (pending in Brooke, Ohio, Marshall, and Wetzel Counties) to be consolidated and referred to the Business Court Division.

Absent transfer and consolidation, four different circuit judges will have to hear and decide the same issue, possibly reaching inconsistent results. Thus, not only is this case exactly the type that should be referred to the Business Court Division, but consolidation in the Business Court Division will also promote judicial economy and consistency. For all of these reasons, this case should be referred to the Business Court Division.

In further support of this Motion, please find attached hereto an accurate copy of the operative complaints, answers, and docket sheet.

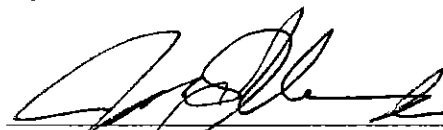
### **III. CONCLUSION**

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 19<sup>th</sup> day of October, 2016.

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

**By Counsel**



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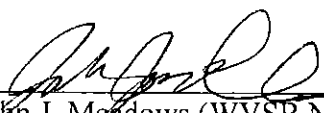
**CERTIFICATE OF SERVICE**

I, John Meadows, do hereby certify that on this 19<sup>th</sup> day of October, 2016, I have served the foregoing *"Motion to Refer Case to Business Court Division,"* with attachments by first class mail to all counsel of record at the addresses provided below:

Thomas A. Oughton,  
Assessor of Brooke County  
Brooke County Courthouse  
200 Courthouse Square  
Wellsburg, WV 26070

The County Commission of Brooke County  
840 Charles Street  
Wellsburg, WV 26070

Mark Matkovich, Tax Commissioner  
1001 Lee Street East  
Charleston, West Virginia 25301

  
John J. Meadows (WVSB No. 9442)