

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

UNITED BANK, INC., a West Virginia  
banking corporation,

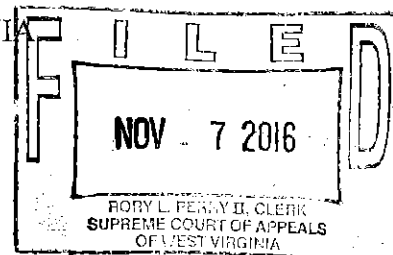
Plaintiff,

v.

Kanawha County Circuit Court  
Civil Action No. 16-C-1486

CRISWELL FRENCH, PLLC, a West Virginia  
professional limited liability company, formerly  
known as Criswell French Condaras PLLC and  
Criswell & French, PLLC; MATTHEW S. CRISWELL,  
an individual; STACI N. CRISWELL, an individual;  
MARK L. FRENCH, an individual; and  
ASHLEY W. FRENCH, an individual,

Defendants.



TO: THE HONORABLE CHIEF JUSTICE MENIS E. KETCHUM, II

**MOTION TO REFER CASE TO THE BUSINESS COURT DIVISION**

Pursuant to Rule 29.06 of the West Virginia Trial Court Rules, Plaintiff, United Bank, Inc. ("United Bank"), by counsel Bowles Rice LLP, respectfully requests that the above-styled case be referred to the Business Court Division<sup>1</sup>. In support of its Motion, United Bank states as follows:

**FACTS**

1. United Bank brings these claims for collection of monies due and owing to United Bank by Defendants pursuant to the two commercial loans made by United Bank to Defendant Criswell French PLLC, a Charleston law firm.

2. Defendant Criswell French PLLC has defaulted under the terms of the loans, and United Bank has declared the entire balance immediately due and payable.

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<sup>1</sup> Because of Defendants' long-standing ties to the Kanawha County court system, the current matter has been reassigned three separate times on recusal. The matter is currently pending before Judge Carrie Webster.

3. Defendants Matthew S. Criswell, Staci N. Criswell, Mark L. French, and Ashley W. French personally guaranteed repayment of the two commercial loans made by United Bank to Criswell French PLLC. In addition to the above-named Defendants, Steve and Amy Condaras personally guaranteed repayment of the two commercial loans.

4. Steve Condaras is a former member of Criswell French Condaras PLLC, predecessor, by change of name, to Defendant Criswell French PLLC. United Bank has granted Steve and Amy Condaras several forbearances in exchange for continued payments made in partial satisfaction of the United Bank loans.

5. The entire amount due and owing on the loans, and the respective guaranties, including interest accrued through July 6, 2015, is \$501,056.61. Interest continues to accrue at the aggregate rate of \$60.6018189 per day.

6. United Bank filed its Complaint on September 28, 2016. On October 10, 2016, Defendants Criswell French PLLC, Matthew Criswell, and Staci Criswell accepted service of process. On October 12, 2016, Defendants Mark French and Ashley French accepted service of process.

7. On October 26, 2016, Defendants filed their Motion to Dismiss in response to United Bank's Complaint. As grounds for their Motion to Dismiss, Defendants state that United Bank has failed to join two indispensable parties – Steve and Amy Condaras.

8. Defendants, however, are precluded from claiming the Condarases are indispensable parties because they have waived such claims by virtue of the non-exhaustion clauses in the guaranties and loan agreements. Pursuant to the terms of the loan agreements and

the guaranties, United Bank may, at its election, proceed against all, none, or any number of the borrowers and guarantors.

9. Moreover, the loan documents contain cross-collateralization provisions, cross-default provisions, and non-exhaustion clauses. Accordingly, this matter requires a careful analysis of the interrelated loan documents in order to establish liability between United Bank and Defendants, as well as amongst Defendants themselves.

### **STANDARD**

10. Rule 29 of the West Virginia Trial Court Rules ("TCR") provides, in part, that civil actions which constitute "Business Litigation" are eligible for transfer to the West Virginia Business Court Division.

11. "Business Litigation" is defined by TCR 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.

TCR 29.04(a).

12. Under TCR 29, any party or judge may seek a referral of “Business Litigation” to the Business Court Division by filing a Motion to Refer with the Clerk of this Court, after the time to answer the complaint has expired. See TCR 29.06(a)(1). Such a motion must include a copy of the “complaint, answer, docket sheet and any other documents that support referral....” Id.

13. A true and accurate copy of United Banks’s Complaint is attached hereto as Exhibit A. A true and accurate copy of Defendants’ Motion to Dismiss is attached as Exhibit B. A true and accurate copy of the circuit court’s docket sheet is attached hereto as Exhibit C.

#### ANALYSIS

14. Because the present action seeks to adjudicate fourteen counts of breach of contract, stemming from two separate commercial transactions, United Bank’s claims fall within the subject matter of the Business Court Division. Specifically, this case satisfies the criteria provided in TCR 29.04(a), in that the principal claim or claims involve matters of significance to the transactions, operations, or governance between business entities.

15. The current litigation pertains to two separate commercial transactions entered into between two sophisticated commercial entities, a state chartered bank and a Charleston law firm. The two separate commercial transactions are evidenced by numerous loan agreements, notes, and amendments thereto.

16. The parties seek to adjudicate their respective performance under the agreements and the discharge thereof. Because the claims involve matters of significance to transactions between business entities, the present case meets the dictates of TCR 29(a)(1).

17. Moreover, the case in controversy meets the requirements of TCR 29.04(a)(2), in that specialized treatment of the parties' claims is likely to improve the expectation of a fair and reasonable resolution of the controversy. In order to resolve this case, the Court must delve into contract terms and analyze the relationship between the borrowers and their secured creditor.

18. The loan documents contain several cross-collateralization provisions, cross-default provisions, and non-exhaustion clauses. Accordingly, the Court will be required to analyze the interplay between the various loan documents and the manner in which said provisions apportion liability amongst the parties.

19. With respect to Defendants' Motion to Dismiss, the Court must also determine whether, by the terms of the loan documents, Defendants waived their right to join the Condarases.

20. This case further implicates guarantor obligations, in that the Court will be required to determine: (1) the liability between the guarantors and United Bank; and, (2) the liability as between each guarantor. Moreover, United Bank expects issues of agency to arise, which may require an adjudication as to the liability of a former member of Criswell French, PLLC. A judge that possesses familiarity with complex financing arrangements, debtor and creditor rights, and agency law will undoubtedly improve the expectation of a fair and reasonable resolution of the parties' claims.

21. Finally, the principal claims in this case do not involve any of the categories of claims excluded from the definition of Business Litigation listed in TCR 29.04(a)(3).

22. Therefore, in light of the commercial nature of this dispute and the need for specialized treatment due to the complex legal issues, the principal claims in this case fall within the jurisdiction of the Business Court Division.

23. As required by TCR 29.06(a)(1), United Bank states that it is unaware of any pending or future actions related to the parties' controversy.

WHEREFORE, Plaintiff, United Bank, Inc., pursuant to West Virginia Trial Court Rule 29.06, respectfully moves the Chief Justice of the West Virginia Supreme Court of Appeals to refer this case to the Business Court Division.

UNITED BANK, INC.

By Counsel



Richard M. Francis (WV Bar #1275)  
Stuart A. McMillan (WV Bar #6352)  
Andrew C. Robey (WV Bar #12806)  
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*Counsel for United Bank, Inc.*

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Defendants.

**CERTIFICATE OF SERVICE**

I, Richard M. Francis, do hereby certify that I have caused a copy of the hereto  
attached **Motion to Refer Case to the Business Court Division** to be served upon:

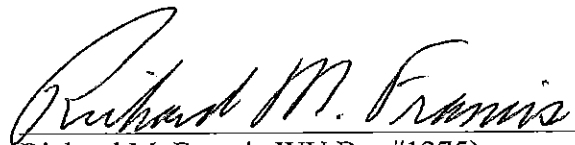
Matthew S. Criswell, Esquire  
Mark L. French, Esquire  
CRISWELL FRENCH PLLC  
105 Capitol Street, Suite 200  
Charleston, West Virginia 25301

Cathy S. Gatson, Clerk  
Circuit Court of Kanawha County  
Judicial Annex  
111 Court Street  
Charleston, West Virginia 25301

Carrie L. Webster, Judge  
Circuit Court of Kanawha County  
Judicial Annex  
111 Court Street  
Charleston, West Virginia 25301

Lorri Stotler, Administrative Assistant  
Business Court Division Central Office  
Berkeley County Judicial Center  
380 West South Street, Suite 2100  
Martinsburg, West Virginia 25401

by placing the same in the regular United States Mail, postage prepaid, on this 7<sup>th</sup> day of  
November 2016.

  
Richard M. Francis WV Bar #1275)