

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

ADKINS ENERGY, INC., et al.,

Plaintiffs,

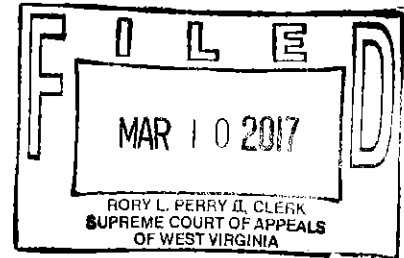
v.

Marshall County Circuit Court

Civil Action No. 16-C-92 C

DOMINION TRANSMISSION, INC., et al.,

Defendants.

**TO: THE HONORABLE CHIEF JUSTICE****MOTION TO REFER CASE TO THE BUSINESS COURT DIVISION**

James C. Wright (W. Va. Bar #6816)
 HARTLEY & O'BRIEN PLLC
 The Wagner Building
 2001 Main Street, Suite 600
 Wheeling, WV 26003

Robert B. Wolinsky
 Jennifer A. Fleury
 HOGAN LOVELLS US LLP
 555 13th Street, N.W.
 Washington, DC 20004
 (pro hac vice applications to be filed)

Counsel for Dominion Transmission, Inc.

Gregory J. Krock (W. Va. Bar #10999)
 BUCHANAN, INGERSOLL & ROONEY
 One Oxford Centre
 301 Grant Street, 20th Floor
 Pittsburgh, PA 15219

Counsel for Riley Natural Gas Company

James F. Companion (W. Va. Bar #790)
 Yolonda G. Lambert (W. Va. Bar #2130)
 SCHRADER, BYRD & COMPANION PLLC
 The Maxwell Centre
 32-20th Street, Suite 500
 Wheeling, WV 26003

Elizabeth M. Thomas (W. Va. Bar #12320)
 MCGUIREWOODS LLP
 625 Liberty Avenue, 23rd Floor
 Pittsburgh, PA 15222

Jonathan T. Blank
 MCGUIREWOODS LLP
 310 Fourth Street, N.E., Suite 300
 Charlottesville, VA 22902
 (admitted pro hac vice)

Katherine Mims Crocker
 MCGUIREWOODS LLP
 800 East Canal Street
 Richmond, VA 23219
 (admitted pro hac vice)

*Counsel for Dominion Field Services, Inc.
 and Joseph Vanzant*

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

ADKINS ENERGY, INC.,
ALPHA GAS CORP.,
ALL STATE ENERGY CORP.,
BALD EAGLE OIL & GAS, INC.,
BERRY ENERGY, INC.,
BOGGS NATURAL GAS, FLP,
BOWIE, INC.,
BRAXTON OIL & GAS CORP.,
BUCKEYE OIL PRODUCING CO.,
CARDINAL NATURAL FUEL COMPANY, INC.,
CLOWSER PRODUCTION COMPANY, INC.,
COMMONWEALTH ENERGY, INC.,
CW LEASE,
DC PETROLEUM, INC.,
ENERGY MANAGEMENT, INC.,
FMF OIL AND GAS PROPERTIES, INC.,
FRYMIER OIL & GAS, LLC,
GENESIS EXPLORATION & PROD. CO., LLC,
GMH GAS CO., INC.,
HMS RESOURCES, INC.,
HORIZON ENERGY CORP.,
JACKSON FUEL CORP.,
KIMCO, KRAKROW CORP.,
LIPPIZAN PETROLEUM, INC.,
LONE PINE OPERATING COMPANY, INC.,
MCINTOSH OIL & GAS, INC.,
MEGAN OIL & GAS CO., INC.,
MIKE ROSS, INC.,
MOUNTAIN V OIL & GAS, INC.,
PATCHWORK OIL & GAS, LLC,
PAULICO RESOURCES, INC.,
PERKINS OIL AND GAS, INC.,
PETROLEUM RESOURCES, INC.,
R & R OIL AND GAS, LLC,
RAMSEY ASSOCIATED PETROLEUM, INC.,
ROGERS AND SON,
STANDARD OIL COMPANY, INC.,
STEPHEN DEBRULAR d/b/a STEPHEN GAS COMPANY,
TAPO ENERGY, LLC,
TEDDY ADKINS,
TERM ENERGY CORPORATION, and
WHITTLE CORP.,

Plaintiffs,

v.

Marshall County Circuit Court
Civil Action No. 16-C-92 C

DOMINION TRANSMISSION, INC.,
DOMINION FIELD SERVICES, INC.,
DOMINION RESOURCES, INC.,
JOSEPH VANZANT, and
RILEY NATURAL GAS COMPANY,

Defendants.

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, Defendants Dominion Transmission, Inc., Dominion Field Services, Inc., Riley Natural Gas Company, and Joseph Vanzant, by counsel, James C. Wright, Esq., and others listed below, respectfully request the above-styled case be referred to the Business Court Division.

In regard to additional related actions:

- ☐ There are no known related actions.
- ☒ The following related actions could be the subject of consolidation, and are
- ☒ now pending
- or
- ☐ may be filed in the future. (Please list case style, number, and Court if any)

Riley Natural Gas Company v. Clowser Production Company, Inc., Harrison
County Circuit Court Civil Action No. 16-C-287; Riley Natural Gas Company v.
Berry Energy, Inc., Harrison County Circuit Court Civil Action No. 16-C-365

This action involves: (Please check all that apply)

- | | |
|---|--|
| <input checked="" type="checkbox"/> Breach of Contract; | <input type="checkbox"/> Non-compete Agreements; |
| <input type="checkbox"/> Sale or Purchase of Commercial Entity; | <input type="checkbox"/> Intellectual Property, Securities, Technology Disputes; |
| <input type="checkbox"/> Sale or Purchase of Commercial Real Estate; | <input checked="" type="checkbox"/> Commercial Torts; |
| <input checked="" type="checkbox"/> Sale or Purchase of Commercial Products Covered by the Uniform Commercial Code; | <input type="checkbox"/> Insurance Coverage Disputes in Commercial Insurance Policies; |
| <input type="checkbox"/> Terms of a Commercial Lease; | <input type="checkbox"/> Professional Liability Claims in Connection with the Rendering of Professional Services to a Commercial Entity; |
| <input type="checkbox"/> Commercial Non-consumer debts; | <input type="checkbox"/> Anti-trust Actions between Commercial Entities; |
| <input checked="" type="checkbox"/> Internal Affairs of a Commercial Entity; | |
| <input type="checkbox"/> Trade Secrets and Trademark Infringement; | |

☒ Injunctive and Declaratory Relief Between Commercial Entities;

☒ Liability of Shareholders, Directors, Officers, Partners, etc.;

☒ Mergers, Consolidations, Sale of Assets, Issuance of Debt, Equity and Like Interest;

☐ Shareholders Derivative Claims;

☐ Commercial Bank Transactions;

☐ Franchisees/Franchisors;

☐ Internet, Electronic Commerce and Biotechnology

☒ Disputes involving Commercial Entities; or

☒ Other (Describe): Inter alia, claims for breach of joint venture; contract-related claims in addition to breach (unjust enrichment, rescission based on unconscionability, declaratory judgment of force majeure); claims for breach of fiduciary duty arising out of a partnership, investment-advisor relationship, or distributorship; claims for aiding and abetting such supposed breach of fiduciary duty

In support of this motion, this matter contains issues significant to businesses, and presents novel and/or complex commercial or technological issues for which specialized treatment will be helpful, as more fully described here: Please see the attached memorandum in support of this Motion. In short, this action involves commercial transactions between more than 40 business entities, dozens of contracts with differing terms that will require significant interpretation, and complex and significant defenses, including preemption under the federal Natural Gas Act. Adjudicating these claims and defenses will require commercial expertise and the investment of substantial judicial resources.

In further support of this Motion, please find attached hereto an accurate copy of the operative complaint(s), ~~the operative answer(s)~~, the docket sheet, and the following other documents: Defendants' Motions to Dismiss, memorandums in support thereof, and representative samples of the contract documents between DFS and Plaintiffs.

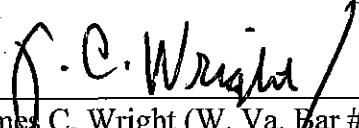
In regard to expedited review, the Movant:

☒ DOES NOT request an expedited review under W.Va. Trial Court Rule 29.06(a)(4), and gives notice that all affected parties may file a memorandum stating their position, in accordance with W.Va. Trial Court Rule 29.

☐ hereby REQUESTS that the Chief Justice grant this Motion to Refer without responses, pursuant to W.Va. Trial Court Rule 29.06(a)(4), and contends that the following constitutes good cause to do so: _____

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 10th day of March, 2017,


James C. Wright (W. Va. Bar #6816)
HARTLEY & O'BRIEN PLLC
The Wagner Building
2001 Main Street, Suite 600
Wheeling, WV 26003

Robert B. Wolinsky
Jennifer A. Fleury
HOGAN LOVELLS US LLP
555 13th Street, N.W.
Washington, DC 20004
(pro hac vice applications to be filed)

Counsel for Dominion Transmission, Inc.

James F. Companion (W. Va. Bar #790)
Yolonda G. Lambert (W. Va. Bar #2130)
SCHRADER, BYRD & COMPANION PLLC
The Maxwell Centre
32-20th Street, Suite 500
Wheeling, WV 26003

Elizabeth M. Thomas (W. Va. Bar #12320)
MCGUIREWOODS LLP
625 Liberty Avenue, 23rd Floor
Pittsburgh, PA 15222

Jonathan T. Blank
MCGUIREWOODS LLP
310 Fourth Street, N.E., Suite 300
Charlottesville, VA 22902
(admitted pro hac vice)

Katherine Mims Crocker
MCGUIREWOODS LLP
800 East Canal Street
Richmond, VA 23219
(admitted pro hac vice)

*Counsel for Dominion Field Services, Inc. and
Joseph Vanzant*

Gregory J. Krock
BUCHANAN, INGERSOLL & ROONEY
One Oxford Centre
301 Grant Street, 20th Floor
Pittsburgh, PA 15219

Counsel for Riley Natural Gas Company

CERTIFICATE OF SERVICE

I, James C. Wright, do hereby certify that on this 10th day of March, 2017, I have served the foregoing Motion to Refer Case to the Business Court Division, with attachments, by either hand delivery or first class mail to

Jonathan R. Marshall
BAILEY & GLASSER, LLP
209 Capitol Street
Charleston, WV 25301
Counsel for Plaintiffs

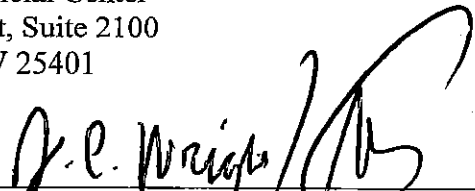
Howard M. Persinger, III
PERSINGER & PERSINGER, L.C.
101 Dickenson Street
Williamson, WV 25661
Counsel for Plaintiffs

Jeffrey V. Kessler
BERRY, KESSLER, CRUTCHFIELD, TAYLOR & GORDON
514 Seventh Street
Moundsville, WV 26041
Counsel for Plaintiffs

The Honorable Judge Jeffrey D. Cramer
Marshall County Circuit Court
600 7th Street
Moundsville, WV 26041

Marshall County Circuit Clerk's Office
600 7th Street, Room 127
Moundsville, WV 26041

Business Court Division Central Office
Berkeley County Judicial Center
380 West South Street, Suite 2100
Martinsburg, WV 25401


James C. Wright (W. Va. Bar #6816)

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

ADKINS ENERGY, INC., et al.,

Plaintiffs,

v.

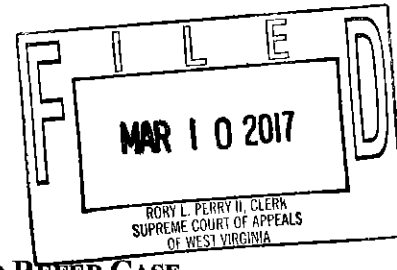
Marshall County Circuit Court

Civil Action No. 16-C-92 C

DOMINION TRANSMISSION, INC., et al.,

Defendants.

TO: THE HONORABLE CHIEF JUSTICE



MEMORANDUM IN SUPPORT OF MOTION TO REFER CASE
TO THE BUSINESS COURT DIVISION

James C. Wright (W. Va. Bar #6816)
HARTLEY & O'BRIEN PLLC
The Wagner Building
2001 Main Street, Suite 600
Wheeling, WV 26003

Robert B. Wolinsky
Jennifer A. Fleury
HOGAN LOVELLS US LLP
555 13th Street, N.W.
Washington, DC 20004
(pro hac vice applications to be filed)

Counsel for Dominion Transmission, Inc.

Gregory J. Krock (W. Va. Bar #10999)
BUCHANAN, INGERSOLL & ROONEY
One Oxford Centre
301 Grant Street, 20th Floor
Pittsburgh, PA 15219

Counsel for Riley Natural Gas Company

James F. Companion (W. Va. Bar #790)
Yolonda G. Lambert (W. Va. Bar #2130)
SCHRADER, BYRD & COMPANION PLLC
The Maxwell Centre
32-20th Street, Suite 500
Wheeling, WV 26003

Elizabeth M. Thomas (W. Va. Bar #12320)
MCGUIREWOODS LLP
625 Liberty Avenue, 23rd Floor
Pittsburgh, PA 15222

Jonathan T. Blank
MCGUIREWOODS LLP
310 Fourth Street, N.E., Suite 300
Charlottesville, VA 22902
(admitted pro hac vice)

Katherine Mims Crocker
MCGUIREWOODS LLP
800 East Canal Street
Richmond, VA 23219
(admitted pro hac vice)

*Counsel for Dominion Field Services, Inc.
and Joseph Vanzant*

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

ADKINS ENERGY, INC.,
ALPHA GAS CORP.,
ALL STATE ENERGY CORP.,
BALD EAGLE OIL & GAS, INC.,
BERRY ENERGY, INC.,
BOGGS NATURAL GAS, FLP,
BOWIE, INC.,
BRAXTON OIL & GAS CORP.,
BUCKEYE OIL PRODUCING CO.,
CARDINAL NATURAL FUEL COMPANY, INC.,
CLOUSER PRODUCTION COMPANY, INC.,
COMMONWEALTH ENERGY, INC.,
CW LEASE,
DC PETROLEUM, INC.,
ENERGY MANAGEMENT, INC.,
FMF OIL AND GAS PROPERTIES, INC.,
FRYMIER OIL & GAS, LLC,
GENESIS EXPLORATION & PROD. CO., LLC,
GMH GAS CO., INC.,
HMS RESOURCES, INC.,
HORIZON ENERGY CORP.,
JACKSON FUEL CORP.,
KIMCO, KRAKROW CORP.,
LIPPIZAN PETROLEUM, INC.,
LONE PINE OPERATING COMPANY, INC.,
MCINTOSH OIL & GAS, INC.,
MEGAN OIL & GAS CO., INC.,
MIKE ROSS, INC.,
MOUNTAIN V OIL & GAS, INC.,
PATCHWORK OIL & GAS, LLC,
PAULICO RESOURCES, INC.,
PERKINS OIL AND GAS, INC.,
PETROLEUM RESOURCES, INC.,
R & R OIL AND GAS, LLC,
RAMSEY ASSOCIATED PETROLEUM, INC.,
ROGERS AND SON,
STANDARD OIL COMPANY, INC.,
STEPHEN DEBRULAR d/b/a STEPHEN GAS COMPANY,
TAPO ENERGY, LLC,
TEDDY ADKINS,
TERM ENERGY CORPORATION, and
WHITTLE CORP.,

Plaintiffs,

v.

Marshall County Circuit Court
Civil Action No. 16-C-92 C

DOMINION TRANSMISSION, INC.,
DOMINION FIELD SERVICES, INC.,
DOMINION RESOURCES, INC.,
JOSEPH VANZANT, and
RILEY NATURAL GAS COMPANY,

Defendants.

TO: THE HONORABLE CHIEF JUSTICE

MEMORANDUM IN SUPPORT OF MOTION TO REFER CASE
TO THE BUSINESS COURT DIVISION

INTRODUCTION

Defendants Dominion Transmission, Inc. ("DTT"), Dominion Field Services, Inc. ("DFS"), Joseph Vanzant, and Riley Natural Gas Company ("Riley") respectfully request that this action be transferred to the Business Court Division in accordance with West Virginia Trial Court Rule 29.06, as set forth in their Motion to Refer Case to the Business Court Division (the "Motion").

Plaintiffs, 42 commercial natural-gas production entities and/or owners, assert in a 273-paragraph, 13-count First Amended Complaint numerous commercial contract and tort claims against businesses with whom they contracted to sell gas and related parties. For the reasons that follow, this action is ripe for referral to the Business Court Division.

ARGUMENT

I. This action meets the definition of "business litigation" in West Virginia Trial Court Rule 29.04.

Each cause of action in this case involves the negotiation, interpretation, or enforceability of business contracts. Plaintiffs have asserted claims for breach of contract (including under the Uniform Commercial Code), breach of joint venture, unjust enrichment, unconscionability, declaratory judgment of force majeure, breach of fiduciary duty, aiding and abetting breach of

fiduciary duty, fraud, fraudulent inducement, civil conspiracy, negligence, negligent misrepresentation, and violation of the West Virginia Consumer Credit and Protection Act (“WVCCPA”).

Plaintiffs’ claims revolve around a commercial negotiation process that began in 2008 for the sale of gas in connection with the “Gateway Project,” a proposed expansion of DTI’s interstate pipeline system. To secure contracts with customers and allocate the risk associated with this significant undertaking, DTI established contractual terms made available to all potential shippers for firm-transportation capacity that included fixed volume obligations and transportation fees, a ten-year minimum term, and specific credit requirements. *See* First Am. Compl. ¶¶ 99-101. Seeking to work with producers who elected not to contract directly with DTI, DFS set about gauging interest in an arrangement whereby producers would sell gas to DFS and DFS would contract for firm-transportation capacity with DTI. *Id.* ¶¶ 93-110. In exchange, the producers would reimburse DFS for the reservation fees and other costs that DFS would owe to DTI and also pay a small management fee. *Id.* ¶ 110. Riley (a competitor of DFS’s) sought to establish a similar relationship with producers. *See id.* ¶ 4. Each Plaintiff entered into a contractual arrangement with DFS and/or Riley. *See id.*

The claims in this case focus on that negotiation process, the resulting terms of the contracts between Plaintiffs and DFS and/or Riley, and Plaintiffs’ asserted inability to fulfill their contractual obligations because of economic difficulties wrought by subsequent market events. Accordingly, “the principal claim or claims” (indeed, all claims) “involve matters of significance to the transactions, operations, or governance between business entities.” W. Va. Trial Ct. R. 29.04(a)(1). These include, *inter alia*, the transactions and operations between Plaintiffs and,

respectively, DFS and Riley, as well as the agreements and interactions between DTI and DFS (which Plaintiffs allege violated federal law and were otherwise improper).

Moreover, “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.” W. Va. Trial Ct. R. 29.04(2). This action involves dozens of Plaintiffs, each of which entered into a commercial contracting arrangement with one or more Defendants that often or always involved multiple documents and varying terms. In addition, Defendants have raised legal defenses that are both complex (for example, preemption under the federal Natural Gas Act) and important to the development of commercial law in West Virginia (for example, that fixed-price contracts are not in general substantively unconscionable and that economic hardship does not trigger a standard force majeure clause).

Finally, “the principal claim or claims” in this case “do not involve . . . consumer litigation” or any other class of claims identified in West Virginia Trial Court Rule 29.04(a)(3). Each of Plaintiffs’ claims, as set forth above, relates to the negotiation, interpretation, or enforceability of commercial contracts. Plaintiffs’ WVCCPA claim does not make this case inappropriate for referral to the Business Court Division. The WVCCPA claim is just one of thirteen counts and could not reasonably be characterized as “the principal claim.” The allegations underlying the WVCCPA claim are exact replicas of the allegations underlying Plaintiffs’ other claims, and Plaintiffs did not even include a WVCCPA claim in their original complaint. Finally, as discussed in the briefs supporting Defendants’ motions to dismiss, the WVCCPA claim is subject to dismissal because Plaintiffs have failed to plead the allegations of

fraud with particularity, as required by West Virginia Rule of Civil Procedure 9(b), and because the DFS contracts contain a choice-of-law clause under which Pennsylvania law governs.

This case is quintessential business litigation and, as such, warrants referral to the Business Court Division.

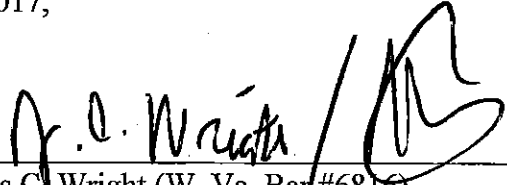
II. Defendants have complied with the procedural requirements for filing a motion to refer pursuant to West Virginia Trial Court Rule 29.06.

DTI, DFS, and Mr. Vanzant submitted the Motion after filing motions to dismiss with the Circuit Court. The Motion has therefore been filed after the time to answer the complaint expired under the prevailing interpretation of Rule 29.06(a)(2). Or, in the alternative, good cause exists to file the Motion sooner because Defendants have moved to dismiss the First Amended Complaint in whole and for reasons most appropriately resolved by the Business Court Division, as discussed above. Defendants have also served the Motion on all parties, the Honorable Judge Jeffrey D. Cramer of the Marshall County Circuit Court, the Marshall County Circuit Clerk's Office, and the Business Court Division Central Office. As a result, all procedural requirements for filing the Motion pursuant to West Virginia Trial Court Rule 29.06 have been satisfied.

CONCLUSION

For the reasons stated in the Motion and this brief, and based on the documents attached to the Motion, Defendants respectfully request that the Chief Justice refer this action to the Business Court Division for review.

Respectfully submitted, this 10th day of March, 2017,


James C. Wright (W. Va. Bar #6816)
HARTLEY LAW GROUP, PLLC
The Wagner Building

2001 Main Street, Suite 600
Wheeling, WV 26003

Robert B. Wolinsky
Jennifer A. Fleury
HOGAN LOVELLS US LLP
555 13th Street, N.W.
Washington, DC 20004
(pro hac vice applications to be filed)

Counsel for Dominion Transmission, Inc.

James F. Companion (W. Va. Bar #790)
Yolonda G. Lambert (W. Va. Bar #2130)
SCHRADER, BYRD & COMPANION, PLLC
The Maxwell Centre
32-20th Street, Suite 500
Wheeling, WV 26003

Elizabeth M. Thomas (W. Va. Bar #12320)
MCGUIREWOODS LLP
625 Liberty Avenue, 23rd Floor
Pittsburgh, PA 15222

Jonathan T. Blank
MCGUIREWOODS LLP
310 Fourth Street, N.E., Suite 300
Charlottesville, VA 22902
(admitted pro hac vice)

Katherine Mims Crocker
MCGUIREWOODS LLP
800 East Canal Street
Richmond, VA 23219
(admitted pro hac vice)

*Counsel for Dominion Field Services, Inc.
and Joseph Vanzant*

Gregory J. Krock
BUCHANAN, INGERSOLL & ROONEY
One Oxford Centre
301 Grant Street, 20th Floor
Pittsburgh, PA 15219

Counsel for Riley Natural Gas Company

CERTIFICATE OF SERVICE

I, James C. Wright, do hereby certify that on this 10th day of March, 2017, I have served the foregoing Memorandum in Support of Motion to Refer Case to the Business Court Division by either hand delivery or first class mail to

Jonathan R. Marshall
BAILEY & GLASSER, LLP
209 Capitol Street
Charleston, WV 25301
Counsel for Plaintiffs

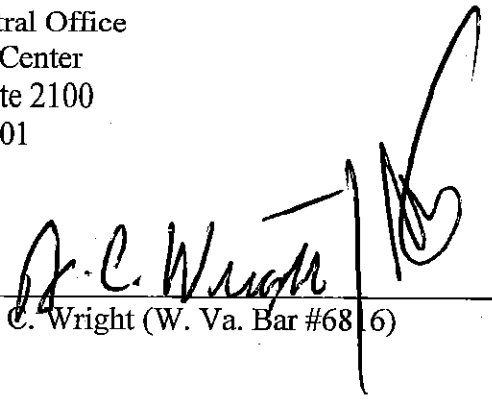
Howard M. Persinger, III
PERSINGER & PERSINGER, L.C.
101 Dickenson Street
Williamson, WV 25661
Counsel for Plaintiffs

Jeffrey V. Kessler
BERRY, KESSLER, CRUTCHFIELD, TAYLOR & GORDON
514 Seventh Street
Moundsville, WV 26041
Counsel for Plaintiffs

The Honorable Judge Jeffrey D. Cramer
Marshall County Circuit Court
600 7th Street
Moundsville, WV 26041

Marshall County Circuit Clerk's Office
600 7th Street, Room 127
Moundsville, WV 26041

Business Court Division Central Office
Berkeley County Judicial Center
380 West South Street, Suite 2100
Martinsburg, WV 25401


James C. Wright (W. Va. Bar #6816)