

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

RILEY NATURAL GAS COMPANY,
A West Virginia corporation,

Plaintiff,

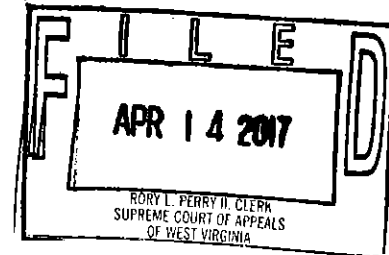
v.

Harrison County Circuit Court
Civil Action No. 16-C-365

BERRY ENERGY, INC.,

Defendant.

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, Defendant Berry Energy, Inc., by counsel, Jonathan R. Marshall, Esq., respectfully requests 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.

Adkins Energy, Inc., et al. v. Dominion Transmission, Inc., et al. No. 16-C-92, Circuit Court of Marshall County, referred to Business Court Division by Administrative Order of April 4, 2017, which motion identified the instant proceeding as a related action.

This action involves: (Please check all that apply)

- | | |
|--|---|
| × Breach of Contract; | × Sale or Purchase of Commercial Products Covered by the Uniform Commercial Code; |
| <input type="checkbox"/> Sale or Purchase of Commercial Entity; | <input type="checkbox"/> Terms of a Commercial Lease; |
| <input type="checkbox"/> Sale or Purchase of Commercial Real Estate; | <input type="checkbox"/> Commercial Non-consumer debts; |

- | | |
|--|---|
| <ul style="list-style-type: none"> <input type="checkbox"/> Internal Affairs of a Commercial Entity; <input type="checkbox"/> Trade Secrets and Trademark Infringement; <input type="checkbox"/> Non-compete Agreements; <input type="checkbox"/> Intellectual Property, Securities, Technology Disputes; × Commercial Torts; <input type="checkbox"/> Insurance Coverage Disputes in Commercial Insurance Policies; <input type="checkbox"/> Professional Liability Claims in Connection with the Rendering of Professional Services to a Commercial Entity; <input type="checkbox"/> Anti-trust Actions between Commercial Entities; × Injunctive and Declaratory Relief Between Commercial Entities; | <ul style="list-style-type: none"> <input type="checkbox"/> Liability of Shareholders, Directors, Officers, Partners, etc.; <input type="checkbox"/> Mergers, Consolidations, Sale of Assets, Issuance of Debt, Equity and Like Interest; <input type="checkbox"/> Shareholders Derivative Claims; <input type="checkbox"/> Commercial Bank Transactions; <input type="checkbox"/> Franchisees/Franchisors; <input type="checkbox"/> Internet, Electronic Commerce and Biotechnology × Disputes involving Commercial Entities; or <input type="checkbox"/> Other (Describe) _____ |
|--|---|

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: Plaintiff asserts entitlement to declaratory and monetary relief grounded in the negotiation, interpretation, or enforceability of its business contracts with Defendant, who defends and counterclaims premised on unconscionability and other defects in contract formation, and on various tort theories, including without limitation fraud and breach of fiduciary duty. The principal claim or claims thus involve matters of significance to the transactions, operations, or governance between business entities, fulfilling the definition of "business litigation" set forth in T.C.R. 29.04. Referral to the Business Court Division is likely to improve the expectation of a fair and reasonable resolution of the controversy, given the desirability of specialized knowledge or expertise in the subject matter.

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: Memoranda in support of Defendant's Motion to Dismiss and Plaintiff's Opposition thereto.

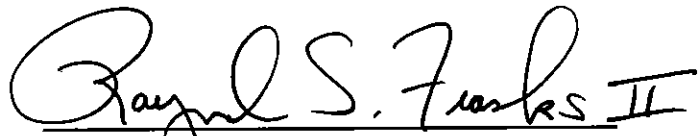
In regard to expedited review, the Movant:

- ☐ 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: This Motion to Refer is unopposed by Plaintiff. The dismissal motion

is ripe for hearing and, in light of ongoing discovery obligations, should be heard and adjudicated with dispatch.

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.

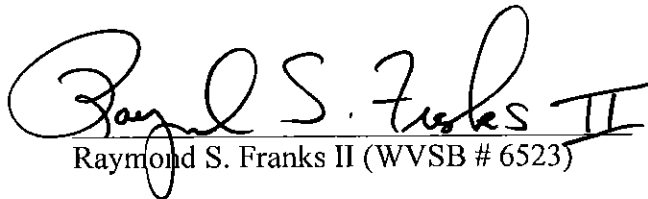
Respectfully submitted, this 14th day of April, 2017,



Jonathan R. Marshall (WVSB # 10580)
Raymond S. Franks II (WVSB # 6523)
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Counsel for Defendant Berry Energy, Inc.

CERTIFICATE OF SERVICE

I, Raymond S. Franks II, do hereby certify that on this 14th day of April, 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 Plaintiff's counsel, Nicholas S. Preservati, Esq., at Spilman Thomas Battle, PLLC, P.O. Box 273, Charleston WV, 25321; the Harrison County Circuit Clerk's Office, Harrison County Courthouse, 301 West Main Street, Clarksburg, WV 26301-2967; and the Business Court Division Central Office, Berkeley County Judicial Center, 380 West South Street, Suite 2100, Martinsburg, WV 25401



Raymond S. Franks II (WVSB # 6523)