

IN THE CIRCUIT COURT OF MERCER COUNTY, WEST VIRGINIA

**Meral, Inc.,**  
a West Virginia corporation,

Plaintiff,

v.

Civil Action No. 17-C-

303

**Brewster, Morhous, Cameron, Caruth,**  
**Moore, Kersey & Stafford, PLLC,**  
a West Virginia professional limited liability company;  
**Lawrence E. Morhous;**  
and  
**Jerry J. Cameron,**

Defendants.

**COMPLAINT**

Comes now Plaintiff Meral Inc., by counsel, pursuant to Rule 15(a) of the West Virginia Rules of Civil Procedure, and for its amended complaint, avers and states as follows:

1. Plaintiff, Meral, Inc. is a corporation formed under West Virginia law.
2. Defendant Brewster, Morhous, Cameron, Caruth, Moore, Kersey & Stafford, PLLC (hereafter "Brewster Morhous") is a professional limited liability company formed under West Virginia law. Brewster Morhous' offices are located in Bluefield, Mercer County, West Virginia.
3. Brewster Morhous, by and through its members and employees, is engaged in the practice of law throughout southern West Virginia.
4. Defendant Lawrence E. Morhous is an attorney licensed to practice law in West Virginia and resides in Bluefield, Mercer County, West Virginia.

5. Defendant Jerry J. Cameron is an attorney licensed to practice law in West Virginia and, on information and belief, resides in Mercer County, West Virginia.

6. At all times relevant hereto, Defendants Morhous and Cameron were members of Defendant Brewster Morhous engaged in the practice of law as members and employees of Defendant Brewster Morhous.

7. This action asserts claims of professional liability, breach of contract and vicarious liability against Defendants residing and conducting business in Mercer County West Virginia. Plaintiff's complaint seeks damages in excess of applicable jurisdictional limits. Therefore, this Court has personal jurisdiction over the parties and subject matter jurisdiction over the matters in dispute.

8. Defendants Morhous and Cameron reside in Mercer County, West Virginia and Defendant Brewster Morhous is headquartered in Mercer County, West Virginia. Venue in Mercer County is therefore appropriate.

#### **GENERAL AVERMENTS**

9. In May 2008, Meral, by and through its agent, Leon Browning, began negotiations with WPP, LLC, a Delaware limited liability company, about the possibility of Meral leasing several thousand acres of metallurgical coal owned by WPP and located in Falling Spring District, Greenbrier County, West Virginia. Those negotiations resulted in an agreement between Meral and WPP regarding the leasing of said coal.

10. That Meral and WPP entered into a Coal Mining Lease dated August 13, 2008 (hereafter "the WPP lease") whereby Meral acquired the exclusive right to mine and sell coal from approximately 11,000 acres of metallurgical coal reserves owned by WPP and located in Falling Spring District, Greenbrier County.

11. That Defendant Morhous represented Meral during Meral's negotiations with WPP concerning the leasing of said coal and the preparation of said Coal Mining Lease.

12. That having acquired the WPP lease, Meral set about acquiring the rights to a coal loading facility owned by Mead Westvaco in Greenbrier County, West Virginia located near the WPP leasehold. Such realty was necessary to allow coal mined from the WPP leasehold to be loaded on railcars for shipment.

13. That as a result of such negotiations, Plaintiff and Mead Westvaco entered into a Coal Load-Out facility Lease and Easement (hereafter "the Load-Out agreement") dated November 30, 2011. Defendant Morhous represented Plaintiff in the preparation of said contract.

14. That in October 2010, Meral began negotiations whereby Meral would assign certain of its rights to mine and ship coal pursuant to the WPP lease and Load-out Agreement. Such negotiations resulted in Meral entering into an Asset Purchase Agreement dated January 31, 2011 with South Fork Mining Company, LLC, a limited liability company formed under West Virginia law (hereafter "South Fork").

15. That per the terms of the Asset Purchase Agreement, South Fork acquired Meral's right to mine and sell coal from the WPP leasehold and Meral's rights under the Load-Out agreement.

16. That per to the terms of said Asset Purchase Agreement, in exchange for assignment of certain of Meral's rights under the WPP lease and the Load-Out agreement, Meral was to receive cash payments totaling \$5.2 million (hereafter the "purchase price")

17 That per the terms of the Asset Purchase Agreement, Meral received \$1.7 million of the purchase price at the closing of the Asset Purchase Agreement transaction held on January 31, 2011. Meral was to receive \$2.5 million of the purchase price upon South Fork's acquisition of permits necessary to conduct mining operations on the WPP leasehold and a final payment of \$1 million within 18 months of South Fork having acquired said mining permits.

18. That in addition to the purchase price, the Asset Purchase Agreement provided that Meral would receive an overriding royalty on coal mined and sold from the WPP leasehold entitling Meral to receive a payment of an amount specified in the Agreement on each ton of coal mined and sold from the leasehold (hereinafter the "overriding royalty").

19. That Defendant Morhous represented Meral during negotiations that resulted in said Asset Purchase Agreement and the preparation of said Agreement and related documents.

20. That Defendant Cameron represented Meral during Meral's negotiations that resulted in said Asset Purchase Agreement and in the preparation of said Agreement and related documents.

21. Defendant Cameron represented Meral at the closing of the Asset Purchase Agreement on January 31, 2011.

22. Having acquired the necessary permits to conduct mining operations on the WPP leasehold, on September 18, 2012, South Fork paid Meral the \$2.5 purchase price installment due Meral per the terms of the Asset Purchase Agreement.

23. Per the terms of the Asset Purchase Agreement, the final \$1 million purchase price installment was due Meral on March 18, 2014.

24. As the date for payment of the \$1 million purchase price installment neared, South Fork approached Meral and requested that Meral consider amending the Asset Purchase Agreement to allow South Fork to pay Meral the \$1 million purchase price balance in installments.

25. Negotiations between South Fork and Meral resulted in the execution of an amendment to the Asset Purchase Agreement dated March 17, 2014.

26. Per the terms of said amendment, Meral would receive \$200,000.00 on April 15, 2014. Said amendment further provided that beginning on July 15, 2014 and continuing on the 15<sup>th</sup> day of each third month thereafter, Meral would receive an additional installment of not less than \$50,000.00 until the balance of the purchase price was paid in full.

27. Defendant Morhous represented Meral during Meral's negotiations with South Fork that resulted in the amendment to the Asset Purchase Agreement and in the preparation of documents memorializing said amend.

28. In their capacity as counsel for Plaintiff Meral, Defendants Morhous and Cameron failed to prepare a deed of trust, financing statement, or other document granting Meral a security interest in South Fork's assets sufficient to secure payment of the purchase price installment payments due Meral pursuant to the Asset Purchase Agreement.

29. Defendant Morhous failed to recommend to Meral that in exchange for Meral's agreement to restructure payment of the final \$1 million installment of the purchase price, South Fork provide Meral with security sufficient to assure such payment in the event South Fork breached the terms of the amended Asset Purchase Agreement.

30. Defendant Morhous erroneously advised and assured Meral that the terms of the Asset Purchase Agreement provided that Meral could eject South Fork and retake possession of the WPP leasehold and Meral's rights under the 2008 WPP lease and the Load-Out agreement if South Fork failed to pay either the purchase price or overriding royalties due Meral pursuant to the Asset Purchase Agreement

31. That on April 6, 2015, South Fork and several related corporate entities commenced a Chapter 11 bankruptcy proceeding in the United States Bankruptcy Court for the Western District of Virginia (hereafter "the Bankruptcy Court"). Said

bankruptcy proceedings were consolidated for joint administration and thereafter identified as Case 15-70444.

32. That when South Fork commenced said bankruptcy proceeding, Meral was owed \$671,812.14 of the \$5.2 million purchase price owed Meral per the terms of the amended Asset Purchase Agreement.

33. That when South Fork commenced said bankruptcy proceeding, Meral was owed \$109,920.55 in overriding royalty payments due Meral per the terms of the Asset Purchase Agreement.

34. That despite having commenced said bankruptcy proceeding, South Fork continued to pay Meral overriding royalties for coal mined after the date South Fork had commenced bankruptcy.

35. That on July 27, 2015, Meral filed a proof of claim in said bankruptcy proceeding asserting that the unpaid balance of the purchase price and unpaid overriding royalty payments due Meral under the Asset Purchase agreement constituted secured claims.

36. That on or about September 10, 2015, South Fork made the last overriding royalty payment to Meral pursuant to the terms of the Asset Purchase Agreement.

37. That on November 6, 2015, South Fork objected to Meral's proof of claim to the extent that Meral asserted that it was a secured creditor.

38. That in reliance on the advice and recommendations of Defendant Morhous, on November 9, 2015, Meral filed a motion in the South Fork bankruptcy

seeking authorization from the Bankruptcy Court to allow Meral to eject South Fork and retake possession of the WPP leasehold and loadout facility pursuant to Paragraph 3(a)(vii) of the Asset Purchase Agreement.

39. On November 24, 2015, South Fork filed its objection to Meral's motion seeking authorization to retake possession of the WPP leasehold, arguing that under the terms of the Asset Purchase Agreement, Meral conveyed all its interest in the WPP leasehold and loadout facility to South Fork and, as such, had no right to retake possession of the WPP leasehold and loadout facility under West Virginia law.

40. That by order entered on February 3, 2016, the Bankruptcy Court found that Meral had failed to record documents among the Greenbrier County land records to perfect a security interest in South Fork's assets and thereby secure payment of the balance of the purchase price and unpaid production royalties owed Meral. As a result, the Bankruptcy Court classified Meral as an unsecured creditor. The Court further found that having conveyed away all its rights to the WPP leasehold and loadout facility, Meral could assert no right to retake possession of the WPP leasehold and loadout facility under West Virginia law.

40. That Meral timely appealed the Bankruptcy Court's ruling to the United States District Court for the Western District of Virginia.

41. That by order entered December 13, 2016, the United States District Court for the Western District of Virginia affirmed the Bankruptcy Court's order classifying Meral an unsecured creditor and affirming the Bankruptcy Court's ruling



that Meral had no right to retake possession of the WPP leasehold and loadout facility.

42. By order entered January 27, 2016, said Bankruptcy Court confirmed South Fork's plan of reorganization.

43. Per the terms of South Fork's plan of reorganization, unsecured creditors such as Meral will receive approximately 4¢ on the dollar on their claims.

44. Per the terms of South Fork's plan of reorganization, South Fork characterized the Asset Purchase Agreement as an executory contract and rejected the same. South Fork contends that as a result, it has no obligation to pay Meral an overriding royalty on coal mined and sold pursuant to the WPP lease.

45. South Fork continues to mine and sell coal from the WPP leasehold pursuant to the terms of the WPP lease.

46. That since confirmation of South Fork's plan of reorganization, Meral has received no overriding royalty payments from South Fork on coal mined and sold from the WPP lease.

### **I. PROFESSIONAL LIABILITY**

47. Plaintiff restates the averments contained in Paragraphs 1 through 46 of the Complaint.

48. That Defendants Morhous and Cameron knew that in acquiring the WPP lease and the Load-Out agreement, Meral intended to mine and sell coal from the WPP leasehold.

49. That before entering into the Asset Purchase Agreement with South Fork, Defendants Morhous and Cameron assured Meral that if South Fork failed to perform its obligations under the Asset Purchase Agreement, said Agreement entitled Meral to retake possession of the WPP leasehold and the Load-Out facility, thereby allowing Meral to mine and sell coal from the WPP leasehold.

50. That in providing legal services and representation to Meral, Defendants Morhous and Cameron had a duty to exercise such skill, prudence and diligence as members of the legal procession commonly possess and exercise.

51. That during their representation of Meral, the conduct of Defendants Morhous and Cameron fell below the applicable standard of care in numerous respects, including, but not limited to:

- a. failing to recommend and require that Meral's right to receive purchase price payments under the Asset Purchase Agreement be secured by assets owned or subsequently acquired by South Fork;
- b. failing to prepare a deed of trust, security agreement, financing statement or other documents necessary to create a security interest in favor of Meral securing payment of the purchase price due Meral under the Asset Purchase Agreement;
- c. failing to cause a deed of trust, security agreement, financing statement or other appropriate documents creating a security interest in favor of Meral and securing payment of the purchase price due Meral under the Asset Purchase Agreement to be recorded by the Clerk of the County

Commission of Greenbrier County, West Virginia, thereby perfecting such security interest;

- d. erroneously advising Meral that the terms of the Asset Purchase Agreement gave Meral the right to eject South Fork retake possession of the WPP leasehold and Load-Out facility if South Fork failed to pay the purchase price and royalty payments due Meral or otherwise failed to meet its obligations under the Asset Purchase Agreement.
- e. failing to prepare and record with the Clerk of the County commission of Greenbrier County documents containing language sufficient to preserve Meral's reversionary interest in the WPP leasehold exercisable by Meral upon South Fork's failure to pay amounts owed Meral pursuant to the Asset Purchase Agreement.
- f. failing to prepare and record with the Clerk of the County Commission of Greenbrier County documents of the type typically prepared and recorded in transactions in West Virginia whereby a party receives or retains an overriding royalty interest in minerals;
- g. failing to consider, conduct legal research and take such steps as were reasonably prudent and necessary to protect Meral's rights under the Asset Purchase Agreement in the event of South Fork's bankruptcy or insolvency.

52. That as a direct and proximate result of the errors, acts and omissions of Defendants Morhous and Cameron, each of which constitutes a breach or violation

of the duty of care owed Plaintiff by said Defendants, Plaintiff cannot recover possession of the WPP leasehold and loadout facility.

53. That as a direct and proximate result of the errors, acts and omissions of Defendants Morhous and Cameron, each of which constitutes a breach or violation of the duty of care owed Plaintiff by said Defendants, Plaintiff suffered a loss of \$671,812.14 of the purchase price and \$109,920.55 in accrued overriding royalty payments due Meral per the terms of the Asset Purchase Agreement.

54. That as a direct and proximate result of the errors, acts and omissions of Defendants Morhous and Cameron, each of which constitutes a breach or violation of the duty of care owed Plaintiff by said Defendants, Plaintiff will incur lost income in the form of an overriding royalty interest on coal mined and sold from the WPP leasehold, the estimated value of which exceeds \$20,000,000.00.

Wherefore, Plaintiff Meral, Inc. asks that judgment be rendered in its favor and against Defendant Lawrence E. Morhous and Defendant Jerry J. Cameron, jointly and severally; that Meral be awarded damages, including the balance due on the purchase price owed Meral under the terms of the Asset Purchase Agreement; accrued overriding royalty payments; and lost future income sufficient to compensate it for all losses suffered and to be suffered as a result of the errors, omissions and other actionable conduct of Defendants Morhous and Cameron and in an amount in excess of any applicable jurisdictional limit; that Meral be awarded its costs and attorney fees; and such other and further relief as the Court deems appropriate.

## II. BREACH OF CONTRACT

55. Plaintiff restates the averments contained in Paragraphs 1 through 54 of the Complaint.

56. That Defendants Morhous and Cameron expressly or impliedly contracted to exercise ordinary professional skill, knowledge and judgment in their rendition of professional services to Plaintiff Meral.

57. That Defendants Morhous and Cameron failed to exercise ordinary professional skill and knowledge in their rendition of professional services to Plaintiff Meral in its dealings with South Fork, all of which constitutes a breach of contract.

58. That as a direct and proximate result of Defendants Morhous and Cameron breach of contract, Plaintiff could not recover possession of the WPP leasehold and loadout facility.

59. That as a direct and proximate result of the errors, acts and omissions of Defendants Morhous and Cameron, each of which constitutes a breach of contract, Plaintiff suffered a loss of \$671,812.14 of the purchase price and \$109,920.55 in accrued overriding royalty payments due Meral per the terms of the Asset Purchase Agreement.

60. That as a direct and proximate result of the errors, acts and omissions of Defendants Morhous and Cameron, each of which constitutes a breach of contract, Plaintiff will incur lost income in the form of an overriding royalty interest on coal

mined and removed from the WPP leasehold, the estimated value of which exceeds \$20,000,000.00.

Wherefore, Plaintiff Meral, Inc. asks that judgment be rendered in its favor and against Defendant Lawrence E. Morhous and Defendant Jerry J. Cameron, jointly and severally; that Meral be awarded damages, including the balance due on the purchase price owed Meral under the terms of the Asset Purchase Agreement; accrued overriding royalty payments; and lost future income sufficient to compensate it for all losses suffered and to be suffered as a result of the errors, omissions and other actionable conduct of Defendants Morhous and Cameron and in an amount in excess of any applicable jurisdictional limit; that Meral be awarded its costs and attorney fees; and such other and further relief as the Court deems appropriate.

### **III. LIABILITY FOR ACTS AND OMISSIONS OF MEMBERS**

61. Plaintiff restates the averments contained in Paragraphs 1 through 60 of the Complaint.

62. That Defendant Brewster Morhous is a professional limited liability company formed under the laws of the state of West Virginia.

63. That per West Virginia Code §31B-13-1305(c), a professional limited liability company is liable for the acts or omissions of its members and employees while carrying on the business of the professional limited liability company to the same extent any other limited liability company would be liable for the acts or omissions of its members and employees.

64. Per West Virginia Code §31B-3-302, a limited liability company is liable for loss or injury caused as a result of a wrongful act, omission or other actionable conduct of a member acting in the ordinary course of business of the limited liability company.

65. That at all times relevant hereto, Defendants Morhous and Cameron have been members and employees of Defendant Brewster Morhous.

66. That during their representation of Plaintiff, Defendants Morhous and Cameron acted negligently and in violation of applicable professional standards of care.

67. That as a direct and proximate result of the errors, acts, omissions and actionable conduct of Defendants Morhous and Cameron, Plaintiff cannot recover possession of WPP leasehold and loadout facility.

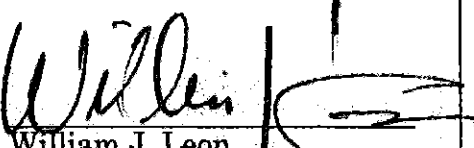
68. That as a direct and proximate result of the errors, acts and omissions of Defendants Morhous and Cameron, each of which constitutes a breach breach of contract, Plaintiff suffered a loss of \$671,812.14 of the purchase price and \$109,920.55 in accrued overriding royalty payments due Meral per the terms of the Asset Purchase Agreement.

69. That as a direct and proximate result of the errors, acts and omissions of Defendants Morhous and Cameron, each of which constitutes a breach of contract, Plaintiff will incur lost income in the form of an overriding royalty interest on coal mined and removed from the WPP leasehold, the estimated value of which exceeds \$20,000,000.00.

Wherefore, Plaintiff Meral, Inc. asks that judgment be rendered in its favor and against Defendant Brewster. Morhous, Cameron, Caruth, Moore, Kersey & Stafford, PLLC; that Meral be awarded damages, including the balance due on the purchase price owed Meral under the terms of the Asset Purchase Agreement; accrued overriding royalty payments; and lost future income sufficient to compensate it for all losses suffered and to be suffered as a result of the errors, omissions and other actionable conduct of Defendants Morhous and Cameron and in an amount in excess of any applicable jurisdictional limit; that Meral be awarded its costs and attorney fees; and such other and further relief as the Court deems appropriate.

**PLAINTIFF REQUESTS A TRIAL BY JURY**

Meral, Inc.,  
Plaintiff, by counsel

  
William J. Leon  
W.Va. Bar I.D. #2182  
William J. Leon, LC  
1200 Dorsey Ave., Suite III  
Morgantown, WV 26501  
304-554-3880  
jay@jayleonlaw.com