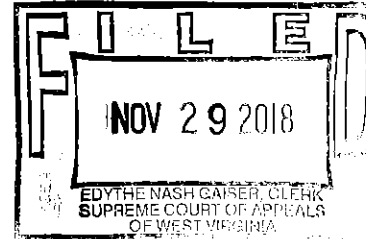


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**IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA**



**KRP MARCELLUS I, LLC,  
RIVERCREST ROYALTIES II, LLC,  
DIVERSIFIED ROX MINERALS,  
LLC, BRD ROYALTY HOLDINGS,  
LLC and AMON G. CARTER  
FOUNDATION, collectively known as  
KIMBELL GROUP,**

**Plaintiffs,**

Marshall County Circuit Court

**vs.**

Civil Action No. 18-C-215

**CHEVRON U.S.A. INC., a Pennsylvania  
Corporation, TH EXPLORATION, LLC  
a Texas Limited Liability Company, and  
DOE CORPORATIONS 1-20,**

**Defendants.**

**TO: THE HONORABLE CHIEF JUSTICE MARGARET L. WORKMAN**

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

Pursuant to Rule 29.06 of the West Virginia Trial Court Rules, Defendant Chevron U.S.A. Inc. ("Chevron"), by counsel, Sharon L. Potter, Esq., and Christina S. Terek, 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. (Please list case style, number, and Court if any)
- 
-

This action involves: (Please check all that apply)

- |  |  |
|--|--|
| <input checked="" type="checkbox"/> Breach of Contract;  | <input type="checkbox"/> Anti-trust Actions between Commercial Entities;   |
| <input type="checkbox"/> Sale or Purchase of Commercial Entity;  | <input type="checkbox"/> Injunctive and Declaratory Relief Between Commercial Entities;  |
| <input type="checkbox"/> Sale or Purchase of Commercial Real Estate;   | <input type="checkbox"/> Liability of Shareholders, Directors, Officers, Partners, etc.;   |
| <input type="checkbox"/> Sale or Purchase of Commercial Products Covered by the Uniform Commercial Code;                                 | <input type="checkbox"/> Mergers, Consolidations, Sale of Assets, Issuance of Debt, Equity and Like Interest;  |
| <input type="checkbox"/> Terms of a Commercial Lease;  | <input type="checkbox"/> Shareholders Derivative Claims;   |
| <input type="checkbox"/> Commercial Non-consumer debts;  | <input type="checkbox"/> Commercial Bank Transactions;   |
| <input type="checkbox"/> Internal Affairs of a Commercial Entity;  | <input type="checkbox"/> Franchisees/Franchisors;  |
| <input type="checkbox"/> Trade Secrets and Trademark Infringement;   | <input type="checkbox"/> Internet, Electronic Commerce and Biotechnology   |
| <input type="checkbox"/> Non-compete Agreements;   | <input checked="" type="checkbox"/> Disputes involving Commercial Entities; or   |
| <input type="checkbox"/> Intellectual Property, Securities, Technology Disputes;   | <input checked="" type="checkbox"/> Other (Describe) <u>Dispute regarding Plaintiffs' contention that they retained overriding royalty interests in 253 oil and gas leases covering approximately 53,000 acres via the terms of numerous reservations, assignments, and conveyances.</u> |
| <input type="checkbox"/> 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; |  |

In support of this motion, Defendant Chevron asserts that this matter contains issues significant to transactions between business entities, and presents novel and/or complex commercial or technological issues for which specialized treatment will be helpful, as more fully described here:

The West Virginia Business Court Division has jurisdiction to efficiently manage and resolve "litigation involving commercial issues" between parties engaged in business transactions. W.Va. T.C.R. 29.01. Specifically, the Business Court Division, upon proper referral and transfer by the Chief Justice of the West Virginia Supreme Court, may properly preside over and adjudicate "Business Litigation," which is defined as:

[O]ne 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

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. T.C.R. 29.04(a)(1) – (3). A party may file a motion to refer a case to the Business Court Division “after the time to answer the complaint has expired.” W. Va. T.C.R. 29.06(a)(2).

As an initial matter, this Motion is timely, as both Chevron and its co-Defendant TH Exploration, LLC (“THX”) have filed Motions to Dismiss the operative Complaint, copies of which are attached hereto. (THX has advised the undersigned counsel that it has no objection to this Motion to Refer). Additionally, for the reasons set forth below and as evidenced by the issues raised in the attached Complaint and Motions to Dismiss, this matter constitutes “Business Litigation.”

On September 17, 2018, Plaintiffs KRP Marcellus I, LLC, Rivercrest Royalties II, LLC, Diversified Rox Minerals, LLC, BRD Royalty Holdings, LLC, and Amon G. Carter Foundation (collectively known as the Kimbell Group and referenced herein as “TKG”) filed a Complaint with the Circuit Court of Marshall County, West Virginia, asserting claims against Chevron, THX, and “Doe Corporations 1-20.”

The scope of TKG’s claims in this action is immense. Through eleven separate counts against the above-named Defendants and no less than twenty unidentified “Doe Corporations,” TKG seeks to impose

overriding royalty interests (“ORRIs”) upon 53,000 acres comprising the majority of Chevron’s oil and gas leasehold position in Marshall County, West Virginia. According to TKG, certain leasehold assignments purportedly creating these ORRIs mandate their application not only to the leases assigned thereby (defined in TKG’s Complaint as “Subject Leases”), but also to any subsequent “extensions or renewals” thereof. In effect, TKG contends that these ORRIs burden this West Virginia acreage in perpetuity, and without any exception whatsoever.

This complex dispute also involves numerous transactions between business entities. Depending on the outcome of the Motions to Dismiss filed by Chevron and its co-Defendant THX, this action will implicate not only the 253 “Subject Leases” under which TKG claims ORRIs, but also hundreds of transactions impacting these leaseholds, requiring a detailed analysis of (a) the manner and terms by which TKG allegedly obtained its ORRIs in the Subject Leases, (b) the impact of subsequent assignments, reservations, and conveyances concerning TKG’s alleged ORRIs, and (c) the manner and terms by which Chevron executed subsequent leases for acreage that was initially included in a Subject Lease.

The presiding Court will also be required to analyze discrete areas of contract and property law in order to determine whether hundreds of individual Chevron leases constitute “extension or renewals” of prior Subject Leases mandating payment of overriding royalties to TKG, including circumstances where Chevron leases were executed (i) after the primary terms of certain Subject Leases expired; (ii) during the primary terms of certain Subject Leases; (iii) during the extended terms of certain Subject Leases; and (iv) after the expiration of the extended terms of certain of certain Subject Leases. (*See* Complaint, Counts III-VI). This determination regarding the scope and application of the “extension or renewal” provisions in various assignments will also have a significant impact regarding the drafting of extension or renewal clauses in instruments assigning overriding royalties in the future, as well as the issuance of overriding royalties under existing contractual provisions.

clauses in instruments assigning overriding royalties in the future, as well as the issuance of overriding royalties under existing contractual provisions.

Additionally, if this action is not dismissed in its entirety, it is likely that additional necessary parties will need to be joined. TKG contends that the “Doe Corporations” identified in its Complaint “represent those corporations [other than Chevron and TXH] which received a working interest in the encumbered leaseholds” through assignments and conveyances. (See Complaint, ¶ 4). In addition to coordinating this litigation among various business entities (both named and presently unnamed), the Court will also likely be required to oversee extensive discovery involving numerous parties with respect to hundreds of real property transactions.

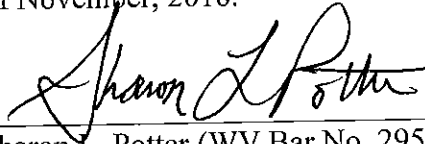
In sum, Chevron believes that the Business Court Division’s particular interest and expertise in complex business litigation involving novel issues of law makes this action a prime candidate to be referred to this Court.

In further support of this Motion, Chevron has attached hereto an accurate copy of (i) the operative Complaint; (ii) a Motion to Dismiss the Complaint and Memorandum in Support filed by Chevron; (iii) a Motion to Dismiss and Memorandum in Support filed THX; (iv) a Motion to Stay Discovery Pending the Adjudication of the Motions to Dismiss the Complaint and Motion to Refer to the Business Court Division and Memorandum in Support filed by Chevron; and (v) the docket sheet.

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: \_\_\_\_\_

Respectfully submitted, this 29th day of November, 2018.

A handwritten signature in cursive script, appearing to read "Sharon L. Potter", is written over a horizontal line.

Sharon L. Potter (WV Bar No. 2952)

Christina S. Terek (WV Bar No. 9724)

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cterek@spilmanlaw.com

*Counsel for Chevron U.S.A. Inc.*

CERTIFICATE OF SERVICE

I, Sharon L. Potter, do hereby certify that on this 29<sup>th</sup> day of November, 2018, I have served the foregoing "Motion to Refer Case to the Business Court Division", without attachments, by either hand delivery or first class mail to the following:<sup>1</sup>

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

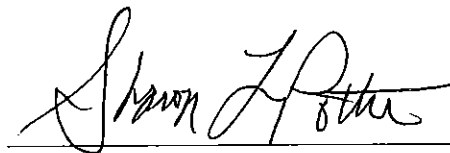
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Michael E. Nogay, Esquire  
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Marshall County Courthouse  
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*Counsel for Defendant  
TH Exploration, LLC*



Sharon L. Potter

<sup>1</sup> No attachments were included with the motion on those served per this Certificate due to volume and redundancy. All but the Business Court Division Central Office already have these attachments, but any documents are certainly available upon request.