

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

SHELL EQUIPMENT COMPANY, INC.;
SHELL ENERGY COMPANY, INC.;
SHELL MINING COMPANY, INC.;
FRANK JOSEPH STAUD; and,
JENNIFER STAUD,

Plaintiffs,

v.

Civil Action No. 14-C-143-2
The Honorable Thomas A. Bedell

MCNEER, HIGHLAND, MCMUNN AND VARNER, L.C.,
a West Virginia legal corporation,

Defendant.

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

The plaintiffs, Shell Equipment Company, Inc., Shell Energy Company, Inc., Shell Mining Company, Inc., Frank Joseph Staud and Jennifer Staud, by counsel, Gregory H. Schillace, pursuant to Rule 29.06 of the West Virginia Trial Court Rules move to refer the above-styled action to the business court division. The nature of this action involves breach of contract, in part, between commercial entities, and professional liability claims in connection with the rendering of professional services to commercial entities. Accordingly, referral of this case to the business court division is appropriate.

The above-styled action contains novel and complex issues of significance to the transactions and operations between business entities and the law firm which represent business entities. As alleged in the complaint, the defendant and its predecessor partnership represented the plaintiffs in various legal matters including, but not limited to, litigation for a period exceeding twenty (20) years. The complaint highlights four particular legal matters, of the numerous matters in which the defendant represented one or more of the plaintiffs:

- (a) Shell Equipment Company, Inc. and Shell Energy Company, Inc. v. Monongahela Power Company, Allegheny Power and Allegheny Energy Service Corporation, Civil Action No. 09-C-3, Circuit Court of Marion County, West Virginia (hereinafter "Marion County action");
- (b) Shell Equipment Company, Inc. v. Regional Jail and Correctional Facility Authority, Claim No. CC-10-0477, Court of Claims of the State of West Virginia (hereinafter "Court of Claims action");
- (c) Frank J. Staud and Shell Equipment Company, Inc., v. West Virginia Regional Authority, Circle M Enterprises and Randall McNally, Civil Action No. 06-C-220, Circuit Court of Randolph County, West Virginia (hereinafter "Randolph County action"); and,
- (d) Shell Equipment Company, Inc. v. Rossco Limited Liability Company, et al., Civil Action No. 08-C-18, Circuit Court of Upshur County, West Virginia (hereinafter "Upshur County action").

Each of these matters involves litigation which meets the definition of business litigation pursuant to Rule 29.04 of the West Virginia Trial Court Rules.

Additionally, the civil action styled: Shell Equipment Company, Inc. v. Rossco Limited Liability Company, et al., Civil Action No. 08-C-18, Circuit Court of Upshur County, West Virginia, Business Court Division, was transferred to the Business Court Division by Order of the Chief Justice of the West Virginia Supreme Court of Appeals entered on September 24, 2013. Accordingly, one of the civil actions upon which the complaint alleges the defendant engaged in negligent conduct towards the plaintiffs was previously pending in the Business Court Division of the Circuit Court of Upshur County, West Virginia.

Further, the plaintiffs reasonably believe that the liability insurance carrier for the defendant has previously instituted a declaratory judgment action in the United States District Court for the Southern District of West Virginia. That action was styled: The North River Insurance Company v. McNeer, Highland, McMunn and Varner, L.C., Civil Action No. 2:13-CV-22977, United States District Court for the Southern District of West Virginia, although that action has been dismissed the terms and conditions of the dismissal have not been disclosed to the plaintiffs. Accordingly, the plaintiffs presently anticipate that there may be an insurance coverage dispute with respect to the commercial liability policy issued to the defendant, McNeer, Highland, McMunn and Varner, L.C. Presently, there are no known other related actions pending.

WHEREFORE, the plaintiffs respectfully request that the above-styled civil action be referred to the Business Court Division.

Dated this 8th day of May, 2014.


Gregory H. Schillace
State Bar No. 5597

Counsel for the Plaintiffs

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CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of May, 2014, I served the foregoing **MOTION OF THE PLAINTIFFS TO REFER CASE TO THE BUSINESS COURT DIVISION** upon all opposing counsel of record by depositing a true copy thereof in the United States mail, first-class postage prepaid, in an envelope addressed as follows:

Michael J. Farrell, Esquire
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914 Fifth Avenue
Post Office Box 6457
Huntington, WV 25772-6457

Gregory H. Schillace /JAP