

**IN THE CIRCUIT COURT OF PLEASANTS COUNTY, WEST VIRGINIA  
BUSINESS COURT DIVISION**

**BB LAND, LLC, a West Virginia Company,  
and JB EXPLORATION 1, LLC, a  
West Virginia Company,**

**Plaintiffs,**

**vs.**

**BLACKROCK ENTERPRISES, LLC,  
a West Virginia Company, and  
MICHAEL L. BENEDUM,**

**Defendants.**

**FILED IN OFFICE**

**MAR 3 - 2021**

MILLIE FARNSWORTH  
CIRCUIT COURT CLERK  
PLEASANTS CO WV

**Civil Action No.: 18-C-2  
Presiding: Judge Lorensen  
Resolution: Judge Wilkes**

**ORDER REGARDING PRE-TRIAL CONFERENCE**

CAME the parties, in a Pre-Trial Conference held on March 1, 2021 pursuant to this Court's prior Order entered August 7, 2020, commencing at 10:00 a.m. in the Pleasants County Courthouse, St. Mary's, West Virginia.

1. Geoffrey Bracken, Rhonda Weiner, Vi Tran, Charles Bailey, and Jose f Horter appeared for the Plaintiffs and Brian Swiger, Jack Budig, and Brian Glasser appeared for the Defendants.
2. The Court heard oral argument by counsel for the Parties regarding the following previously filed motions:
  - a. Blackrock's Motion for Sanctions for Failure to Comply with Court Orders;
  - b. Blackrock's Motion for Sanctions on Failure to Preserve Evidence;

- c. Jay-Bee's Written Objection to Blackrock's Conversion Claim;
- d. Jay-Bee's Motion to Exclude Blackrock Enterprises, LLC's Expert Testimony;
- e. Jay-Bee's Motion *in Limine* (attached as Exhibit B to its Pretrial Memorandum);
- f. Blackrock's Motion to Strike Jay-Bee's Untimely Filings; and
- g. Jay-Bee's Motion *in Limine* to Exclude the Expert Testimony of John S.L.

Morgan.


3. With regard to Blackrock's motions for sanctions (see ¶2a-b), after hearing counsel's oral argument, the Court ruled that striking claims and defenses is not an appropriate remedy at the case at bar. The Court ruled that it will not rule on the lesser sanction of the adverse inference instruction at this time; the Court will be informed by evidence as it comes in the case. Further, the Court determined that it would not be making peremptory ruling without hearing evidence that a particular item or late disclosure is prejudicial. For these reasons, Blackrock's motions for sanctions were DENIED.
4. With regard to Jay-Bee's Written Objection to Blackrock's Conversion Claim (see ¶2c), counsel for Defendant stated that it was withdrawing its conversion claim as to Mr. Randy Broda. For this reason, the Court finds this issue DISPOSED OF.
5. Jay-Bee's Motion to Exclude Blackrock Enterprises, LLC's Expert Testimony sought to exclude the testimony of three potential expert witnesses: Donald B. Nestor, Agostino Guerini F, and Stephen A. Holmes. With regard to Jay-Bee's Motion to Exclude Blackrock Enterprises, LLC's Expert Testimony (see ¶2d), counsel for Defendant indicated at the hearing that he would not be calling Mr. Nestor or Mr. Guerini, and the Court finds the motion is moot to those witnesses. As to Mr. Holmes, the Court ruled he

can testify as to what is disclosed in his report. As such, this motion is granted in part and denied in part.

6. With regard to Jay-Bee's Motion *in Limine* (attached as Exhibit B to its Pretrial Memorandum) (see ¶2e), the Court ruled upon these matters at the hearing and said rulings are contained in a separate order.
7. Blackrock's Motion to Strike Jay-Bee's Untimely Filings (see ¶2f), seeks to strike the following filings as untimely: Jay-Bee's Pretrial Memorandum, Jay-Bee's Motion to Exclude Blackrock Enterprises, LLC's Expert Witness Testimony, Plaintiff's Third Supplemental Witness Disclosure filed February 19, 2021, Plaintiff's Fourth Supplemental Witness Disclosure filed February 22, 2021. The Court ruled that the motion shall be DENIED, and Mr. Griffith shall be permitted to testify, subject to those limitations indicated by Mr. Bailey in his response oral argument which are more fully set forth on the record.
8. With regard to Jay-Bee's Motion *in Limine* to Exclude the Expert Testimony of John S.L. Morgan (see ¶2g), the Court ruled that because of the great divergence as to what each party argued the methodology was and what assumptions were made, it will take the motion under advisement until such time during the trial before Mr. Morgan is scheduled to testify.
9. Conference was had regarding the issue of whether the LAA was terminable.
10. The Pretrial Conference was then adjourned at 4:33 p.m.

The Court directs the Circuit Clerk to distribute attested copies of this order to all counsel of record, and to the Business Court Central Office at West Virginia Business Court Division, 380 West South Street, Suite 2100, Martinsburg, West Virginia, 25401.

3-3-21



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JUDGE MICHAEL D. LORENSEN  
JUDGE OF THE WEST VIRGINIA  
BUSINESS COURT DIVISION