

BB LAND, LLC AND JB EXPLORATION)
1, LLC,)
 Plaintiff,)
)
 vs.))
)
BLACKROCK ENTERPRISES, LLC,)
MICHAEL L. BENEDUM,)
 Defendants)
)

DAY ORDER FROM MAY 7, 2021 HEARING

Charles Bailey, Esq., Geoffrey Bracken, Esq., Rhonda Weiner, Esq., Josef Horter, Esq., and Vi Tran, Esq. appeared for the Plaintiffs. Brian Glasser, Esq. and Jack Budig, Esq. appeared for the Defendants.

1. Conference was had regarding Jay-Bee's Rule 16 Motion for Trial Phase II and the mining partnership issue pending before the Court. The Court issued its ruling on the bench regarding the mining partnership issue. The Court ADJUDGED and ORDERED:
 - a. A *de facto* mining partnership exists between Jay-Bee and Blackrock Enterprises LLC ("Blackrock") with respect to the developed acreage in Pleasants County in which Blackrock and Jay-Bee both own a working interest; and
 - b. West Virginia Code Chapter 37 applies to the undeveloped acreage that has not yet terminated.
2. For these reasons, the Court determines that it is hereby ADJUDGED and ORDERED that Jay-Bee's Rule 16 Motion for Trial Phase II is GRANTED IN PART and disposed of.
3. The Court explained that this ruling regarding the existence of a *de facto* mining

partnership and the applicability of West Virginia Code Chapter 37 would issue orally from the bench and in short form in the hearing's day order, and that a full written analysis of the decision, including findings of fact and conclusions of law, would be issued by separate order from the Court entered within the next ten (10) days.

4. Conference was had regarding a plan for Phase II of the Trial in this matter.

Conference was had regarding the trial dates in this matter. There being no objection to holding Phase II, which does not require a jury, in the courtroom of the undersigned in Berkeley County, West Virginia, Phase II of the Trial was set for the 20th day of September, 2021 at 9:00 a.m. before the undersigned in the Berkeley County Judicial Center, Courtroom B, 380 West South Street, Martinsburg, West Virginia.

5. Further, conference was had regarding a Pretrial Conference for Phase II. The parties proffered that a Pretrial Conference would be useful, and a Pretrial Conference was set for the 30th day of August, 2021 at 10:00 a.m. before the undersigned in the Berkeley County Judicial Center, Courtroom B, 380 West South Street, Martinsburg, West Virginia.

6. Mr. Glasser informed the Court he plans to file a motion on behalf of Defendant for a certification of the Phase I liability trial and mining partnership issue for appeal. The Court took note that a potential, future appeal may impact the docketed trial and pretrial dates.

7. The Court ordered that if any party wished to submit briefs as to what the parties wish to have addressed at the August 30, 2021 Pretrial after the Court's order regarding Phase II, the Court's determination that a mining partnership exists, and the Court's determination regarding the applicability of West Virginia Code Chapter 37 to the undeveloped acreage, each party may submit a brief due two weeks before the August 30, 2021 Pretrial for the Court's consideration.

8. Conference was had regarding Defendant's Motion to Revoke the Admission *Pro Hac*

Vice of Geoffrey Bracken, and the Court stated it had entered a Scheduling Order setting forth a briefing schedule on the motion by order entered May 6, 2021.

9. The Status Hearing was then adjourned.

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.

ENTER: May 7th, 2021

/s/ Michael Lorensen
Circuit Court Judge
3rd Judicial Circuit

Note: The electronic signature on this order can be verified using the reference code that appears in the upper-left corner of the first page. Visit www.courtswv.gov/e-file/ for more details.