

**IN THE CIRCUIT COURT OF McDOWELL COUNTY
WEST VIRGINIA**

BLUE EAGLE LAND, LLC, <i>et al.</i>,)	
)	
Petitioners,)	
)	
v.)	
)	Case No.: 08-C-171-M
)	
WEST VIRGINIA OIL & GAS CONSERVATION COMMISSION, <i>et al.</i>,)	
)	
Respondents.)	

MOTION TO TRANSFER

NOW COME the Petitioners, by and through their Counsel, Nicholas S. Preservati of Preservati Law Offices, and pursuant to Rule 42(b) of the West Virginia Rules of Civil Procedure, hereby moves this Honorable Court to transfer West Virginia Surface Owners' Rights Organization v. West Virginia Oil and Gas Conservation Commission, *et al.*, Case No. 08-AA-85 from the Circuit Court of Kanawha County to the Circuit Court of McDowell County, and in support thereof, state as follows:

Statement of Facts

1. The Petitioners filed a Writ of Prohibition against the Respondents before the West Virginia Supreme Court. The matter was argued before the Supreme Court on March 12, 2008.
2. The Supreme Court granted the Writ of Prohibition as moulded on May 27, 2008. The Supreme Court refused to address the Petition for Writ of Prohibition on the merits and granted the Petitioners leave to appeal the matter to circuit court within thirty days of the

issuance of the mandate. The Petitioners timely filed their appeal of this matter from the Supreme Court to the Circuit Court of McDowell County on June 26, 2008.

3. On July 23, 2008, the West Virginia Surface Owners' Rights Organization ("WVSORO") appealed this same matter to the Circuit Court of Kanawha County. The caption in that appeal is West Virginia Surface Owners' Rights Organization v. West Virginia Oil and Gas Conservation Commission, et al., Case No. 08-AA-85. WVSORO filed its appeal despite the fact that it was not a party to the Writ of Prohibition or the underlying administrative hearings. (See WVSORO Appeal attached hereto as "Exhibit A").

4. In the instant case filed in McDowell County Circuit Court, Eastern American Energy Corporation has filed a Motion to Dismiss, while counsel for Chesapeake Appalachia has filed an appearance. There have been no similar filings in Case No. 08-AA-85 in Kanawha County.

Legal Analysis

The issue in this case is whether West Virginia Surface Owners' Rights Organization v. West Virginia Oil and Gas Conservation Commission, et al., Case No. 08-AA-85 should be transferred to the Circuit Court of McDowell County. It should.

The rule in West Virginia is clear:

When two or more actions arising out of the same transaction or occurrence are pending before different courts or before a court and a magistrate, the court in which the **first** such action was commenced **shall order** all the actions transferred to it or any other court in which any such action is pending.

Rule 42(b) (emphasis added). Also, when two actions arise out of the same transaction or occurrence and both actions are pending in two different circuit courts, it is mandatory that the court in which the first action was commenced either transfer the other action to it or transfer its pending action to the court where the other action is still pending. State ex rel. Bank of Ripley v.

Thompson, 149 W. Va. 183, 139 S.E.2d 267 (1964); Hanlon v. Joy Mfg. Co., 187 W. Va. 280, 418 S.E.2d 594 (1992). The reason for this rule is to avoid unnecessary cost or delay and to avoid the necessity of two trials instead of one, therefore avoiding the possibility of judgments in direct conflict. State ex rel. Bank of Ripley, 149 W. Va. 183.

Finally, when a motion is made to have an action transferred pursuant to Rule 42(b), the movant must give notice to all parties in the case to be transferred. State Ex Rel. Taylor v. Nibert, 640 S.E.2d 192 (2006). The parties in the case to be transferred must be given the opportunity to object prior to the transfer and if requested, the transferring court shall hold a hearing to determine whether transfer is proper under Rule 42(b). Id.

Applying Rule 42(b) to this case, it is clear that West Virginia Surface Owners' Rights Organization v. West Virginia Oil and Gas Conservation Commission, et al., Case No. 08-AA-85 should be transferred to McDowell County Circuit Court. The instant case was filed almost a month before the filing of the appeal in Kanawha County. This fact alone requires that this Honorable Court transfer these matters to the same circuit court.

Rule 42(b) does permit this Court to either transfer Case No. 08-AA-85 to McDowell County, or to transfer the instant action to Kanawha County. Given that numerous parties have filed appearances in the instant action, and given that there is currently a Motion to Dismiss pending in this action, judicial economy and fairness to the parties advocates the transfer of Case No. 08-AA-85 to McDowell County. This is especially so considering that no similar action has been taken in the Kanawha County litigation. Also, Petitioners will be filing a Motion to Stay the Kanawha County litigation pending the outcome of this Motion to Transfer.

Finally, the Respondents and WVSORO may request a hearing on the Petitioners' Motion to Transfer. Given the clarity of Rule 42(b) and the fact that the instant matter was first in time, the Petitioners are not requesting a hearing on this motion. Instead, Petitioners are

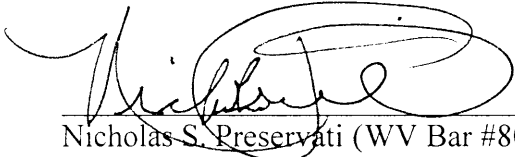
respectfully requesting that this Court grant its Motion to Transfer within fourteen (14) days of its filing, unless Petitioners or WVSORO object to the transfer and request a hearing.

WHEREFORE, the Petitioners respectfully request that this Court grant its Motion to Transfer, and any other relief that it deems appropriate.

Respectfully submitted,

PETITIONERS

By Counsel.



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