

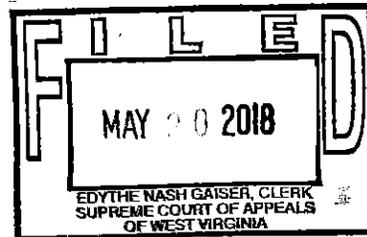
IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

WW CONSULTANTS, INC.,  
a Virginia Corporation

v.

KANAWHA COUNTY CIRCUIT COURT  
Civil Action No. 18-C-115  
Honorable Louis H. Bloom, Circuit Judge

POCAHONTAS COUNTY PUBLIC SERVICE DISTRICT, a public corporation and local political subdivision of the State of West Virginia, MARK SMITH, DAVID GANDEE, and DAVID DRAGAN, in their official capacity as board members of the Pocahontas County Public Service District, the WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION, a Department of the State of West Virginia, and the WEST VIRGINIA WATER DEVELOPMENT AUTHORITY an instrumentality of the State of West Virginia.



TO: The Honorable Chief Justice Margaret L. Workman

**JOINT MOTION OF WW CONSULTANTS, INC., POCAHONTAS COUNTY PUBLIC SERVICE DISTRICT, MARK SMITH, DAVID GANDEE, AND DAVID DRAGAN TO REFER MATTER TO THE BUSINESS COURT DIVISION**

Pursuant to Trial Court Rule 29.06, the Plaintiff/Counter-Claim Defendant, WW Consultants, Inc. ("WWC") and Defendant/Counter-Claim Plaintiff, Pocahontas County Public Service District ("PSD"), and Defendants Smith, Gandee, and Dragan (all collectively referred to as "Movants"), respectfully request that the above captioned civil action be referred to the Business Court Division. In support of this joint motion, Movants<sup>1</sup> state as follows:

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<sup>1</sup> Defendant West Virginia Water Development Authority has represented that it will not take a position, either for or against this motion. Defendant West Virginia Department of Environmental Protection has not expressed its intentions regarding this joint motion.

1. This dispute arises out of the design and construction of a large waste water treatment facility and collection system in Pocahontas County, West Virginia. The total cost of the project was around \$27 Million. WWC designed the system and provided resident project representatives during the construction. PSD was the project's owner, and the WVDEP and WWDA provided financial backing and administration for the project. WWC seeks a statutory receivership against the WVDEP and WWDA on the remaining balance of project funds to satisfy any future settlement or judgment to be paid on behalf of the PSD. The parties to the civil action are all sophisticated entities that had legal counsel through most of the project's history.

2. WWC's various claims against the Defendants arise through its contractual relationship with the PSD. WWC alleges that it is owed approximately \$956,856 in unpaid professional services and unreimbursed costs that are due under various contract provisions. The PSD disputes that these amounts are owed.

3. The PSD filed a counter-claim against WWC, alleging that WWC failed to provide certain services that it was contractually obligated to perform at the conclusion of the project. The PSD also alleges professional negligence against WWC for certain design features and for its handling of some issues that came up during construction. WWC disputes that it breached any duties under the contract, and further disputes that it violated its professional duty of care.

4. Under Trial Court Rule 29.04(a) "Business Litigation" is defined as follows:

(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 suites, 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.

4. The Movants assert that Civil Action No. 18-C-115 satisfies the definition of Business Litigation set forth in Trial Court Rule 29.04(a). The parties are either private business entities, public corporations, board members of a public corporation, or state agencies, and the claims involve matters of significance to the transactions, operations or governance between the entities. Moreover, the dispute presents sophisticated and complex commercial issues involving the design, construction, and financing of a large waste water treatment system that took place over a seven year period. Those sophisticated and complex commercial issues include the professional standard of care of engineers, interpreting and applying construction contract documents, interpreting and applying West Virginia code and other state rules, regulations, and policies regarding financing public waste water projects in West Virginia, and understanding the duties and responsibilities of various entities in large construction projects, such as owners, design professionals, general contractors, sub-contractors, material suppliers, vendors, and financing entities. The parties anticipate that a significant amount of electronic and traditional discovery will be required. Damages in this matter will require the analysis of delay costs, business finances, construction costs, and construction damages. Thus, specialized treatment of these issues in the Business Court are warranted.

5. Movants assert that there are no related actions currently pending. Movants further assert that it may be necessary to file third-party actions as litigation progresses depending on the results of discovery and the possible opinions of testifying experts. Additionally, as required by Trial Court Rule 29.06(a)(1), the Docket Sheet is attached and

marked as Exhibit 1, and all filings in Civil Action No. 18-C-115 are attached and marked respectively as Exhibit 2 to this Motion.

6. Movants do not request an expedited review under Trial Court Rule 29.06(a)(4), and they give notice that all affected parties may file a memorandum stating their position, in accordance with Trial Court Rule 29.

WHEREFORE, Movants respectfully request, pursuant to Trial Court Rule 29.06, the Chief Justice of the West Virginia Supreme Court of Appeals to refer this case to the Business Court Division together with and such other relief as the Court may deem proper.

Respectfully submitted this 30<sup>th</sup> day of May, 2018.

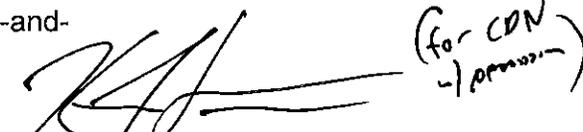


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VIRGINIA DEPARTMENT OF  
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Department of the State of  
West Virginia, and the WEST VIRGINIA  
WATER DEVELOPMENT AUTHORITY  
an instrumentality of the State of  
West Virginia.**

**CERTIFICATE OF SERVICE**

I, Keith R. Hoover, hereby certify that on this 30<sup>th</sup> day of May, 2018, a true and correct copy of the "**JOINT MOTION OF WW CONSULTANTS, INC., POCAHONTAS COUNTY PUBLIC SERVICE DISTRICT, MARK SMITH, DAVID GANDEE, AND DAVID DRAGAN TO REFER MATTER TO THE BUSINESS COURT DIVISION**" was served via regular U.S. Mail, postage prepaid, to the following counsel of record:

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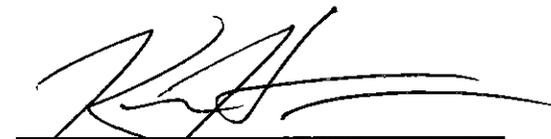
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