

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

Jefferson County Foundation, Inc.,

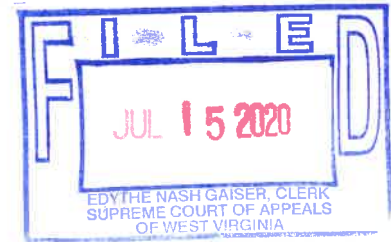
Plaintiff,

v.

West Virginia Economic Development  
Authority, and Roxul USA, Inc. d/b/a  
ROCKWOOL,

Defendants.

Kanawha County Circuit Court  
Civil Action No. 20-C-332  
(Judge Kaufman)



REPLY IN SUPPORT OF  
JOINT MOTION TO REFER CASE TO THE BUSINESS COURT DIVISION

Jefferson County Foundation has opposed referral of this matter to the Business Court Division by challenging the jurisdictional hook: it argues that this case does not qualify as “business litigation” because it is neither a dispute between business entities nor a complex tax appeal.<sup>1</sup> The West Virginia Economic Development Authority and ROCKWOOL<sup>2</sup> offer four short points in rebuttal.

**First**, not all cases in the Business Court Division must involve disputes between business entities: the rules specifically authorize referrals of complex tax appeals,<sup>3</sup> which will always involve a governmental entity—whether a county board of equalization and review or the State Tax Commissioner—as one of the real parties-in-interest.

**Second**, nothing in the rules limits complex tax appeals to valuation challenges. In fact, equal and uniform taxation clause<sup>4</sup> challenges, like those at issue here, have historically reached this Court following an initial challenge before a county board of equalization and review and a subsequent appeal

---

<sup>1</sup> See W. Va. Tr. Ct. R. 29.04(a)

<sup>2</sup> ROCKWOOL is the trade name for Roxul USA, Inc.

<sup>3</sup> See W. Va. Tr. Ct. R. 29.04(a)(3).

<sup>4</sup> W. Va. Const. Art. X, § 1.

to circuit court.<sup>5</sup> The only reason the Foundation’s case does not follow this pattern is because it has attempted to bypass the Jefferson County Board of Equalization and Review’s original jurisdiction. The claims, however, are no different than would be prosecuted in an appeal from that body.

**Third**, there is precedent for referring a case involving a commercial transaction between a State entity like WVEDA and a private entity like ROCKWOOL. For instance, in a dispute between the West Virginia Investment Management Board and the Variable Annuity Life Insurance Company over the administration of two contracts underlying the State public teachers’ retirement system, this Court acted *sua sponte* to reconsider and grant a request to refer the matter to the Business Court Division.<sup>6</sup> It did so “[g]iven the admitted complexity of the issues,”<sup>7</sup> which is a similarly appropriate consideration here.

**Fourth**, there is nothing inappropriate about WVEDA and ROCKWOOL’s request. Although it now argues to this Court that this case does not require specialized knowledge,<sup>8</sup> the Foundation argued to the trial court that “this is a complex case that will require extensive briefing and oral argument.”<sup>9</sup> Scheduling that briefing and argument will take time—particularly in light of disruptions caused by the COVID-19 pandemic—but likely can be concluded more quickly under the expedited schedule for Business Court Division matters.<sup>10</sup> And given the significance of the issues here to both the parties and the public, a desire for a speedy resolution is both a legitimate reason for referral and one that should be welcomed by the Foundation.

**WHEREFORE**, for the foregoing reasons and those apparent to the Court, WVEDA and ROCKWOOL request that the Chief Justice of the West Virginia Supreme Court of Appeals enter an Order referring this case to the Business Court Division.

---

<sup>5</sup> *Killen v. Logan Cty. Comm’n*, 170 W. Va. 602, 295 S.E.2d 689 (1982), overruled on other grounds, *In re Tax Assessment of Foster Found.*, 223 W. Va. at 14, 672 S.E.2d at 150.

<sup>6</sup> *W. Va. Inv. Mgmt. Bd. v. Variable Annuity Life Ins. Co.*, 234 W. Va. 469, 485, 766 S.E.2d. 416, 432 (2014).

<sup>7</sup> *Id.*

<sup>8</sup> Pl.’s Reply to Defs.’ Joint Mot. to Refer Case to Business Court Division 5.

<sup>9</sup> Pl.’s Resp. to Mot. to Dismiss filed by Def. ROCKWOOL 2.

<sup>10</sup> *See* W. Va. Tr. Ct. R. 29.08.

**ROYUL USA, INC. d/b/a ROCKWOOL**



Joseph V. Schaeffer (WV Bar # 12088)  
SPILMAN THOMAS & BATTLE, PLLC  
301 Grant Street, Suite 3440  
Pittsburgh, PA 15219  
Ph. 412.325.3303  
Fax 412.325.3325  
jschaeffer@spilmanlaw.com

James A. Walls (WV Bar # 5175)  
SPILMAN THOMAS & BATTLE, PLLC  
48 Donley Street, Suite 800  
Morgantown, WV 26501  
Ph. 304.291.7947  
Fax 304.291.7979  
jwalls@spilmanlaw.com

James E. Simon (WV Bar # 13265)  
SPILMAN THOMAS & BATTLE, PLLC  
300 Kanawha Blvd., East  
Charleston, WV 25301  
Ph. 304.340.3832  
Fax 304.720.3400  
jsimon@spilmanlaw.com

**THE WEST VIRGINIA ECONOMIC  
DEVELOPMENT AUTHORITY**



Michael E. Caryl, Esq. (WV Bar # 622)  
Robert S. Kiss, Esq. (WV Bar #2066)  
Camden P. Siegrist, Esq. (WV Bar # 3394)  
Peter G. Markham, Esq. (WV Bar #9396)  
BOWLES RICE LLP  
600 Quarrier Street  
Charleston, WV 25301  
Ph. 304.347.1100

**CERTIFICATE OF SERVICE**

I, Joseph V. Schaeffer, do hereby certify that on this 14th day of July, 2020, I caused the foregoing **Reply in Support of Joint Motion to Refer Case to Business Court Division** to be served upon counsel via United States mail, postage pre-paid, addressed as follows:

Christopher P. Stroeck, Esq.  
ARNOLD & BAILEY, PLLC  
208 N. George Street  
Charles Town, WV 25414

Robert M. Bastress, Jr., Esq.  
P. O. Box 1295  
Morgantown, WV 26507

Robert M. Bastress, III, Esq.  
DIPIERO, SIMMONS, MCGINLEY & BASTRESS, PLLC  
604 Virginia Street, East  
P. O. Box 163  
Charleston, WV 25326  
*Counsel for Jefferson County Foundation, Inc.*

Kanawha County Circuit Clerk  
111 Court Street,  
Charleston, WV 25301

Business Court Division Central Office,  
Berkeley County Judicial Center,  
380 West South Street, Suite 2100,  
Martinsburg, WV 25401

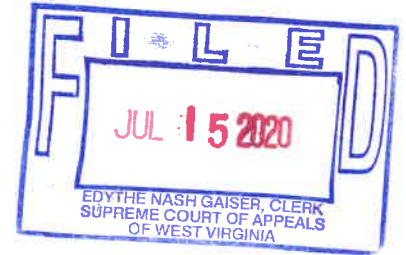
  
\_\_\_\_\_  
Joseph V. Schaeffer (WV Bar # 12088)

13160334

July 14, 2020

**Via UPS Overnight Delivery**

Edythe Nash Gaiser  
Clerk of Court  
State Capitol Room E-317  
1900 Kanawha Blvd. East  
Charleston, WV 25305



Re: *Jefferson County Foundation, Inc. v. West Virginia Economic Development Authority, and Roxul USA, Inc. d/b/a ROCKWOOL*  
Case No. 20-C-332

Dear Clerk Gaiser:

Please find for filing the original of the **Reply in Support of Joint Motion to Refer Case to the Business Court Division**. A copy has been served upon the parties as reflected in the Certificate of Service.

Should you have any questions, please do not hesitate to contact me.

Very truly yours,

  
Joseph V. Schaeffer

JVS/dla

Enclosures

cc: **Via U.S. Mail**  
Christopher P. Stroeck, Esquire  
Robert M. Bastress, Jr., Esquire  
Robert M. Bastress, III, Esquire  
Kanawha County Circuit Clerk  
Business Court Division Central Office