

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

**COVESTRO, LLC
Plaintiff,**

v.

**Civil Action No.: 18-C-202
Presiding Judge: Wilkes
Resolution Judges: Carl and Nines**

**AXIALL CORPORATION,
ALLTRANSTEK, LLC, and
RESCAR COMPANIES,
Defendants,**

and

**AXIALL CORPORATION,
Third-Party Plaintiff,**

v.

**SUPERHEAT FGH SERVICES, INC.,
Third-Party Defendant.**

---CONSOLIDATED WITH---

**AXIALL CORPORATION,
Plaintiff,**

v.

**ALLTRANSTEK LLC, RESCAR, INC.
t/d/b/a RESCAR COMPANIES, and
SUPERHEAT FGH SERVICES, INC.,
Defendants.**

**Civil Action No. 18-C-203
Presiding Judge: Wilkes
Resolution Judges: Carl and Nines**

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**ORDER GRANTING DEFENDANT SUPERHEAT FGH SERVICES, INC.'S
MOTION FOR SUMMARY JUDGMENT**

This matter came before the Court this 20th day of August 2022 upon Defendant Superheat FGH Services, Inc.'s Second Motion for Summary Judgment. The parties have fully briefed the issues necessary. The Court dispenses with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process. So, upon the full consideration of the issues, the record, and the pertinent legal authorities, the Court rules as follows.

FINDINGS OF FACT

1. This civil action consists of two consolidated cases¹ containing causes of action surrounding a chlorine leak at the Axiall Corporation's (hereinafter "Defendant" or "Axiall") facility, which produces chlorine and other products, in Marshall County, West Virginia. See Def's Mem., p. 2. The chlorine release occurred after railroad tank car AXLX 1702, owned by Axiall, sustained a crack causing the tank shell to rupture after it was loaded with liquid chlorine. *Id.* In its Complaint, Axiall² contends the fracture of the tank shell was caused by Defendants AllTranstek, LLC, Rescar, Inc. t/d/b/a Rescar Companies, and Superheat FGH Services, Inc. (hereinafter "Defendant" or "Superheat"). *Id.*

2. Further, it is alleged that Defendant Rescar, Inc. t/d/b/a Rescar Companies' ("Rescar") provides railroad tank car maintenance services including, among other things, mechanical repair, exterior painting, interior coating, and cleaning. Superheat, as a subcontractor to Rescar, provided remote local post weld heat treatment ("LPWHT") operations and

¹ See Order of Court consolidating cases entered 2/28/19.

² The Court notes Axiall is a Defendant and Third-Party Plaintiff in Civil Action No. 18-C-202 and a Plaintiff in Civil Action No. 18-C-203. See, *infra*, ¶¶4, 17.

monitoring services to Rescar, including at Rescar's facility located in DuBois, Pennsylvania. *See* Def's Mem., p. 2.

3. Within Axiall's Complaint in the instant case, Axiall asserted one cause of action for Negligence against Superheat. *See* Def's Mem., p. 2. With respect to Superheat, Axiall claimed the subject incident was caused by Superheat's failure to properly conduct and/or monitor Local Post Weld Heat Treatment (referred to by the parties as "LPWHT") on AXLX 1702 after repair to the tank car were performed by Rescar. *See* Def's Mem., p. 2.

4. In addition to Axiall's Complaint, Axiall filed a Complaint to Join Third Party Defendant Superheat in in Civil Action No. 18-C-202. *See* Def's Mem., p. 2-3. Axiall's Third-Party Complaint joined Superheat to the civil action filed by Covestro, LLC (hereinafter "Covestro"), which arises out of damages to Covestro's plant facility as a result of the tank car rupture/chlorine release. *Id.* at 3. In this action, Axiall alleged Superheat was negligent related to performing its work and monitoring heat treating during the course of railroad tank car repairs. *Id.*

5. The Court notes no cross-claims have been asserted against Superheat by AllTranstek, LLC (hereinafter "AllTranstek"), Rescar, or Covestro, and the only claims currently pending against Superheat either Civil Action No. 18-C-202 or Civil Action No. 18-C-203 are the claims asserted by Axiall. *Id.*

6. There also exists a civil action referred to by the parties as "the Pennsylvania action" or "the Pennsylvania matter", which is Axiall Corporation v. AllTranstek, LLC, et al., Civil Division No. GD-18-010944, in the Court of Common Pleas of Allegheny County Pennsylvania, wherein Axiall filed suit against AllTranstek, Rescar, and Superheat. *See* Def's Mem., p. 3. This Pennsylvania action arises out of the same August 2016 incident, the same

repair work on AXLX 1702, and seeks the same alleged damages to Axiall's Natrium plant facility, and Superheat contends it includes identical allegations of negligence against Superheat. *Id.*; *see also* *Id.*, Ex. C (Pennsylvania Complaint).

7. On October 14, 2021, the jury in the Pennsylvania action reached a verdict, and relevant to the instant motion, the jury found, via verdict slip in that action, that Superheat was not negligent. *Id.* at 4. Further, the jury found that Superheat caused no harm and in the portion of the verdict slip where it apportioned fault, found that Superheat was 0% responsible for Axiall's damages. *Id.*; *see also* *Id.*, Ex. D (Jury Verdict Slip).

8. Subsequently, Superheat filed the instant Second Motion for Summary Judgment, seeking summary judgment as to Axiall's claims against it, arguing collateral estoppel of the jury's findings in the Pennsylvania action should preclude Axiall from relitigating its claims against Superheat in the instant consolidated civil action³. *See* Def's Mot., p. 1-2; *see also* Def's Mem., p. 4.

9. On a prior day, Defendants AllTranstek L.L.C. and Rescar Companies filed Response of AllTranstek LLC and Rescar Companies in Opposition to Superheat's Second Motion for Summary Judgment, arguing the instant motion should be denied because it's the position of Rescar and AllTranstek in this matter (referencing their oppositions to motions for summary judgment filed by Axiall and Covestro) that collateral estoppel should not be applied to the Pennsylvania action. *See* Defs' Resp., p. 2. Specifically, AllTranstek and Rescar's Response argues that the Pennsylvania jury was considering breaches of duties owed to Axiall, not Covestro, and Covestro's allegations and legal duties and duties involved are not identical to those alleged in the Pennsylvania action. *Id.*

³ Civil Action No. 18-C-202 and Civil Action No. 18-C-203.

10. On a prior day, Axiall filed Axiall Corporation's Response to Superheat's Second Motion for Summary Judgment, which was a one and one-fourth-page response referring to a certain "observation" in its own motion for summary judgment on collateral estoppel issues, wherein it averred that it anticipated Superheat would apply for collateral estoppel effect of the Pennsylvania jury's findings, that Axiall has filed a notice of appeal of a judgment entered in the Pennsylvania case involving Superheat, and that "[c]autiously avoiding any appearance of waiver, Axiall does not include the [Pennsylvania] jury's findings favorable to Superheat in Axiall's collateral estoppel averments in this motion". See Axiall's Resp., p. 2.

11. Covestro did not file a Response.

12. Superheat filed Defendant Superheat FGH Services, Inc.'s Reply to the Response of AllTranstek LLC and Rescar Companies in Opposition to Superheat's Second Motion for Summary Judgment, arguing the Response arguments fail because the issue of whether Superheat's conduct caused or contributed to the rupture of AXLX 1702 was decided by the Pennsylvania jury, and as such, collateral estoppel clearly applies to the determination of Superheat's negligence in the instant consolidated actions here. See Reply, p. 3. Further, Superheat contends that because AllTranstek and Rescar were both parties to the Pennsylvania action who participated fully in the Pennsylvania trial, the principles of collateral estoppel apply to them in the same manner they do to Axiall. *Id.* at 4.

13. The Court now finds the instant Motion is ripe for adjudication.

STANDARD OF LAW

14. Motions for summary judgment are governed by Rule 56, which states that "judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no

genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” W. Va. R. Civ. P. 56(c). West Virginia courts do “not favor the use of summary judgment, especially in complex cases, where issues involving motive and intent are present, or where factual development is necessary to clarify application of the law.” *Alpine Property Owners Ass’n, Inc. v. Mountaintop Dev. Co.*, 179 W.Va. 12, 17 (1987).

15. Therefore, “[a] motion for summary judgment should be granted only when it is clear that there is no genuine issue of fact to be tried and inquiry concerning the facts is not desirable to clarify the application of the law.” Syl. Pt. 3, *Aetna Cas. and Surety Co. v. Fed. Ins. Co. of New York*, 148 W.Va. 160, 171 (1963); Syl. Pt. 1, *Andrick v. Town of Buckhannon*, 187 W.Va. 706, 421 S.E.2d 247 (1992); Syl. Pt. 1, *Williams v. Precision Coil, Inc.*, 194 W.Va. 52 (1995). A motion for summary judgment should be denied “even where there is no dispute to the evidentiary facts in the case but only as to the conclusions to be drawn therefrom.” *Williams v. Precision Coil, Inc.*, 194 W.Va. 52, 59 (internal quotations and citations omitted).

16. However, if the moving party has properly supported their motion for summary judgment with affirmative evidence that there is no genuine issue of material fact, then “the burden of production shifts to the nonmoving party ‘who must either (1) rehabilitate the evidence attacked by the movant, (2) produce additional evidence showing the existence of a genuine issue for trial or (3) submit an affidavit explaining why further discovery is necessary as provided in Rule 56(f).’” *Id.* at 60.

CONCLUSIONS OF LAW

17. In this matter, Superheat filed the instant Second Motion for Summary Judgment, seeking summary judgment as to Axiall’s claims against Superheat in Civil Action No. 18-C-203 as Plaintiff and Axiall’s claims against Superheat in Civil Action No. 18-C-202 as

Third-Party Plaintiff, because Superheat alleges it is entitled to summary judgment based on the collateral estoppel effect of the jury's findings in the Pennsylvania action. *See* Def's Mot., p. 1-1-2; *see also* Def's Mem., p. 9.

18. As an initial matter, under *Jordache Enterprises, Inc. v. National Union Fire Ins. Co. of Pittsburgh, Pa.*, 513 S.E.2d 692 (W. Va. 1998) and *Cortez v. Murray*, No. 17-0662, 2018 WL 2447285 (W. Va. May 31, 2018), Pennsylvania law should be utilized to determine if collateral estoppel applies because the applicable jury verdict was entered in Pennsylvania. In *Jordache Enterprises, Inc. v. National Union Fire Ins. Co. of Pittsburgh, Pa.*, 513 S.E.2d 692 (W. Va. 1998), the West Virginia Supreme Court of Appeals considered the effect of a prior judgment from a New York court and which state's law to apply with respect to collateral estoppel. The court determined that "the full faith and credit clause [of the United States Constitution] generally requires the courts of this State to give the New York judgment at least the res judicata effect which it would be accorded by New York courts." *Jordache Enters., Inc.*, 513 S.E.2d at 703. As a result, the court applied New York law concerning the elements of collateral estoppel. *Id.*; *see also Greenleaf v. Garlock, Inc.*, 174 F.3d 352, 357 (3d Cir. 1999) (applying Pennsylvania law)(to determine preclusive effect of prior state court action, courts "look to the law of the adjudicating state").

19. The West Virginia Supreme Court of Appeals applied a similar analysis in *Cortez v. Murray*, No. 17-0662, 2018 WL 2447285 (W. Va. May 31, 2018). In that case, the Supreme Court cited *Jordache Enterprises* for the proposition that a prior judgment on the merits from another state is entitled to deference. *See Cortez*, 2018 WL 2447285, at *7. The court went on to apply Texas law concerning the preclusive effect of a prior judgment in subsequent proceedings in another state. *Id.* at *7-8.

20. The Court finds that based on the decisions in *Jordache Enterprises* and *Cortez*, since the prior verdict at issue in the instant motion was entered in Pennsylvania, this Court applies Pennsylvania law to determine if collateral estoppel applies.

21. Pennsylvania courts generally apply the following elements when considering whether collateral estoppel applies to preclude relitigation of a matter decided in prior litigation: 1) an issue decided in a prior action is identical to one presented in a later action; 2) the prior action resulted in a judgment on the merits; 3) the party against whom collateral estoppel is asserted was a party to the prior action, or is in privity with a party to the prior action; and 4) the party against whom collateral estoppel is asserted had a full and fair opportunity to litigate the issue in the prior action. *See Ream v. Commonwealth Dep't of Pub. Welfare*, 500 A.2d 1274, 1276 (Pa. Commw. Ct. 1985). Some Pennsylvania courts also require a fifth element—whether the issue determined in the prior action was “essential” to the previous judgment. *See Pitney Road Partners, LLC v. Murray Assocs., Architects, P.C.*, No. 2253 MDA 2013, 2014 WL 10575406, at *4 (Pa. Super. Ct. Sept. 18, 2014).

22. The first collateral estoppel element is whether an issue decided in a prior action is identical to an issue presented in a later action. *See Mason v. Progressive Direct Ins. Co.*, No. 1650 EDA 2014, 2015 WL 7013630, at *2 (Pa. Super. Ct. June 5, 2015) (quoting *Safeguard Mut. Ins. Co. v. Williams*, 345 A.2d 664, 668 (Pa. 1975)).

23. Superheat argues the issues are identical because in the Pennsylvania case, the jury decided whether Superheat was negligent with respect to its work performed in connection with repairs on AXLX 1702, and this is the identical issue Axiall would present with respect to Superheat here. *See Def's Mem.*, p. 6. The Court agrees with Superheat that the issue is identical.

24. Clearly, the issue litigated was whether or not Superheat was negligent with regard to local post-weld treatments performed on railcar AXLX 1702 and whether any such negligence caused or contributed to the August 2016 rupture of AXLX 1702. Stated another way, the Pennsylvania action decided the issue of whether Superheat's conduct caused or contributed to the August 2016 rupture of railcar AXLX 1702.

25. Axiall argued its theories of negligence to the jury, and the jury was directly asked to make a decision regarding Superheat's negligence specifically. *Id.* at 7. This specific jury finding was detailed on the verdict slip.

26. The Court does not find AllTranstek and Rescar's argument that the issues were not identical because the Pennsylvania jury considered breaches of duties owed to Axiall, and not Covestro, to be persuasive. *See* Def's Resp., p. 2. The Court considers that Covestro has not opposed the instant motion. *See* case file; *see also* Reply, p. 2. The Court considers the fact that Covestro did not assert a cross claim against Superheat on the basis of Axiall's Third-Party Complaint. *See* Def's Mem., p. 3. There is no evidence in the record that AllTranstek and Rescar did not owe a duty to Covestro. *See* Covestro's Reply to AllTranstek and Rescar's Opposition to Covestro's Mot. for Partial Summ. J. on the Jury Verdict Reached in Penna., p. 5. The law is clear that a party opposing a motion for summary judgment may not rest on allegations of his or her unsworn pleadings and must instead come forth with evidence of a genuine factual dispute. *Id. citing Crum v. Equity Inns, Inc.*, 685 S.E.2d 219, 227 (W. Va. 2009). The Court was not presented with any authority or anything other than bald allegations that AllTranstek and Rescar did not owe Covestro a duty. *Id.* at 6. The Court considers that Covestro is a neighboring plant facility who had the misfortune of sitting adjacent to Axiall's facility. Further, it had no relationship with tank car AXLX 1702. The Court considers that collateral estoppel applies even

if the cause of action in the second case were to differ from the cause of action in the first case; the requirement under the law is that the issue be the same, as the Court has determined it is here. *Columbia Med. Grp., Inc. v. Herring & Roll, P.C.*, 829 A.2d 1184, 1190 (Pa. Super. 2003). For these reasons, the Court finds that AllTranstek and Rescar failed to show a genuine issue of material fact as to whether collateral estoppel applies to the identical issues, notwithstanding its arguments regarding who was owed a duty.

27. The Court also notes that AllTranstek and Rescar did not assert Cross-Claims against Superheat in either the West Virginia actions or Pennsylvania case. Superheat also has pled in the instant briefing that AllTranstek and Rescar did not argue that Superheat was negligent during the Pennsylvania trial, and in fact, they averred the opposite⁴. *See Reply*, p. 2.

28. The Court next addresses the second element, that the prior action resulted in a judgment on the merits. *See Ream*, at 1276. While the second element generally applies when a final judgment has been entered in the prior action, the Pennsylvania Supreme Court has recognized that “final judgment” encompasses “any prior adjudication of an issue in another action that is determined to be sufficiently firm to be accorded conclusive effect.” *See Shaffer v. Smith*, 673 A.2d 872, 875 (Pa. 1996) (quoting Restatement (Second) of Judgments § 13 (1980)). As a result, multiple courts applying Pennsylvania law have held that a state court jury verdict on damages is considered a “final judgment” when analyzing collateral estoppel. *See Greenleaf v. Garlock, Inc.*, 174 F.3d 352, 358-59 (3d Cir. 1999) (applying Pennsylvania law); *Allstate Ins. Co. v. Boyles*, No. 05-1778, 2007 WL 2011492, at *3 (W.D. Pa. July 5, 2007) (applying Pennsylvania law) (“Relitigating an issue upon which a jury has already returned a verdict would

⁴ For example, during opening statements, it was proffered that counsel for AllTranstek and Rescar stated, “Superheat did not cause this”. *Id.* Further, it was proffered that Rescar’s Vice-President of Quality Assurance testified at the Pennsylvania trial that he was not blaming Superheat “for any of this”. *Id.* at 4.

be ‘unnecessarily duplicative and a waste of valuable judicial resources – the precise evils that issue preclusion is designed to combat.’”)(internal citation omitted).

29. Here, there were post-trial motions filed in the Pennsylvania action, which have now been ruled upon. However, the Court notes that Axiall mentions in its own motion for summary judgment⁵, and in its entire Response to the instant motion, that it anticipates Superheat will apply for collateral estoppel effect for the Pennsylvania jury findings, and avers to the Court that Axiall has filed a notice of appeal of a judgment entered in the Pennsylvania action in Superheat’s favor. *See Axiall’s Mem.*, p. 8; *see also Axiall’s Resp.*, p. 2. Further, in its Response to the aforementioned Axiall summary judgment motion⁶, Covestro avers that Axiall filed a Notice of Appeal to the Superior Court of Pennsylvania in the Pennsylvania case, “but only with regard to the partial judgment entered in favor of Superheat”. *See Covestro’s Resp.*, p. 11.

30. The Court considers that it has been proffered to this Court that post-trial motions in the Pennsylvania case have now been ruled upon by Judge Ward. Further, the Court examines the appeal of the Pennsylvania matter, which is an appeal as to Superheat. The Court finds *Shaffer v. Smith*, 543 Pa. 526, 673 A.2d 872 (1996) instructive. In *Shaffer*, the Pennsylvania Supreme Court recognized that “‘final judgment’ includes any prior adjudication of an issue in another action that is determined to be sufficiently firm to be accorded conclusive effect”. *Id.* at 531, 875 (quoting Restatement (Second) of Judgments § 13 (1980)).

⁵ *See Axiall Corporation’s Motion for Partial Summary Judgment on the Collateral Estoppel Effect of Certain Jury Findings in the Allegheny County Verdict and Associated Court Rulings*, filed 4/14/22.

⁶ *See Plaintiff Covestro LLC’s Memorandum of Law in Opposition to Axiall’s Motion for Partial Summary Judgment on the Collateral Estoppel Effect of Certain Jury Findings in the Allegheny County Verdict and Associated Court Rulings*.

31. Further, *Shaffer* examined how an appeal which has not yet been decided effects collateral estoppel. The Court in *Shaffer* held that a prior action from the trial court level remains final for purposes of collateral estoppel, even if there is an appeal. *Id.* at 875.

32. The Court notes that *Shaffer* dealt with a prior action in the form of a criminal conviction. The appellant in *Shaffer* argued the Appellee should not have been able to invoke collateral estoppel because the conviction should “not have been considered a final judgment on the merits while the outcome of his PCRA petition was pending”. *Id.* at 874. The *Shaffer* Court analyzed and considered that the related question of what effect a civil appeal has on an otherwise final judgment has been answered, stating that “[a] judgment is deemed final for purposes of *res judicata* or collateral estoppel unless or until it is reversed on appeal”. *Id.* at 874-75. (citing *Helmig v. Rockwell Mfg. Co.*, 389 Pa. 21, 131 A.2d 622, *cert. denied*, 355 U.S. 832, 78 S.Ct. 46, 2 L.Ed.2d 44 (1957); *In re Wallace's Estate*, 316 Pa. 148, 174 A. 397 (1934); *Bassett v. Civil Serv. Comm'n of Philadelphia*, 100 Pa.Comm.w. 356, 514 A.2d 984 (1986)).

33. In discussing and analyzing the underlying purposes of collateral estoppel, the result of having to institute another proceeding to set aside a civil judgment if the appeal is later reversed, the judicial economy concerns with regard to duplicative efforts if the court were to hold to the contrary, and analyzing the Restatement of Judgments, the *Shaffer* Court reasoned that the prior adjudication of an issue in another action shall remain final for the purposes of collateral estoppel, even if there is an appeal, until such time as that appeal is reversed. *Id.* at 875.

34. For these reasons, this Court finds that although the only pending appeal in the Pennsylvania action addresses the partial judgment entered in favor of Superheat on Axiall's

claims, the jury verdict still constitutes a final judgment for the purposes of collateral estoppel unless or until it is reversed on appeal. *See Id.* at 874.

35. The Court next addresses the third element, that the party against whom collateral estoppel is asserted was a party to the prior action, or is in privity with a party to the prior action. *See Ream*, at 1276.

36. Here, Axiall, the party against whom collateral estoppel is asserted, was undisputedly a party to the Pennsylvania action. AllTranstek, Rescar, and Superheat were the other parties to the Pennsylvania action. Accordingly, this Court finds and concludes that the third collateral estoppel factor has been met.

37. The Court next addresses the fourth element, that the party against whom collateral estoppel is asserted had a full and fair opportunity to litigate the issue in the prior action. *See Ream*, at 1276. Regarding this specific issue of Superheat's negligence, the Court finds Axiall had ample opportunity to litigate this at the weeks-long trial in the Pennsylvania action. Superheat proffered that Axiall fully litigated these claims through discovery in the Pennsylvania action, whereover fifty depositions were recorded. *See Def's Mem.*, p. 8. Superheat proffered that Axiall was not precluded from presenting any theory of liability against Superheat during the Pennsylvania trial, and during trial, presented multiple fact and expert witnesses in support of its negligence claims against Superheat. *Id.* This evidence is persuasive that Axiall had a full and fair opportunity to, and did, argue the same negligence theories regarding Superheat's involvement to the Pennsylvania jury. Therefore, the Court finds the fourth element is met.

38. Finally, the Court next addresses the fifth element that some Pennsylvania courts require, whether the issue determined in the prior action was essential to the previous judgment.

See Pitney Road Partners, LLC v. Murray Assocs., Architects, P.C., No. 2253 MDA 2013, 2014 WL 10575406, at *4 (Pa. Super. Ct. Sept. 18, 2014). With regard to this identical issue of whether Superheat was negligent with respect to its local post-weld heat treatments performed on railcar AXLX 1702 and whether any such negligence caused or contributed to the tank car rupture, the verdict slip in the Pennsylvania action was clear: The Pennsylvania action's jury verdict slip asked the jurors to specifically determine if Superheat was negligent as a specific enumerated question. *See* Def's Mot., Ex. D (Jury Verdict Slip). The jury was tasked with determining if Superheat was negligent in a civil action that asked for a determination of which parties were negligent with regard to the subject August 2016 chlorine release/tank car rupture event. The Court considers this plainly essential to the verdict. The Court finds the fifth element is met.

39. Accordingly, all the elements being met, the Court finds summary judgment shall be awarded in favor of Superheat on this matter and the Court hereby finds as a matter of law that pursuant to the doctrine of collateral estoppel, Axiall's claims against Superheat in this matter are precluded, as the Superheat has been determined to be not negligent and 0% at fault for the August 2016 chlorine release/tank car rupture event as a matter of law.

40. In conclusion, for all of these reasons, the Court finds the instant motion must be GRANTED. The claims against Superheat shall be dismissed with prejudice, as they are precluded by the doctrine of collateral estoppel as outlined above.

CONCLUSION

WHEREFORE, it is hereby **ORDERED** and **ADJUDGED** that Defendant Superheat FGH Services, Inc.'s Second Motion for Summary Judgment is hereby **GRANTED**. It is further

hereby **ORDERED** and **ADJUDGED** that Defendant Superheat FGH Services, Inc. is **DISMISSED** with prejudice as a party in this instant case.

The Court notes the objections of the parties to any adverse ruling herein. The Clerk shall enter the foregoing and forward attested copies hereof to all counsel, and to the Business Court Central Office at Business Court Division, 380 West South Street, Suite 2100, Martinsburg, West Virginia, 25401.

8-29-22

date of entry



JUDGE CHRISTOPHER C. WILKES
JUDGE OF THE WEST VIRGINIA
BUSINESS COURT DIVISION