



**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON**

**BROTHERHOOD MUTUAL INSURANCE
CO., a foreign corporation, a/s/o The Keystone
Apostolic Church, f/k/a The Pentecostal Assembly
of Jesus Christ, a non-profit association,**

Plaintiff,

v.

**Civil Action No.: 2:16-cv-03118
Honorable John T. Copenhaver, Jr.**

**CENTRAL WEST VIRGINIA REGIONAL
AIRPORT AUTHORITY, INC., a West Virginia
Corporation, et al.,**

Defendants.

**DEFENDANT CENTRAL WEST VIRGINIA REGIONAL
AIRPORT AUTHORITY, INC.'S MOTION TO DISMISS CROSS-CLAIMS BY
WEST VIRGINIA PAVING, INC.**

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Defendant Central West Virginia Regional Airport Authority, Inc. ("Airport") hereby submits this Motion to Dismiss the cross-claims filed against it by Defendant, West Virginia Paving, Inc ("West Virginia Paving"). In support of its Motion to Dismiss, Airport states:

1. Airport adopts and incorporates by reference the contents of the accompanying "Memorandum of Law in Support of Defendant Central West Virginia Regional Airport Authority, Inc.'s Motion to Dismiss Cross-Claims by West Virginia Paving, Inc."
2. Airport further adopts and incorporates by reference "Defendant Central West Virginia Regional Airport Authority, Inc.'s Motion to Dismiss Complaint" [Doc. 17] and "Memorandum in Support of Defendant Central West Virginia Regional Airport Authority, Inc.'s Motion to Dismiss Complaint" [Doc. 18].

3. On April 6, 2016, West Virginia Paving filed its “Answer to Complaint and Cross Claims Against All Co-Defendants.” *See* West Virginia Paving Ans. [Doc. 8]. Therein, West Virginia Paving asserted cross-claims for indemnity and contribution against Airport. *Id.*

4. Plaintiff, Brotherhood Mutual Insurance Co. (“Brotherhood”), asserts a subrogation claim against Airport and the other defendants, including West Virginia Paving, in the underlying Complaint. *See* Brotherhood Compl. [Doc. 1]. Therein, Brotherhood seeks the amount it paid to Keystone Apostolic Church as its first-party insurance carrier for damages allegedly incurred by Keystone Apostolic Church as a result of the March 12, 2015 failure of the mechanically stabilized earth retention structure located at Yeager Airport. *Id.* Airport filed a Motion to Dismiss the Brotherhood’s claims because West Virginia Code § 29-12A-13(c) bars Brotherhood’s claims against Airport. *See* Airport Motion to Dismiss [Doc. 17].

5. Pursuant to West Virginia Code § 29-12A-13(c) West Virginia Paving’s cross-claims against Airport are barred as a matter of law. W. Va. Code § 29-12A-13(c). *See* W. Va. Code § 29-12A-13(c) (“All actions filed against a political subdivision shall be filed in the name of the real party or parties in interest and in no event may any claim be presented or recovery be had under the right of subrogation.”). West Virginia Paving’s cross-claims against Airport must, therefore, be dismissed pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

WHEREFORE, for all of the foregoing reasons, and those more fully set forth in the “Memorandum of Law in Support of Defendant Central West Virginia Regional Airport Authority, Inc.’s Motion to Dismiss Cross-Claims by West Virginia Paving, Inc.,” Defendant Central West Virginia Regional Airport Authority, Inc. respectfully requests that this Court enter an Order dismissing the cross-claims by West Virginia Paving, Inc. against Airport and grant Airport all other relief to which it is entitled.

Respectfully Submitted,

CENTRAL WEST VIRGINIA REGIONAL
AIRPORT AUTHORITY, INC.

By: /s/ Patricia M. Bello

Matthew A. Nelson (WV State Bar # 9421)

Patricia M. Bello (WV State Bar # 11500)

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This document constitutes a ruling of the court and should be treated as such.

Court Authorizer

Comments:

Mooted by Order of Stipulated Dismissal of West Virginia Paving, Inc. Without Prejudice (Transaction ID 60442793)

/s/ Judge Hutchison, John A