



**IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA**

**IN RE: YEAGER AIRPORT LITIGATION**

**CIVIL ACTION NO. 16-C-7000**

**THIS DOCUMENT APPLIES TO:**

Central West Virginia Regional Airport Authority, Inc.,

v.

Civil Action No. 15-C-1022 KAN

Triad Engineering, Inc., et al.

**ORDER REGARDING RULINGS ISSUED ON NOVEMBER 30, 2018**

On November 30, 2018, the Presiding Judges conducted a hearing in the Yeager Airport Litigation. Having reviewed the parties' motions, responses, and replies, and heard the arguments of counsel, and having conferred with one another to insure uniformity of their decisions, as contemplated by Rule 26.07(a) of the West Virginia Trial Court Rules, the Presiding Judges issued unanimous rulings on the following motions:

1. *The Travelers Indemnity Company's Motion for Summary Judgment Regarding Insurance Coverage* (Transaction ID 62579412) is **DENIED** as to the duty to defend Triad Engineering, Inc. as an additional insured under the general liability insurance policies issued to Cast & Baker Corporation. Likewise, *Triad's Motion for Partial Summary Judgment against Travelers* (Transaction ID 62578588) is **GRANTED** as to the issue of duty to defend, and *Westfield Insurance Company's Motion for Summary Judgment on Coverage Issues with Respect to Travelers Policies* (Transaction ID 62579818) is also **GRANTED** as to the issue of duty to defend. The Court finds that Travelers Indemnity Company owed a duty to defend Triad Engineering, Inc. in this matter. It is black letter law that the duty to defend is broader than the duty to indemnify. The Court further finds that the allegations made in the Complaints were

broad than the terms of the exclusions relied upon by Travelers in the Travelers policy, and were also broader than the limitations contained in the Certificate of Insurance issued by Travelers to Triad. Travelers is estopped to deny a defense to Triad based upon the scope of the allegations in the Complaints and the provisions of the Certificate of Insurance naming Triad as an additional insured. The Court defers ruling on the issue of indemnity at this juncture.

2. *Joint Motion for Determination on the Measure of Plaintiff's Recoverable Damages* (Transaction ID 62610309) is **DENIED**. The appropriate measure of damages is controlled by *Jarrett v. E.L. Harper & Sons, Inc.*, 160 W.Va. 399, 235 S.E.2d 362 (1977), and as discussed in the West Virginia Pattern Jury Instructions, § 804 Damage to Non-Residential Real Property (2017), including Notes and Sources. The Court takes under advisement the parties' arguments regarding the collateral source issue and defers ruling on that issue at this time.

3. *Defendant Cast & Baker Corporation's Renewed Motion for Summary Judgment* (Transaction ID 62612486) is **DENIED** as premature. Significant questions of fact remain as to who is liable and to what extent. Until the "primary cause of injury or damage" is resolved, this motion is premature.

4. *Defendant Novel Geo-Environmental, LLC's Motion for Partial Summary Judgment as to the Limitation of Liability Provision in its Contract with Cast & Baker Corporation* (Transaction ID 62611597) is **DENIED** as contrary to the public policy of West Virginia and Pennsylvania. See Syl. Pt. 3, *Finch v. Inspectech, LLC*, 229 W.Va. 147, 727 S.E.2d 823 (2012) "When an express agreement is freely and fairly made, between parties who are in an equal bargaining position, *and there is no public interest with which the agreement interferes*, it generally will be upheld. (Emphasis added.) See also, *Antanovich v. Allstate Ins. Co.*, 507 Pa. 68, 488 A.2d 571 (1985), "Generally, a clear and unambiguous contract provision must be given

its plain meaning *unless to do so would be contrary to a clearly expressed public policy.*”

It is so **ORDERED**.

**ENTER:** December 4, 2018.

/s/ John A. Hutchison  
Lead Presiding Judge  
Yeager Airport Litigation