

17-BCD-01  
**COPY**

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, WEST VIRGINIA

PNGI CHARLES TOWN GAMING, LLC,

*Plaintiff,*

v.

CIVIL ACTION NO. 16-C-257

YORK BUILDING PRODUCTS CO., INC. and  
YORK BUILDING AGGREGATES, LLC,

*Defendants.*

TO: THE HONORABLE CHIEF JUSTICE OF THE SUPREME COURT OF  
APPEALS OF WEST VIRGINIA

**MOTION TO REFER CASE TO THE BUSINESS COURT DIVISION**

Plaintiff PNGI CHARLES TOWN GAMING, LLC (the "Plaintiff" or "PNGI"),  
by its counsel, moves the Honorable Chief Justice of the Supreme Court of Appeals of West  
Virginia to refer this Civil Action to the Business Court Division pursuant to West Virginia Trial  
Court Rule 29.06. In support, PNGI states the following:

**STANDARD**

1. "Any party or judge may seek a referral of Business Litigation to the Division by  
filing a Motion to Refer to the Business Court Division with the Clerk of the Supreme Court of  
Appeals of West Virginia. The motion shall identify the nature of the action(s) sought to be  
referred, the basis for the request, and, if known, whether additional related actions are pending  
or may be filed in the future. A copy of the complaint, answer, docket sheet and any other  
documents that support referral under Trial Court Rule 29.04(a) shall be attached to the motion."  
W.Va. Trial Ct. R. 29.06(a)(1).

2. "Business Litigation," for purposes of referral to the Business Court Division, involves actions in circuit court in which:

(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 suits; 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.

W.Va. Trial Ct. R. 29.04(a).

3. "The motion shall be filed after the time to answer the complaint has expired. For good cause shown to the Chief Justice, the motion may be filed sooner." W.Va. Trial Ct. R. 29.06(a)(2).

4. "Any party or affected judge shall have twenty (20) days after the motion is filed to file a reply memorandum stating its position and opposition, if any. Any reply memorandum must be filed with the Clerk of the Supreme Court of Appeals and served in accordance with

Trial Court Rule 29.06(a)(3). The Chief Justice shall have the authority to grant or deny the motion to refer without response for good cause shown.” W.Va. Trial Ct. R. 29.06(a)(4).

### ANALYSIS

5. The nature of the action which PNGI seeks to refer to the Business Court Division is a breach of contract action between PNGI as plaintiff and York Building Products Co., Inc. and York Building Aggregates, LLC (collectively, “York”) as defendants. PNGI claims that York supplied nonconforming aggregates to PNGI for use on its thoroughbred horse racing track at Hollywood Casino at Charles Town Races, and that York’s products created an unsafe and unusable racetrack surface which forced PNGI to cancel live horse racing events for two weeks, including the week of the 2016 Kentucky Derby. York counterclaims that PNGI failed to pay for goods that it accepted.

6. Attached as Exhibits to this motion are copies of: (1) PNGI’s *Complaint*, filed October 6, 2016; (2) York’s *Answer and Counterclaim*, filed December 7, 2016; (3) PNGI’s *Reply to Counterclaim of York Building Products Co., Inc. and York Building Aggregates, LLC*, filed December 27, 2016; and (4) the docket sheet for this case, Civil Action No. 16-C-257.

7. The breach of contract claims between the parties involve matters of significance to the transactions and operations of business entities. The parties are business entities seeking damages in excess of \$100,000.00 as a result of alleged breaches of the contract. Additionally, this action implicates both PNGI and York’s business operations because: (1) the quality and consistency of York’s aggregates products affects a key business sector for that company; and (2) PNGI relies on aggregates suppliers such as York to consistently provide a high quality

product that can be used safely on its thoroughbred horse racing track for live racing events -- a key business sector for PNGI.

8. The dispute presents commercial issues in which specialized treatment is likely to improve the expectation of a fair and reasonable resolution of the controversy. This action involves the parties' respective rights and remedies under the Uniform Commercial Code, a complex area of commercial law in which the Business Court Division is likely to possess specialized knowledge. The case also presents factual questions regarding whether the delivered aggregates met industry specifications, which may involve expert analysis and testimony. PNGI's claims also raise complex questions of lost profits resulting from York's breach of contract, and which will likely require a detailed economic analysis of PNGI's year-over-year revenue streams during the week of, and the week following, the Kentucky Derby. The Business Court Division is likely to have specific knowledge or training in this type of economic damages analysis due to its familiarity with damages claims in other complex commercial disputes.

9. The principal claims raised in this case do not involve any of the categories of claims excluded from the definition of "Business Litigation" contained in W.Va. Trial Ct. R. 29.04(a)(3).

10. There are no related actions pending and PNGI does not believe that any related actions will be filed in the future.

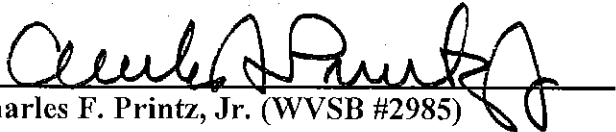
11. Finally, PNGI believes that referring this matter to the Business Court Division will promote the interests of efficient and economical use of judicial resources. The purpose of the Business Court Division is to provide "a process for efficiently managing and resolving

litigation involving commercial issues and disputes between businesses.” W.Va. Trial Ct. R. 29.01. Transferring this case to the Business Court Division, which is required to “develop and implement effective case management and trial methodologies to fairly and expeditiously resolve Business Litigation.” *see* W.Va. Trial Ct. R. 29.05(a), will place this matter before a court that is dedicated to fairly and expeditiously resolving civil litigation and that is uniquely equipped to resolve issues arising in commercial disputes between businesses.

For the reasons set forth above, PNGI requests that this matter be transferred to the Business Court Division for further proceedings pursuant to W.Va. Trial Court Rule 29.

DATED the 4<sup>th</sup> day of January 2017.

**PNGI CHARLES TOWN  
GAMING, LLC**  
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**CERTIFICATE OF SERVICE**

I certify that I served a true copy of the foregoing *Motion to Refer Case to the Business Court Division* by using the E-Filing system in Jefferson County, West Virginia and by mailing copies via United States Mail, first class postage prepaid, upon the following:

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The Honorable John C. Yoder  
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Action No. 16-C-257*

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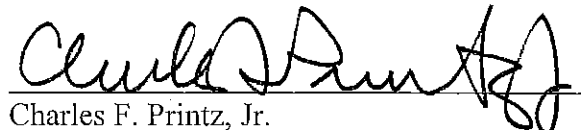
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