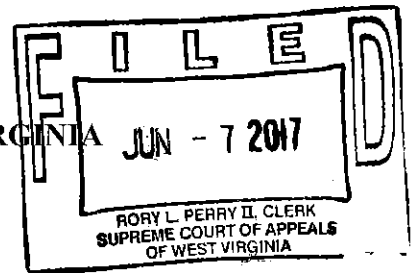


17-BCD-19

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA



**DAVID G. MAHER and AMY C. MAHER,**  
**Plaintiffs,**

**vs.**

**Pocahontas County Circuit Court**  
**Civil Action No. 15-C-55**

**OSWALD "IKE" JOSEPH ZERINQUE and**  
**GERALDINE C. ZERINGUE, his wife; CAMP 4**  
**CONDOMINIUM ASSOCIATION, INC.; a West**  
**Virginia Corporation, THOMAS A. ROAT,**  
**STEVEN BARNUM, OMNI ASSOCIATES ARCHITECTS INC.,**  
**ENDURANCE AMERICAN SPECIALTY INS CO.,**  
**TRAVELERS CASUALTY and SURETY CO. of AMERICA,**  
**THE TRAVERLERS INDEMNITY COMPANY, and**  
**THE PHOENIX INSURANCE COMPANY,**  
**Defendants,**

**and**

**OSWALD "IKE" JOSEPH ZERINQUE and**  
**GERALDINE C. ZERINGUE, his wife; CAMP 4**  
**CONDOMINIUM ASSOCIATION, INC.; a West**  
**Virginia Corporation, and THOMAS A. ROAT,**  
**Third Party Plaintiffs,**

**vs.**

**INTRAWEST SNOWSHOE DEVELOPMENT,**  
**OMNI ASSOCIATES ARCHITECTS INC., and**  
**BRANCH & ASSOCIATES INC.,**  
**Third Party Defendants,**

**and**

**BRANCH & ASSOCIATES INC.,**  
**Third Party Plaintiff,**

**vs.**

**J.B. MICAHIL CO. INC., PHARES CONSTRUCTION,**  
**CARY CORPORATION d/b/a KENT'S INSULATION CO.**  
**d/b/a KENT'S INSULATING, d/b/a MASCO CONTRACTOR**  
**SERVICES EAST, INC,**  
**BREWER & COMPANY of WV INC,**  
**DAVE HINKLE ELECTRIC, INC, and**  
**DAVID DARNOLD CO. INC.,**  
**Third Party Defendants.**

**TO: THE HONORABLE CHIEF JUSTICE ALLEN H. LOUGHRY II**

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

Pursuant to Rule 29.06 of the West Virginia Trial Court Rules, the Honorable Jennifer P. Dent respectfully requests the above-styled case be referred to the Business Court Division.

In regard to additional related actions, the following related actions could be the subject of consolidation, and now pending.

Karen Pilarski (Plaintiff) v. Camp 4 Condominium Association, Inc., Branch & Associates, Inc., Intrawest Snowshoe Development, Inc., Mark Rotellini, and John Doe Defendants 1-10 (Defendants) and Branch & Associates, Inc. (Third Party Plaintiff) v. Omni Associates Architects, Inc., Thomas Roat, Phares Construction, J.B. Michael Co. Inc., Cary Corporation d/b/a Kent's Insulations Co. d/b/a Kent's Insulating d/b/a Masco Contractor Services East Inc., Brewer & Company of WV Inc., Dave Hinkle Electric Inc., and David Darnold Co. Inc. (Third Party Defendants); Case Number 16-C-10, Pocahontas County Circuit Court.

This action involves: Breach of Contract, Negligence, Breach of Warranties, Fraudulent Misrepresentation and Concealment, Contribution and Indemnity, Violations of the Uniform Common Interest Ownership Act, Violations of the Unfair Trade Practices Act, Breach of Legal Duty and Declaration of Covenants, Civil Conspiracy, Declaratory Judgment. These claims are made independently in the Complaint, Crossclaims, Counterclaim, and Third Party Complaints. The claims are made by the Plaintiffs against business entities and, by business entities against business entities. Recently filed is a motion to add a claim to the Amended Complaint for Liability for Damages and Repair of All Defects for All Common Elements of All Units of Camp 4 Condominium Association, Inc. A ruling on said motion has not been entered. Therefore, this action involves disputes among and between commercial entities and individuals.

In support of this motion, the Court asserts that this matter is voluminous given the number and nature of the claims and parties. The time allotted to the case on the Court's docket and, the time necessary for preparation of the issues is significant. Furthermore, in this case, there is potential for additional claims and/or parties. The case contains significant issues including the statute of limitations and statute of repose, and how parties situated similarly to the Defendants and Third Party Defendants will be affected by the application of said statutes; as well as the extent of liability coverage required under the Uniform Common Interest Ownership Act, and alleged violations of the Unfair Trade Practices Act.

In further support of this Motion, please find attached hereto an accurate copy of the Amended Complaint, the Answers, Affirmative Defenses, Counterclaim, and Crossclaims of Defendants, the Third Party Complaints, the responsive pleadings filed thereto and the Motion to add an additional claim to the Amended Complaint. The exhibits attached to said pleadings have been omitted.

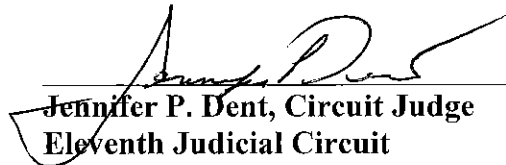
In regard to expedited review, this Court hereby REQUESTS that the Chief Justice grant this Motion to Refer without responses, pursuant to W.Va. Trial Court Rule 29.06(a)(4), and contends that the following constitutes good cause to do so:

Evidentiary hearings are currently scheduled for the 14<sup>th</sup> day of June 2017, on a Motion to Dismiss the Complaint filed by Travelers Casualty and Surety Co. of America, The Travelers Indemnity Company, and The Phoenix Insurance Company, a Motion to Dismiss the Complaint filed by Omni Associates Architects, Inc., a Motion to Dismiss Crossclaim of Thomas Roat filed by Omni Associates Architects, Inc., and a Motion to Dismiss the Third Party Complaint of Oswald and Geraldine Zeringue filed by Omni Associates Architects, Inc. In addition, evidentiary hearings on Motions to Dismiss all Third Party Complaints filed by Branch and Associates, Inc. and a Motion to Dismiss the Third Party Complaints of Camp 4 Condominium Association, Inc. and Thomas Roat to be filed by Intrawest

Snowshoe Development are scheduled for July 20, 2017. Given the pendency of these substantive Motions, the Court believes an expedited referral to the Business Court Division at this time is appropriate.

**WHEREFORE**, the undersigned Judge hereby MOVES, pursuant to W.Va. Trial Court Rule 29, the Chief Justice of the West Virginia Supreme Court of Appeals to refer this case to the Business Court Division.

Respectfully submitted, this 6<sup>th</sup> day of June, 2017,

  
Jennifer P. Dent, Circuit Judge  
Eleventh Judicial Circuit

CERTIFICATE OF SERVICE

I, Jennifer P. Dent, do hereby certify that on this 6<sup>th</sup> day of June, 2017, I have served the foregoing "Judicial Motion to Refer Case to Business Court Division," without attachments by first class mail to:

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Geraldine Zeringue;

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Stuart McMillan  
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Morgantown, WV 26505  
Counsel for Travelers Defendants;

Daniel R. Schuda  
900 Lee Street East, Suite 1700  
Charleston, WV 25301  
Counsel for Defendant Endurance;

by hand delivery without attachments to Judge Robert Richardson at 912 Court Street North, Lewisburg, WV 24901; by first class mail without attachments to the Pocahontas County Circuit Clerk's Office; and by priority mail with attachments to the Business Court Division Central Office, Berkeley County Judicial Center, 380 West South Street, Suite 2100, Martinsburg, WV 25401.



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Jennifer P. Dent, Circuit Judge  
Eleventh Judicial Circuit