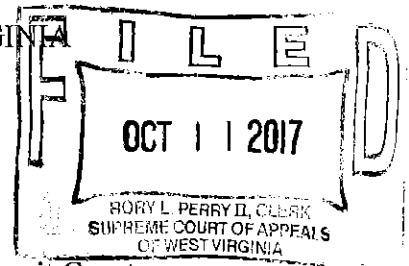


IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA



DAVID F. NELSON, SR., individually and
as a member of Francis, Nelson & Brison, P.L.L.C.
Plaintiff,

Kanawha County Circuit Court
Civil Action No. 16-C-1590

vs.

ALLEN & NEWMAN, PLLC, the Successor
Corporation of and f/k/a ALLEN KOPET and
ASSOCIATES, PLLC, G. David ALLEN and
M. ANDREW BRISON,
Defendants.

TO: THE HONORABLE CHIEF JUSTICE

MOTION TO REFER CASE TO THE BUSINESS COURT DIVISION

Pursuant to Rule 29.06 of the West Virginia Trial Court Rules, the Plaintiff, David F. Nelson, individually and in his capacity as a Member of Francis, Nelson & Brison, PLLC, by and through his counsel, Paul M. Stroebel, Esquire, respectfully requests the above-styled case be referred to the Business Court Division.

In regard to additional related actions:

There are no known related actions.

This action involves: (Please check all that apply)

- | | |
|--|--|
| <input checked="" type="checkbox"/> Breach of Contract; | <input checked="" type="checkbox"/> Commercial Non-consumer debts; |
| <input checked="" type="checkbox"/> Sale or Purchase of Commercial Entity; | <input type="checkbox"/> Internal Affairs of a Commercial Entity; |
| <input type="checkbox"/> Sale or Purchase of Commercial Real Estate; | <input type="checkbox"/> Trade Secrets and Trademark Infringement; |
| <input type="checkbox"/> Sale or Purchase of Commercial Products Covered by the Uniform Commercial Code; | <input type="checkbox"/> Non-compete Agreements; |
| <input type="checkbox"/> Terms of a Commercial Lease; | <input type="checkbox"/> Intellectual Property, Securities, Technology Disputes; |
| | <input type="checkbox"/> Commercial Torts; |

- | | |
|--|--|
| <input type="checkbox"/> Insurance Coverage Disputes in Commercial Insurance Policies; | <input checked="" type="checkbox"/> Mergers, Consolidations, Sale of Assets, Issuance of Debt, Equity and Like Interest; |
| <input type="checkbox"/> Professional Liability Claims in Connection with the Rendering of Professional Services to a Commercial Entity; | <input type="checkbox"/> Shareholders Derivative Claims; |
| <input type="checkbox"/> Anti-trust Actions between Commercial Entities; | <input type="checkbox"/> Commercial Bank Transactions; |
| <input type="checkbox"/> Injunctive and Declaratory Relief Between Commercial Entities; | <input type="checkbox"/> Franchisees/Franchisors; |
| <input checked="" type="checkbox"/> Liability of Shareholders, Directors, Officers, Partners, etc.; | <input type="checkbox"/> Internet, Electronic Commerce and Biotechnology |
| | <input type="checkbox"/> Disputes involving Commercial Entities; or |
| | <input checked="" type="checkbox"/> Other (Describe) <u>Breach of Fiduciary Duty; Unjust Enrichment.</u> |

In support of this motion, this matter contains issues significant to businesses, and presents novel and/or complex commercial or technological issues for which specialized treatment will be helpful, as more fully described here:

This case involves a dispute over an outstanding commercial note, the acquisition of Francis, Nelson & Brison, PLLC by Allen & Newman, PLLC, the terms of that acquisition, and an early departure from Allen & Newman, PLLC by Andrew Brison that resulted in a breach of contract, early departure penalty, breach of fiduciary duty, and unjust enrichment. Three years after the acquisition, Brison left the firm of Allen & Newman; thereby triggering the early departure penalty set forth in the purchase agreement. This penalty was assigned to David F. Nelson, Sr. from Allen & Newman, PLLC when Nelson settled his claims against Allen & Newman. The Second Amended Complaint alleges that Brison breached his contractual duty to both Allen & Newman, as well as to Nelson, individually. The Second Amended Complaint alleges that Brison also breached his fiduciary duty to Nelson by failing to pay his departure penalty as required. This failure resulted in Allen & Newman refusing to pay down the outstanding commercial note. Finally, Brison has been unjustly enriched to the financial detriment of Nelson, who is utterly without fault in relation to Brison's acts or omissions.

In further support of this Motion, please find attached hereto an accurate copy of the Second Amended Complaint, the answers and the docket sheet.

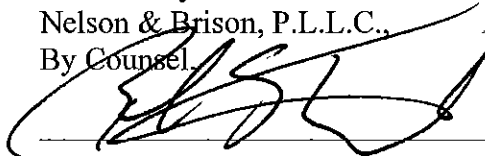
In regard to expedited review, the Movant:

DOES NOT request an expedited review under W.Va. Trial Court Rule 29.06(a)(4), and gives notice that all affected parties may file a memorandum stating their position, in accordance with W.Va. Trial Court Rule 29.

WHEREFORE, the undersigned 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 10th day of October, 2017,

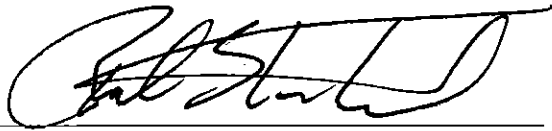
DAVID F. NELSON, SR.,
Individually and as a member of Francis,
Nelson & Brison, P.L.L.C.,
By Counsel.

A handwritten signature in black ink, appearing to read "P. M. Stroebe", is written over a horizontal line.

Paul M. Stroebe (WV BAR 5758)
Stroebe & Johnson, P.L.L.C.
P.O. Box 2582
Charleston, WV 25329

CERTIFICATE OF SERVICE

I, Paul M. Stroebel, do hereby certify that on this 10th day of October, 2017, I have served the foregoing "Motion to Refer Case to Business Court Division," with attachments by either hand delivery or first class mail to: Daniel Schuda, Esquire; Anspach Meeks Ellenberger LLP; 900 Lee Street, East, Suite 1700; Charleston, WV 25301; the Honorable Jennifer Bailey, 111 Court Street; Charleston, WV 25301; the Kanawha County Circuit Clerk's Office, 111 Court Street; Charleston, WV 25301; and the Business Court Division Central Office, Berkeley County Judicial Center, 380 West South Street, Suite 2100, Martinsburg, WV 25401.

A handwritten signature in black ink, appearing to read "Paul M. Stroebel", written over a horizontal line.

Paul M. Stroebel, Esquire