

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

THE THRASHER GROUP, INC.

Plaintiff,

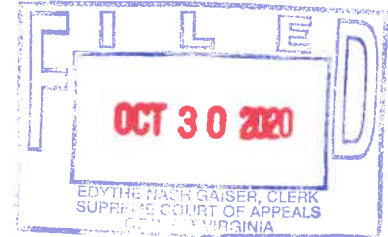
v.

Kanawha County Circuit Court  
Civil Action No.: 20-C-772  
Honorable Judge Jennifer F Bailey

BEAR CONTRACTING, LLC  
and GREAT AMERICAN INSURANCE COMPANY

Defendants.

TO: THE HONORABLE CHIEF JUSTICE



JOINT MOTION TO REFER CASE TO THE BUSINESS COURT DIVISION

Pursuant to Rule 29.06 of the West Virginia Trial Court Rules, the Plaintiff, The Thrasher Group, Inc., by counsel, Adam S. Ennis, John D. Pizzo, and the law firm of Steptoe & Johnson PLLC, and the Defendants, Bear Contracting, LLC, and Great American Insurance Company, by counsel, Christopher A. Brumley, Richard R. Marsh, and the law firm of Flaherty Sensabaugh Bonasso PLLC, jointly request the above-styled case be referred to the Business Court Division.

In regard to additional related actions:

- There are no known related actions.

The following related actions could be the subject of consolidation, and are  
now pending  
or  
may be filed in the future. (Please list case style, number, and Court if any)

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This action involves: (Please check all that apply)

- Breach of Contract;  
Sale or Purchase of Commercial Entity;  
Sale or Purchase of Commercial Real Estate;

Sale or Purchase of Commercial Products  
Covered by the Uniform Commercial  
Code;  
Terms of a Commercial Lease;  
Commercial Non-consumer debts;  
Internal Affairs of a Commercial Entity;

Trade Secrets and Trademark Infringement;  
Non-compete Agreements;  
Intellectual Property, Securities, Technology  
Disputes;

■ Commercial Torts;

Insurance Coverage Disputes in  
Commercial Insurance Policies;

Professional Liability Claims in  
Connection with the Rendering of  
Professional Services to a Commercial  
Entity;

Anti-trust Actions between Commercial  
Entities;

■ Injunctive and Declaratory Relief Between  
Commercial Entities;

Liability of Shareholders, Directors,  
Officers, Partners, etc.;

Mergers, Consolidations, Sale of Assets,  
Issuance of Debt, Equity and Like Interest;

Shareholders Derivative Claims;

Commercial Bank Transactions;

Franchisees/Franchisors;

Internet, Electronic Commerce and  
Biotechnology

■ Disputes involving Commercial Entities; or

■ Other (Describe) Surety Coverage

In support of this joint 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. At issue is a relatively complex contractual dispute that involves interpretation of three subcontracts for engineering services in connection with state highway and highway bridge construction projects, the scope of the engineer's duties, and a related dispute with the surety bonding company. There will be issues concerning what work was within the scope of the engineer's contract and what expenses were assumed by the contractor pursuant to its contract with the Department of Highways. Expert testimony on these issues is expected. Several subsidiary factual issues requiring specialized treatment are involved, each of which will require analysis and decision. One significant issue is who is responsible for the cost of a right-of-way acquisition contractor. Other issues concern services performed by the engineer that it claims were extra work, but that the contractor claims were within the scope of the contract.

In further support of this Joint Motion, please find attached hereto an accurate copy of the operative complaint(s), the operative answer(s), the docket sheet, and the following other documents: no other documents.

In regard to expedited review, the Movants:

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

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: \_\_\_\_\_.

**WHEREFORE**, the undersigned hereby JOINTLY MOVE, 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 28th day of October 2020,



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Great American Insurance Company*

CERTIFICATE OF SERVICE

I, John D. Pizzo, do hereby certify that on this 28<sup>th</sup> day of October, 2020, I have served the foregoing "Motion to Refer Case to Business Court Division," with attachments by first class mail to Richard R. Marsh and Christopher A. Brumley with the law firm of Flaherty Sensabaugh Bonasso PLLC, 205 West Main Street, Clarksburg, WV 26301; the Kanawha County Circuit Clerk's Office; and the Business Court Division Central Office, Berkeley County Judicial Center, 380 West South Street, Suite 2100, Martinsburg, WV 25401.



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Sender Signature