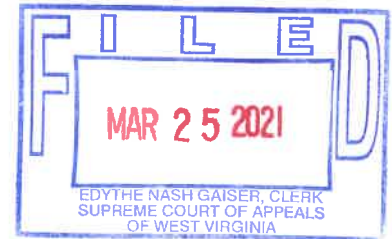


**IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA**

**Dan Ryan Builders West Virginia, LLC,  
A West Virginia limited liability company,  
Plaintiff,**

**vs.) Civil Action No.: 20-C-110 (Berkeley County)  
No. 21-BCD-7**

**Overlay I, LLC,  
A Virginia limited liability company,  
Defendant.**



**DEFENDANT OVERLAY I, LLC'S RESPONSE TO THE ORDER OF THE SUPREME  
COURT OF APPEALS OF WEST VIRGINIA**

COMES NOW, Defendant, Overlay I, LLC ("Defendant"), by and through its counsel, Gregory E. Kennedy, Esquire, and the law firm of Franklin & Prokopik, and hereby files its Response to the Order of the Supreme Court of Appeals of West Virginia dated March 17, 2020, as follows.

As this Court is aware, this civil action is currently pending in the Circuit Court of Berkeley County, West Virginia before the Honorable Bridget M. Cohee (20-C-110), who, on February 26, 2021, filed the Judicial Motion to Refer Case to the Business Court Division ("Judicial Motion") pursuant to Rule 29.06 of the West Virginia Trial Court Rules. Specifically, the Judicial Motion detailed the nature of the civil action and attached a copy of the Complaint, the docket sheet, and the Defendant's Motion to Dismiss, which has yet to be ruled on. Finally, the Judicial Motion stated that the parties would benefit from expedited review from the Business Court and requested that this Court grant the Judicial Motion without responses.

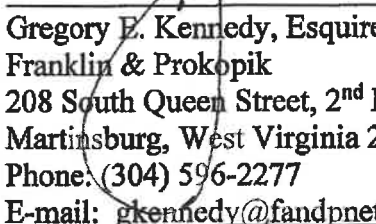
In turn, on March 17, 2021, the Chief Justice, by order of same date, determined that responses to the Judicial Motion are necessary for consideration of the same, and directed the parties to file a response on or before April 2, 2021 ("Order").

In response to the Order, Defendant states that it supports the Judicial Motion and believes that the referral to the Business Division of this matter will be in the best interest of the parties due to the complexity of the underlying issues raised in Plaintiff's Complaint and Defendant's Motion to Dismiss. Additionally, the Defendant notes that its Motion to Dismiss has not been ruled upon, and it hereby requests that a hearing and ruling on the same be heard and determined by the Presiding Judge assigned to this matter upon this Court's entering of an order granting the Judicial Motion for assignment to the Business Court Division.<sup>1</sup>

WHEREFORE, Defendant, Overlay I, LLC, hereby submits its Response to the Order of the Supreme Court of Appeals of West Virginia dated March 17, 2021, and seeks the entry of an order by this Court referring this matter to the Business Court Division, and staying action on Defendant's Motion to Dismiss so that the same may be heard and determined by the Presiding Judge, and any other relief this Court deems proper and just.

Respectfully submitted this 25<sup>th</sup> day of March, 2021.

**OVERLAY I, LLC,**  
By Counsel,



\_\_\_\_\_  
Gregory E. Kennedy, Esquire (WVSB #8730)  
Franklin & Prokopik  
208 South Queen Street, 2<sup>nd</sup> Floor  
Martinsburg, West Virginia 25401  
Phone: (304) 596-2277  
E-mail: [gkennedy@fandpnet.com](mailto:gkennedy@fandpnet.com)  
*Counsel for Overlay I, LLC*

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<sup>1</sup> The undersigned notes that a hearing has been noticed by the circuit court for its Motion to Dismiss on March 31, 2021. The undersigned believes that its Motion to Dismiss should be heard and decided by the Presiding Judge assigned by this Court due to the complexity of the issues. The undersigned further notes that the Plaintiff, in contravention of Rule 15 of the West Virginia Rules of Civil Procedure, has filed an Amended Complaint, and the undersigned will file an appropriate Motion to Strike.

**IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA**

**Dan Ryan Builders West Virginia, LLC,  
A West Virginia limited liability company,  
Plaintiff,**

**vs.) Civil Action No.: 20-C-110 (Berkeley County)  
No. 21-BCD-7**

**Overlay I, LLC,  
A Virginia limited liability company,  
Defendant.**

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 25th day of March, 2021, I filed the *DEFENDANT OVERLAY I, LLC'S RESPONSE TO THE ORDER OF THE SUPREME COURT OF APPEALS OF WEST VIRGINIA* with the Clerk of the Supreme Court of Appeals of West Virginia by emailing the same to [cassandra.wine@courtswv.gov](mailto:cassandra.wine@courtswv.gov).

I HEREBY FURTHER CERTIFY that on the 25th day of March, 2021, I electronically filed the *DEFENDANT OVERLAY I, LLC'S RESPONSE TO THE ORDER OF THE SUPREME COURT OF APPEALS OF WEST VIRGINIA* with the Circuit Clerk of Berkeley County, West Virginia using the West Virginia E-Filing system which will send notification of such filing to the following counsel of record.

William F. Gibson, Esquire  
Kevin P. Kennedy, Esquire  
Shulman, Rodgers, Gandal, Pordy & Ecker, P.A.  
12505 Park Potomac Avenue, 6<sup>th</sup> Fl.  
Potomac, MD 20854  
*Counsel for Plaintiff Dan Ryan Builders West Virginia, LLC*

Charles F. Printz, Jr., Esquire  
Shannon Combs, Esquire  
Bowles Rice LLP  
101 South Queen Street  
Martinsburg, WV 25401  
*Counsel for Plaintiff Dan Ryan Builders West Virginia, LLC*

I HEREBY FURTHER CERTIFY that I served a true copy of ***DEFENDANT OVERLAY I, LLC'S RESPONSE TO THE ORDER OF THE SUPREME COURT OF APPEALS OF WEST VIRGINIA*** via U.S. First Class Mail, postage prepaid, upon the following:

Judge Bridget Cohee  
Berkeley County Judicial Center  
380 West South Street, Suite 4401  
Martinsburg, WV 25401

Virginia Sine, Berkeley County Circuit Clerk  
Berkeley County Judicial Center  
380 West South Street, Suite 2200  
Martinsburg, WV 25401

Business Court Division  
Berkeley County Judicial Center  
380 West South Street, Suite 2100  
Martinsburg, WV 25401



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Gregory E. Kennedy, Esquire (WVSB #8730)