IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

RICHARD M. RASHID,

Plaintiff,

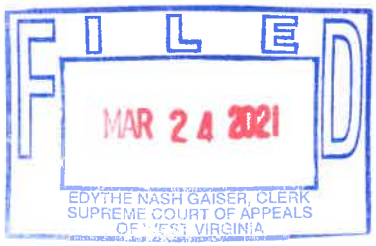
v.

GEORGETTE R. GEORGE, an individual;
RIDGE LINE, INC., a West Virginia corporation;
AFFILIATE SERVICES, LLC, a West Virginia limited liability company;
LMR LIMITED PARTNERSHIP, a West Virginia limited partnership;
LMR MANAGEMENT SERVICES, LLC, a West Virginia limited liability company,
MONARCH MANAGEMENT SERVICES, LLC, a West Virginia limited liability company;
KENT GEORGE, an individual;
R. CHARLES RASHID, an individual;
MICHELE RASHID-STANLEY, an individual;
THOMAS D. DAVIDOW, an individual; and,
MONARCH HOLDINGS, LLC, a West Virginia limited liability company,

Defendants.

Kanawha County Circuit Court
Civil Action No. 19-C-779

(Judge Carrie Webster)



TO THE HONORABLE CHIEF JUSTICE EVAN JENKINS:

DEFENDANTS' RENEWED JOINT MOTION TO REFER TO BUSINESS COURT

A. Introduction:

Richard M. Rashid ("Plaintiff") filed his complaint in this action in August 2019. Soon thereafter, Defendants filed a Joint Motion to Transfer to Business Court, which was denied based on Plaintiff's assertion that his principal claims related to the alleged wrongful termination of his employment. As explained below, Plaintiff then revealed his full hand, culminating in his recently

filed Amended Complaint. This motion to Refer to Business Court is timely in response to these new developments that radically change the nature of Plaintiff's Complaint and compel reference of this case to Business Court now.

Plaintiff's Amended Complaint removes any doubt that this matter should be referred to Business Court. **Exhibit 1** (Motion to Amend Complaint, with attached amendment). Plaintiff's amendments:

(1) raise complicated and novel theories of veil piercing and reverse veil piercing among numerous and distinct entities in the case, including the main holding company – Monarch Holdings, LLC ("Monarch");

(2) invoke novel theories as to individual vs. derivative claims;

(3) seek to impose liability for matters of governance and operations between separately owned business entities; and

(4) seek to establish novel theories of business liability and damages against *ALL* defendants, including: (a) damages in the amount of the value of Plaintiff's limited partnership interests – or the translated value of his share of that limited partner's ownership interests in Monarch; and (b) damages for distributions that Plaintiff alleges should have been made by Monarch to another entity that is not a party.

Alternatively, the Amended Complaint seeks (1) equitable relief appointing a receiver to run the day-to-day operations of Monarch (and businesses that it owns); and (2) a court ordered redemption of the Plaintiff's interests in the limited partnership in which he holds ownership.

The Plaintiff's new claims present matters of great significance to the transactions, operations, and governance between these business entities, and decisions on such issues will potentially impact all West Virginia business entities, and the carefully crafted statutory

frameworks that govern and distinguish them. Plaintiff's theories disregard these legislative structures and the entities they create. He then disregards these entity forms entirely, flowing claims and liabilities hither and yon. His claims present commercial issues that demand specialized treatment, knowledge and expertise. The Business Court was created because this Court recognized the need to provide a forum for such complex business disputes that involve significant issues of law as well as contested issues of fact. Only a judge with specialized business structure training can appropriately unpack Plaintiff's jumbled allegations and novel theories of liability, damages, and equitable relief.

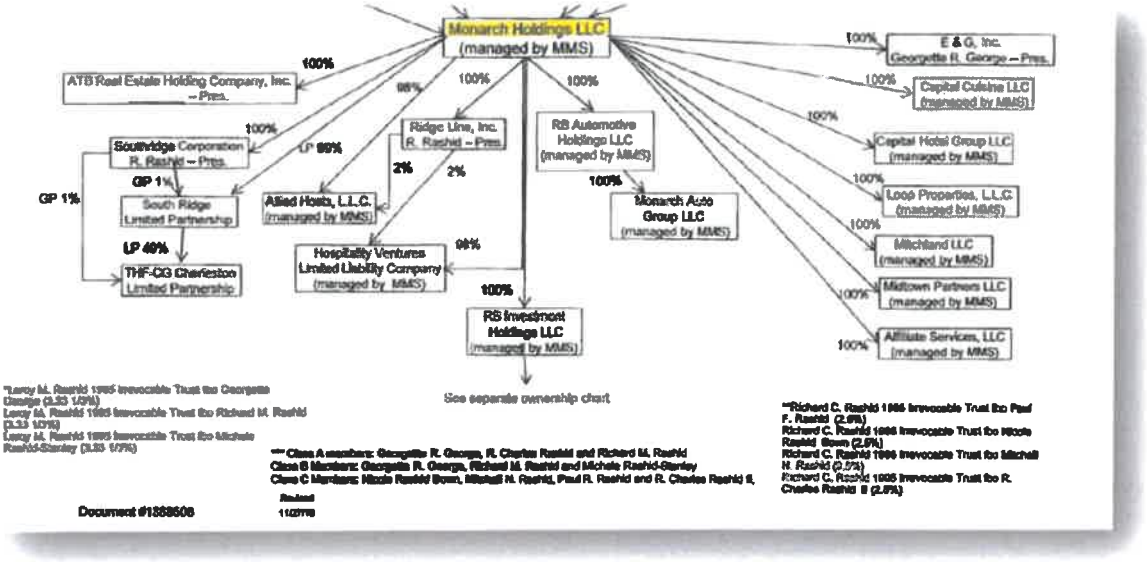
Moreover, referral of this case to the Business Court will not disrupt the progress of this proceeding or prejudice the parties. Due to early motions to dismiss (and related scheduling issues), COVID-19, and an intervening bankruptcy by one of the defendants, discovery is still in its early stages.

After years of hearing concerns about the legal climate faced by businesses in our State, the Legislature formally recognized the "need for a separate and specialized court" with "specific jurisdiction over actions involving" commercial issues and disputes and authorized the Supreme Court of Appeals to establish the Business Court. W. Va. Code § 51-2-15. Simply put, the Legislature and Supreme Court of Appeals created the Business Court to oversee complex business cases just like this one, as Plaintiff's amended complaint now makes explicitly clear. In fact, it is difficult to imagine what case *would* be suitable for Business Court if this case were *not*.

B. <u>The Business Entities at Issue:</u>

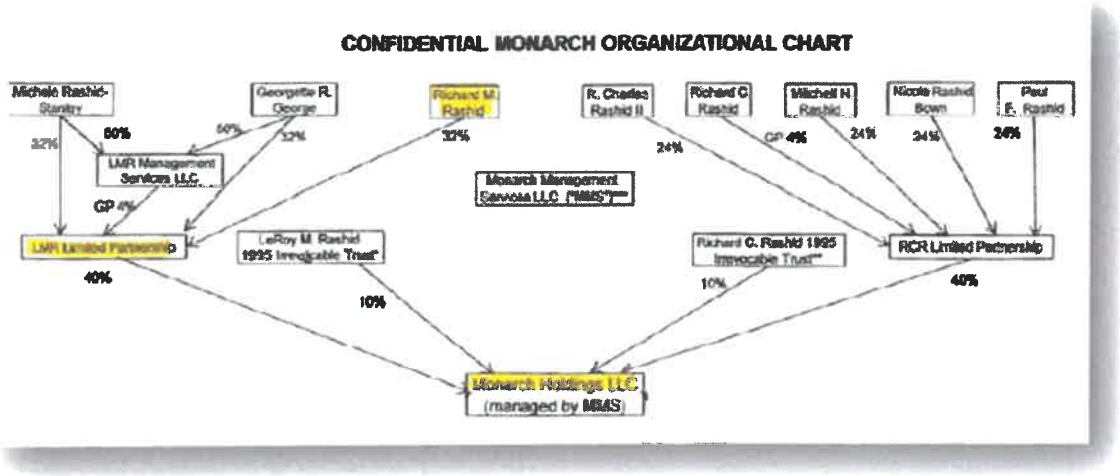
In order to frame the issues discussed in more detail below, it is first important to review the complex organizational chart that outlines the relationships between the various business entities at issue. **Exhibit 2** (Organizational Chart for Monarch). As reflected in the organizational

chart, Monarch is a holding company that owns numerous businessentities. **Exhibit 3**, (8/1/19 Compl.), ¶ 1.[1] See Exhibit 2 excerpt below, showing entities owned by Monarch:



Monarch is managed by an entity that it does not own, Monarch Management Services, LLC ("MMS"). Ex. 3, ¶¶ 62(a) – (c), and 112. Monarch is owned by four distinct entities that split the equity equally between the families of co-founders LeRoy M. Rashid and Dr. Richard C. Rashid. *Id.* at ¶¶ 35 - 37. Those entities are: (1) LMR Limited Partnership ("LMR LP") (40%), (2) LeRoy M. Rashid 1995 Irrevocable Trust ("LMR Trust") (10%), (3) RCR Limited Partnership ("RCR LP") (40%), and (4) Richard C. Rashid 1995 Irrevocable Trust ("RCR Trust") (10%). *Id.* Since 1993, Plaintiff has been and remains a limited partner in LMR Limited Partnership, holding a 32% limited partnership interest. *Id.* at ¶¶ 11, 39 (see highlighting below). He owns no direct interest in Monarch or any of its owned business entities. See excerpt from Exhibit 2 below:

[1] Plaintiff's Complaint also references the businesses "under the umbrella of Monarch Holdings ..." as the "Family Business." *Id.* (emphasis added).



C. Procedural History:

Plaintiff filed his Complaint on August 1, 2019. (Ex. 3). That 42-page Complaint contained 181 paragraphs and alleged eight counts. As summarized by Plaintiff, it set forth "a dispute over the ownership rights and management of a series of closely held, family businesses …" *Id.* at ¶ 1. However, he diluted this narrative with estate-sounding claims (improperly pled against beneficiaries) and a false assertion that his employment claims were principal.

Defendants' early Motion to Refer to Business Court focused on the business allegations of the case expressed in the first four counts of Plaintiff's original complaint, which allege breach of fiduciary duty (Count I), tortious interference with his business expectancy (Count II), breach of the LMR LP Partnership Agreement (Count III), and conspiracy to perpetuate the breaches of fiduciary duty and deprive Plaintiff of the "incidents of ownership" (as Plaintiff defines them)

(Count IV).[2] Defendants judged that practically every aspect of Counts I through IV relate squarely to corporate "transactions, operations, or governance." *See* T.C.R. 29.04(a)(1).[3]

Timely motions to dismiss were filed by all defendants except Affiliate Services, LLC, which answered the relatively straightforward employment discrimination claims against it. In his original complaint, Plaintiff did not seek relief under *any* veil piercing theory, much less under the novel theories he now asserts. He also did not demand, as he does now, a *de facto* or *de jure* redemption of his limited partnership interests in LMR LP, or an award of damages in the amount of the value of his limited partnership interests. *Id.* Even so, given the centrality of Plaintiff's commercial claims to the dispute and Plaintiff's own description of his action as "a dispute over the ownership rights and management of a series of closely held, family businesses[,]" the Defendants filed a Joint Motion to Refer to Business Court on September 20, 2019.

In hindsight, the Motion was premature because the Plaintiff had not yet "played his hand" to allege the collection of theories, damages and equitable remedies that he now asserts. Keeping that powder dry, Plaintiff opposed that referral motion two days before responding to the Defendant's pending Motions to Dismiss. He argued that his claims did not involve transactions, operations, or governance between business entities, and the principal claims revolved around an

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[2] Apart from disputing corporate actions and the interplay between the business entities, Plaintiff alleged corporate and commercial entity wrongdoing, including: (a) paying excessive salaries; (b) making poor investments and/or loans …; (c) making select loans or distributions to support personal projects …; (d) using company funds to pay for personal travel …; (e) forbearing on insider loans on a preferential basis; (f) making and advocating of select risky investments without agreed-upon criteria …; and (g) requiring monetary gifts …" *Id.* ¶ 88. Plaintiff also claimed wrongdoing related to: (1) revisions to the MMS Operating Agreement that added other co-owners as members of MMS (*id.* ¶ 113); amendments to the operating agreement for LMR LP's general partner (*id.* ¶¶ 119-122); and allegedly improper payment of company consultants and agents (*id.* ¶¶ 124-125).

[3] Plaintiff also alleges Count V (discrimination); Count VI (failure to accommodate); Count VII (aiding and abetting); and Count VII (Outrage), which incorporates all counts.

"employee suit."[4] Thus, he urged that no specialized judicial knowledge was required. Then Chief Justice Walker accepted this representation, denying the Defendants Motion to Refer to Business Court on October 18, 2019, saying only that the case "does not require specialized treatment to improve the expectation of a fair and reasonable resolution …"

Plaintiff's subsequent filings and statements in the Circuit Court refute his initial assertions. And it appears from his subsequent actions that he attempted to orchestrate this result by being purposefully obtuse about the ultimate relief he was seeking and the theories of such liability. In this regard, the timing of Defendants' referral motion was unfortunate because Plaintiff's assertions in opposition to Defendants' Motions to Dismiss ("Opposition") just days later put a much bolder emphasis on some of the camouflaged and novel business liability theories tucked within his original Complaint. **Exhibit 4**. For example, while the Complaint was silent as to *any* allegations against certain business entity defendants (LMR LP, its general partner, LMR Management Services, LLC ("LMR Management"), Plaintiff's Opposition asserted that these defendant entities were vicariously responsible for the fiduciary breaches of their limited partners and members, respectively under a *respondeat superior* theory because these companies act "through" the named individual defendants. *Id.* at 21 – 22.[5] Plaintiff's Amended Complaint now asserts the opposite – that the same individual defendants *caused*or *used* the business entities to carry out their alleged breaches of fiduciary duty. Ex. 1, ¶¶ 229 – 230.

The parties were delayed in arguing their respective motions to dismiss until March 4, 2020 – when the Circuit Court held the one-and-only hearing that has occurred in this case. At that

[4] T.C.R. 29.04(a)(3).

[5] While there were no allegations in the Complaint against such business entities, Plaintiff argued that his Complaint *did* seek relief against them because his Complaint alleged that certain individual defendants acted "individually and … as members, partners, or limited partners" of such entities. *Id.*, citing Ex. 3 at 32 (Count I "Wherefore" clause).

hearing, the Defendants sought to explain the various business entity forms at issue and the distinctions and different code provisions that apply. In this lengthy effort, Defendants attempted to explain the complex organization of Monarch's business and its ownership structure, the role of the entity defendants within such frameworks, the relationships between entities and between indirect owners and entities, what contexts could give rise to fiduciary relationships, and what such duties were under controlling West Virginia business (statutory) law. **Exhibit 5**, 3/4/20 Hearing Transcript, Tr. 12:21 – 51:10; Tr 103:8 – 108:6; Tr. 108:18 – 112:23; Tr. 114:6 – 120:1.

Plaintiff's counsel responded by acknowledging the obvious: *"a lot of judges don't necessarily see these kind of cases ..." Id.* Tr. 127:15 – 16. He then further blurred any distinction between the various entities, business structures, and operative code sections by calling the case a "standard ***shareholder*** complaint" – even though Plaintiff is not a shareholder in anything related to this case. *Id.* Tr. 134:16 – 17. He advised the Circuit Court that the case was "exactly the same" as *Tri-State Petroleum Corp. v. Coyne*, 240 W. Va. 542 (2018).[6] *Id.* Tr. 132:11 – 19, a case in which the Supreme Court's analysis turned solely on law applicable to corporations.

After hours of hearing and arguments relating to these various business entities, Judge Webster expressed her discomfort with the subject matter, remarking, "If the parties would like me to join in asking the Supreme Court to reconsider the Business Court, I'll be glad to do so." *Id.* Tr. 169:15–17). She then denied all but one of the motions, noting that she had read the syllabus points in *Tri-States* during brief recess – which she then quoted – all relating to the fiduciary duties

[6] There was some sleight-of-hand by Plaintiff in this regard. He emphasized that *Tri-States* involved a limited partnership to liken that case to this one, but ignored that the Court applied corporate principles from *Masinter v. WEBCO Co.*, 164 W. Va. 241 (1980), another closely-held corporation case, and further ignored that the Court's discussion of fiduciary duty applied only to one of the corporations at issue in that case. *See Tri-State*, 240 W. Va. at 547. The case does not mention fiduciary duties of limited partners or limited partnerships.

owed by officers, directors, and majority shareholders of *corporations*. *Id.* Tr. 177:16 – 179:24. No order has been entered relating to these rulings.

Discovery commenced thereafter – only to be significantly impacted by the COVID-19 restrictions. As argued by Plaintiff in support of his Motion to Amend, "[t]he parties had completed only very limited discovery before this matter was stayed when Affiliate Services filed Chapter 11 Bankruptcy in July 2020." Ex. 1, Motion to Amend, ¶ 5. Although the case had been removed to Bankruptcy Court during the pendency of that process, it was remanded by order dated January 21, 2021. *Id.* ¶ 6.

In the intervening period, however, Plaintiff took the position – for the first time – that he was entitled to damages/relief in the amount of the value of his interests in LMR LP, forced buyout of his LMR LP interests, and/or dissolution of LMR LP. In response, the Defendants filed a Rule 12(c) Motion for Partial Judgment on the Pleadings on February 26, 2021, arguing that such relief was not available because it had not been pled. **Exhibit 6**. On March 5, 2021, Plaintiff responded by moving to amend his Complaint to at least partially assert such claims for relief and more. Ex. 1. Accordingly, this motion to Refer to Business Court is timely.

LEGAL STANDARD

The Business Court is the forum for "Business Litigation," which is defined as a Circuit Court action "in which . . . the principal claim or claims involve matters of significance to the transactions, operations, or governance between business entities" and "presents commercial . . . issues in which specialized treatment is likely 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[.]"

See T.C.R. 29.04(a)(1); 29.06.[7] Parties and judges alike may seek referral of Business Litigation to the Business Court upon a motion to the Clerk of the Supreme Court of Appeals. TC.R. 29.06(a).

ARGUMENT

A. **Plaintiff's Amended Complaint provides more than ample reason to refer this case to Business Court:**

(1) Claims against new Defendant, Monarch, and its "parents, affiliates, and subsidiaries":

Plaintiff's Amended Complaint adds Monarch as a defendant. As illustrated in Exhibit 2 and explained in the Complaint, Monarch owns numerous entities; it is owned by four entities; and, it is managed by a separate company in which it holds no ownership interest, MMS. Plaintiff now asserts that **"Monarch Holdings and its parents, affiliates, and subsidiaries, ... should be held liable for the debts and obligations of the others ..."** Ex. 1, Am. Compl., ¶ 202. This bold allegation seeks regular veil piercing "upstream" from Monarch's subsidiaries to Monarch. *Id.* at 197. However, it then seeks to extend that upstream veil piercing another level to Monarch's "parents" (i.e., LMR LP, LMR Trust, RCR LP, and RCR Trust) – *double veil piercing*. It also seeks to impose that veil piercing horizontally among all of Monarch's "subsidiaries."

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[7]The *Preamble* to this rule states that "[i]n accordance with West Virginia Code § 51-2-15, there is hereby adopted a process for efficiently managing and resolving litigation involving commercial issues ***and*** disputes between businesses." Plaintiff previously argued that he was only an individual, so the Rule did not apply, but he was incorrect. As clarified by the context and body of Rule 29, the statute and the rule are grammatically disjunctive on this issue. This is evident from the language and further evidenced by the numerous cases that have been referred involving individuals. *See, e.g. Mangus Coal Company, Inc. v. Jennings* (12-C-63 Preston County); *Rashid v.Tarakju* (97-C-725 Kanawha County); *Marrara, et al. v. Marrara, et al*(13-C-198 Preston County); *Pauley v. Appalachian Stream Restoration, et al.* (914-C-7 Lincoln County); *Parmer v. United Bank, Inc, et al.* (14-C-374 Monongalia); *Frame, et al. v. Holcomb, et al.* (15-C-699 Kanawha); *Mentus v. Washenitz, et al.* (15-P-63 Marion County); *Stephen R. Peters, et al. v. J&J Land Properties, LLC* (14-C-36 Lewis County); *Millie Tomblin v. Eagle Pipeline, LLC, et al.* (16-C-34 Wayne County); *Keith W. Atkinson v. General Glass Company, Inc., et al.*; *Martin N. Holley v. Lydia M. Beirne, et al.*; and *Bernard Holliday, et al. v. William Toney, et al.*

Plaintiff's novel theories get even more complicated as his Amended Complaint also seeks multiple levels of *reverse* veil piercing. For example, Count I (breach of fiduciary duty) is alleged against LMR LP (a 40% owner of Monarch) and LMR Management (the general partner in LMR LP). *See* Ex. 3, at 32 (Count I "Wherefore" clause). Since LMR LP is an owner of Monarch, these allegations (as amended) seek to accomplish insider reverse veil piercing – imposing liability on Monarch for the alleged vicarious liability of its 40% owner.[8] That owner is further alleged to be responsible for the actions of its limited partners and general partner (*double reverse* veil piercing). And, that owner's general partner (LMR Management) is, in turn, alleged to be responsible for the alleged fiduciary breaches of its managing members (*triple reverse* veil piercing).

The Amended Complaint goes even further, alleging that Monarch is responsible for the fiduciary breaches of its manager – MMS – for which there is no ownership link at all (i.e., imaginary-veil piercing). And that manager (an LLC) is, in turn, alleged to be responsible for the alleged fiduciary duties of its members (including non-managingmembers).

These issues alone raise profound significance to "the transactions, operations, or governance between business entities." T.C.R. 29.04(a)(1). Can a holding company be liable for the alleged fiduciary breaches by its 40% owner? Can that owner, in turn, be held liable for the alleged fiduciary breaches of its limited partners or members of its general partner? And can a holding company like Monarch be held liable for the alleged vicarious breaches of fiduciary duty by its non-owned manager?[9]

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[8] No West Virginia state court has recognized this doctrine.

[9] No West Virginia cases have recognized such a liability, and other courts have expressly rejected it. *See, e.g., Delfin Group USA, LLC v. Baghdasarian,* No. 1:16-cv-1594-WMR, 2019 WL 1903427, *1 (N.D. Ga. Mar. 20, 2019) ("It is well-settled that a limited liability company owes no fiduciary duty to its members, either directly or vicariously, for actions taken by its manager.") (internal quotation omitted); and *ULQ, LLC* v. *Meder,* 666 S.E.2d 713, 718 (Ga.

(2) Additional disregard of LMR Management as an entity and governing documents:

Plaintiff's Amended Complaint disregards all business entities and forms where convenient. For example, he alleges that when LMR Management acts, it is really Georgette George and Michele Rashid-Stanley acting "as limited partners controlling the general partner." Ex. 1, Am. Compl. ¶212. Applying this theory, he asserts that these limited partners "owe fiduciary obligations to Plaintiff. *Id.* However, these individuals are members and managers of LMR Management – which is the general partner. Even if they were acting individually, the controlling limited partnership agreement for LMR LP provides that "A General Partner who is also a Limited Partner will act for the Partnership in his, her, or its capacity as General Partner alone." Ex. 6, Ex. 2, Art 18. Such allegations emphasize the relevance of the governance documents that establish the relationships between LMR LP and LMR Management.

(3) Novel damages and theories of entity liability:

The Complaint alleges that Monarch holds "well in excess of $200 million in real estate …" Ex. 3, ¶ 30. Extrapolating this (disputed) figure out to Plaintiff's ownership in LMR LP (which is a 40% member in Monarch), Plaintiff alleges a value of approximately **$25,600,000** for his limited partnership interest in LMR LP – which he still owns.[10] Plaintiff's Amended Complaint seeks judgment "on all Counts and … damages in the amount equal to the value of [his] interest in the Family Business [i.e., Monarch and its subsidiaries] …" Ex. 1, Am. Compl., at 12 (first bullet). Thus, under Plaintiff's articulated relief in bullet one, ALL defendants – regardless of the

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App. 2008) (holding that "the manager [of an LLC] is not acting as an agent under the control of the LLC that would make the LLC responsible for his actions.")

[10] $200,000,000 x 40% = $80,000,000; and $80,000,000 x 32% = $25,600,000. At the March 4, 2020 hearing, Plaintiff's counsel also asserted that Plaintiff's interests were "worth twenty-six million dollars." Ex. 5, Tr. 147:19-24.

nature of the claims against them – are alleged to be liable for damages in the value of Plaintiff's ownership interests.

He later specifically demands this measure of damages against Monarch, MMS, LMR LP, and LMR Management as the measure of damages under Count I (breach of fiduciary duty). *Id.* (second bullet). Thus, according to Plaintiff's Amended Complaint, these business entities are exposed to liability for the value of Plaintiff's ownership interests in LMR LP – which he gets to keep.

Plaintiff seeks such astonishing relief because LMR LP's Partnership Agreement intentionally and strictly limits the transferability of partnership interests, allowing transfer only by bequest (transfer upon death to a blood relative), incapacity (recognizing rights under a power of attorney), or estate planning transfers (limited to blood relatives). Ex. 6, Ex. 2, Art. 19. Thus, he attempts to construct a damages theory that would potentially allow him to realize the consideration for a transfer of such interests without actually transferring them. Moreover, if such an unauthorized transfer were to occur and LMR LP was forced to recognize it as valid, then LMR LP would be entitled to force the redemption of such interests at the "fair market value" determined by an appraiser selected by LMR LP – with the purchase price spread over 15 equal annual payments. *Id.*

In addition to raising matters requiring specialized treatment, this new "theory" raises substantial entity governance issues that impact directly on the standards of evidence and expert testimony as to valuations. Can Plaintiff impose liability on these other entities for something that his own governing document renders impossible? And at a different valuation scale? And can he simply "skip" the entity in which he owns an interest and jump to Monarch?

(4) Alternative equitable remedies:

(a) Redemption:

Alternatively, Plaintiff's Amended Complaint seeks "a redemption at law or in equity, at fair value, of Plaintiff Richard Rashid's interest in LMR LP and the Family Business ..." Ex. 1, Am. Compl., at 13, (second bullet). The "alternative" nature of such relief confirms that Plaintiff's primary and unprecedented theory of liability would seek to hold LLC entities like Monarch liable for damages in the amount of the value of interests held by their members' owners – all while that member's owner continues to keep his interests.

This theory also seeks to bypass the controlling statutory provisions governing West Virginia limited partnerships. *See* W. Va. Code § 47-9-33 (withdrawal of a limited partner – if allowed – upon not less than six months' prior written notice to each general partner).[11] Plaintiff has previously indicated a desire to perhaps shoe-horn this redemption remedy into a statutory dissolution action (W. Va. Code § 47-9-45) as augmented by the holdings of this Court in *Masinter v. WEBCO Co.*, 164 W. Va. 241, 247 - 255 (1980).[12] However, even if such theories were to apply here to a limited partnership, the operative agreement prohibits dissolution. Ex. 6, Ex. 2, Art. 15. And Plaintiff has not alleged a claim for dissolution under W. Va. Code § 47-9-45 in any event. However, his Amended Complaint does borrow some words from § 47-9-5,[13] but in a way that utterly misses the code provision – placing the focus entirely on Plaintiff rather than the entity. Ex.

[11] The Complaint and Amended Complaint allege no such notice because none has occurred.
[12] *Masinter* recognized the equitable power of courts to grant alternative relief in response to a complaint for corporate dissolution. By subsequent opinion, this Court held that such alternative equitable remedies were not available without first alleging a statutory claim for corporate dissolution. *Smith v. Evans*, 209 W. Va. 340, 344, n. 9 (2001).
[13] W. Va. Code § 47-9-45 provides: "On application by or for a partner, the appropriate circuit court may decree dissolution of a limited partnership whenever it is **not reasonably practicable to carry on the business in conformity with the partnership agreement**."

1, Am. Compl. ¶ 234.[14] Thus, Plaintiff's Amended Complaint raises significant issues about entity governance in West Virginia and whether plaintiffs can bypass statutory procedures and rules in favor of a generic claim for "redemption."

(b) Appointment of receiver:

Alternatively, Plaintiff's Amended Complaint also seeks appointment of an "interim and permanent independent receiver to run the day-to-day operations of the Family Business [i.e, Monarch and its owned entities]." Ex. 1, Am. Compl., at 13, (first bullet). Recall that Plaintiff is not a direct owner of Monarch or any of the entities that company owns. Rather, he is a limited partner in LMR LP, which owns a 40% interest in Monarch. Accordingly, his Amended Complaint seeks alternative relief that would allow him (as a 32% limited partner of a 40% member) to compel the appointment of a receiver to run the day-to-day operations of Monarch – which his counsel describes as the "Big Kahuna."[15] Such a receiver would also run the day-to-day operations of Monarch's LLC subsidiaries, and its corporate subsidiaries that are otherwise subject to a board of directors. This relief would usurp Monarch' rights as an owner and void the terms of its operating agreement by which it reserves the right to appoint its own manager. It would also disregard the operating agreements for all of Monarch's owned and managed LLC subsidiaries as well as the bylaws of the corporations that Monarch owns (e.g., Ridge Line, Inc.). This raises substantial issues regarding the governance between entities.

(5) Other commercial issues requiring specialized knowledge orexpertise:

(a) Outside professionals:

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[14] "Not reasonably practicable or equitable **for Plaintiff to have to carry on** in LMR LP with his fellow partners." Ex. 1, Am. Compl. ¶ 234. This is at best a hybrid distortion of the West Virginia statute, which goes unreferenced in any event.

[15] Plaintiff's counsel described Monarch as "the Big Kahuna" at the hearing on March 4, 2020. Tr. 136:16-17.

Plaintiff's Amended Complaint also seeks to impose all manner of liabilities on outside professionals as well as limited partners, members, and managers. Specifically, Plaintiff alleges sweeping liability against Monarch' outside general counsel, Kent George (Robinson & McElwee), and its business consultant, Thomas Davidow, Ph.D. *See* Ex. 3, ¶¶ 23, 80, 83, 93, 147 (Count II), 154 (Count IV), 175 (Count VII), 179 (Count VIII); and Ex. 1, Am. Compl., at 12 (first bullet). The relationship between these professionals and the business entities is also in dispute—raising questions as to whether outside consulting entities and individuals can conspire or aid-and-abet the business entities who hire them. If Plaintiff's sweeping theories are accurate, West Virginia businesses can expect a significant chilling effect on the availability and pricing for such services.

(b) Owners:

It should be clear from the Plaintiff's original and Amended Complaint that he tests the very furthest depths of potential liability for alleged breach of fiduciary duty (Count I). He applies it to limited partners and members of limited liability companies without regard to the terms of the operative agreements or the statutory framework for such entities. And, as noted above, his Amended Complaint then attempts to flow the liability for such alleged breaches downstream to entity after entity. Plaintiff's Conspiracy counts also squarely invoke the intra-corporate conspiracy doctrine that bars claims that agents of the various business entities conspired with one another.

(c) Valuation expertise:

Plaintiff's new claims invoke complicated valuation issues. He seeks damages in the amount of the "value" of his interests in "the Family Business." But he has no direct ownership in Monarch or its subsidiaries. In this context, he seems to purposefully avoid mentioning the entity

in which he actually owns an interest – LMR LP. He does this because LMR LP is a minority owner of Monarch; and Plaintiff is, in turn, a minority owner of LMR LP. These tiers of minority ownership necessarily compel minority discounts that would be applied at each level. Additionally, the LMR LP Partnership Agreement contains terms that place further limitations *vis-à-vis* redemption rights at terms favorable to the limited partnership. Even Plaintiff alleges that his claims are tethered by his "reasonable" expectations. Ex. 1, ¶ 195.[16] Here, the tiers of ownership, terms of applicable governing documents, and history or dealings between these entities inform such an analysis. Thus, substantial familiarity with business entities, governing documents, and forensic accounting valuations will be required in order to judicially navigate such waters without error.

(d) Standing: individual vs. derivative claims:

Plaintiff's Amended Complaint raises another significant commercial issue involving these business entities: *standing*. Plaintiff attempts to treat all business entities in this case as one, and all alleged wrongdoing as directed at him personally rather than the entity(ies) at issue. His Amended Complaint disregards all distinctions between derivative and individual claims. For example, the Amended Complaint alleges breaches against Plaintiff for MMS, Monarch or its subsidiaries: (1) passing resolutions, amending bylaws, and making corporate changes (¶ 208(d)); (2) borrowing money (¶ 208(e)); (3) obtaining business risk insurance (¶ 216); (4) retaining counsel and spending funds on defense costs (¶ 219); (5) authorizing Affiliate Services, LLC to

[16] *See Brodie v. Jordan*, 857 N.E.2d 1076, 1081 (Mass. 2006). In *Brodie* the Massachusetts Supreme Court reversed a forced buyout because "it placed the plaintiff in a significantly *better* position than she would have enjoyed absent the wrongdoing, and well exceeded her reasonable expectations of benefit from her shares. The Court noted the "defining" aspect of a closely held entity was "the absence of a ready market." *Id.* Thus, there was "nothing in the background law, the governing rules of this particular close corporation, or any other circumstance that could have given the plaintiff a reasonable expectation of having her shares bought out." *Id.*

file for Chapter 11 bankruptcy protection (¶ 222); (6) expending attorney's fees within the Affiliate bankruptcy (¶ 225); and (7) even the choice of attorneys for such (¶ 226). To the extent that any claims exist for such things, they would be claims of the entities – not those of Plaintiff. Similar problems exist with the Plaintiff's original complaint, but that stream becomes a river in the Amended Complaint.[17]

The same issue is present in Plaintiff's new allegations attempting to assert claims for alleged distributions that did not occur to LMR Trust, an entity that is not a party. Ex. 1, Am. Compl., at 12 (first bullet) ("damages for failure to make distributions to the LMR Irrevocable Trust").[18] These allegations raise specialized issues requiring careful distinction between claims that may be asserted individually vs. those that may only be asserted on behalf of the entity at issue.

(e) Counterclaims that will likely flow from Amended Complaint:

Plaintiff's Complaint also raises new matters that will almost certainly require counterclaims. For example, he asserts for the first time that he has assigned interests to his former wife, Dr. Jane Maloof. Ex. 1, Am. Compl. ¶¶ 203 – 206. This is extraordinary because the LMR LP Partnership Agreement provides that "neither title nor beneficial ownership of a limited partnership interest may be transferred or encumbered …" Ex. 6, Ex. 2, Art. 19. This issue squarely invokes the enforceability of governance documents.

B. The employment claims in Plaintiff's action are not "principal" claims.

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[17] Similar issues exist with Plaintiff's Amended Complaint allegations relating to LMR Management but even more removed because Plaintiff owns no interest in LMR Management). See Am. Compl., ¶¶ 213 - 215 (funding litigation, allegedly submitting attorneys' fees to insurance).

[18] Plaintiff is a Co-Trustee for the LMR Trust interests in which he holds a beneficial interest. Neither the LMR Trust nor any of its trustees are named as parties in this action.

The "principal claims" asserted in the amended complaint are "commercial" and involve "transactions, operations and governance" between the companies set forth on Exhibit 2 (i.e., Monarch, its subsidiaries, and the entities that own it). T.C.R. 29.04(a)(1). The issues presented are novel and require specialized treatment by to fulfill the "expectation of a fair and reasonable resolution of the controversy." T.C.R. 29.04(a)(2). The Business Court is undoubtedly the only forum that is staffed and equipped to adjudicate Plaintiff's new and extraordinary allegations and demands for relief that go directly to core issues like the contractual continuity of ownership, governance and operation of business organizations in our State.

If history is a valid indicator, Plaintiff may attempt to skirt this obvious conclusion by again asserting that his *principal* claims involve "employee suits" – and, therefore, the case should be disqualified under T.C.R. 29.04(a)(3). However, that is patently not the case for a number of reasons – and the shelf-life for that argument has long ago expired. As just one obvious metric, Plaintiff filed a proof of claim against Affiliate Services, LLC in its bankruptcy quantifying his employment damages at $4.8 million. **Exhibit 7**. While the Defendants maintain that such quantification is vastly overstated – and not based in law or fact, it pales in comparison to the other relief now sought by Plaintiff. His Amended Complaint seeks damages for the value of his LMR LP limited partnership interests – which he claims to be at least **$25,600,000**. That is more than five times the value he assessed on his employment claims.

Thus, the Amended Complaint removes any doubt that the "principal" claims asserted by the Plaintiff are for breach of fiduciary duties and associated claims. Moreover, his claim for relief seeks to spread liability for such "damages" to all defendants as well as other entities who are not even yet present (e.g., LMR Trust, RCR LP, and RCR Trust). The audacity of such an effort is breathtaking. And a specially trained judge with expertise in governance documents and

commercial agreements will be necessary to untangle the puzzlement that plaintiff seeks to forge from these complex Operating Agreements, Partnership Agreements, related statutory provisions, and legal standards/theories.

C. No party will be prejudiced by referral to Business Court.

No party will be prejudiced, nor will efficiencies be lost by referral to Business Court at this time. Plaintiff's Motion to Amend makes this point abundantly clear. Ex. 1, Motion to Amend ¶5. Indeed, if the case is to proceed past 12(b)(6) motions on the new sweeping damages and relief claims, a complete appraisal and valuation will be required. Discovery is only just starting.

D. Timing for this motion is appropriate even though answers have not been filed to the Amended Complaint.

For "good cause," Trial Court Rule 29 provides that a motion to refer to Business Court may be filed "sooner" than "the time to answer the complaint has expired." W. Va. T. Ct. R. 29.06(a)(2). Here, the good cause for moving to refer now—as opposed to waiting until after the time to answer Plaintiff's new amended complaint has expired—is that most or all Defendants will be filing substantive Rule 12(b)(6) dismissal motions in lieu of answering that raise legal questions of critical importance to the transactions, operations, and governance between business entities.

Plaintiff's Amended Complaint presents issues at the Rule 12(b)(6) stage that will require the Circuit Court to decide at the outset complex questions of law that directly "involve matters of significance to the transactions, operations, or governance between business entities." W. Va. Tr. Ct. R. 29.04(a)(1). Decisions on these substantial dispositive motions will be necessary before the

Defendants are required to file an answer. The Business Court is the ideal forum to consider and rule upon these dispositive motions.[19]

CONCLUSION

For these reasons, the joint motion to refer to Business Court should be granted.

Respectfully,

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[19] Counsel is not aware of any additional related cases that are pending or may be filed in the future.

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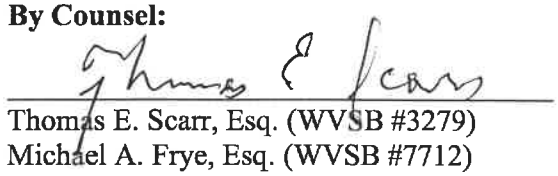

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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

RICHARD M. RASHID,

Plaintiff,

v.

GEORGETTE R. GEORGE, an individual;
RIDGE LINE, INC., a West Virginia corporation;
AFFILIATE SERVICES, LLC, a West Virginia limited liability company;
LMR LIMITED PARTNERSHIP, a West Virginia limited partnership;
LMR MANAGEMENT SERVICES, LLC, a West Virginia limited liability company,
MONARCH MANAGEMENT SERVICES, LLC, a West Virginia limited liability company;
KENT GEORGE, an individual;
R. CHARLES RASHID, an individual;
MICHELE RASHID-STANLEY, an individual;
THOMAS D. DAVIDOW, an individual; and,
MONARCH HOLDINGS, LLC, a West Virginia limited liability company,

Defendants.

Kanawha County Circuit Court
Civil Action No. 19-C-779

Hon. Carrie Webster

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing "The Defendants' Joint Motion to Refer to Business Court" was served via first-class mail on March 24, 2021 to the following:

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