

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

JPMORGAN CHASE BANK, N.A.,

SCA EFiled: Aug 29 2022  
03:12PM EDT  
Transaction ID 67987900

*Petitioner/Defendant,*

v.

BOONE COUNTY CIRCUIT COURT  
CIVIL ACTION NO. 22-C-56

TURNER EXCAVATING, INC.,

The Honorable Stacy L. Nowicki-Eldridge

*Respondent/Plaintiff,*

BLACKHAWK SUB, LLC,  
1<sup>ST</sup> TRUST BANK, INC., and  
JOHN DOE,

*Respondents/Defendants,*

TO: THE HONORABLE CHIEF JUSTICE

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

Pursuant to Rule 29.06 of the West Virginia Trial Court Rules, the Petitioner, JPMorgan Chase Bank, N.A. (“Chase”), by counsel, Andrew P. Smith and the law firm of Steptoe & Johnson PLLC, respectfully requests the above-styled case be referred to the Business Court Division for all further proceedings.

Rule 29.04 of the West Virginia Trial Court Rules contemplates that claims regarding significant transactions and operations between business entities are eligible for referral to the Business Court Division if beneficial. For the reasons set forth below, Plaintiff respectfully requests transfer to the Business Court Division.

**I. INTRODUCTION**

This case involves a commercial contract for mining services between two business entities, the payment of funds between those entities via electronic funds transfer between two financial institutions, complex technical systems relative to wire transfer payment systems, and

application of a specialized body of law exclusive to commercial transactions. This action is a model case for transfer to the Business Court Division.

## **II. FACTUAL BACKGROUND**

Turner Excavating, Inc. (“Turner Excavating”), a coal mining excavating company, and Blackhawk Sub, LLC (“Blackhawk”), a coal mine operator, entered into a Master Services Agreement in March 2021, by which Turner Excavating agreed to provide excavating services, labor, and equipment to Blackhawk’s coal mines in Boone County, West Virginia. (Compl. ¶¶ 1-2, 11).<sup>1</sup> Blackhawk paid Turner Excavating for its services “on numerous occasions” by wire transfer from Blackhawk’s bank account at 1<sup>st</sup> Trust Bank, Inc. (“Trust Bank”) to Turner Excavating’s bank account at United Bank in Danville, West Virginia. (Compl. ¶ 14). However, Turner Excavating alleges Blackhawk did not pay all monies due under the Master Services Agreement, and as a result, the two entities entered into a Settlement Agreement, by which Blackhawk agreed to pay Turner Excavating monthly installments of \$57,324.62 until the balance was paid in full. (Compl. ¶¶ 15-16).

Turner Excavating alleges Blackhawk made the first payment via electronic transfer from its account at Trust Bank to a Chase bank account “purportedly belonging to an entity known as ‘Belo Consulting’ in Sugarland, Texas.” (Compl. ¶ 18-19). According to Turner Excavating, Chase had identified the account as being either “fraudulent” or “not associated with the plaintiff.” (Compl. ¶ 20). Turner Excavating further claims an unknown entity advised Blackhawk and Trust Bank of this. (Compl. ¶ 21).

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<sup>1</sup> Pursuant to Trial Court Rule 29.06(a), a copy of the complaint, answer, and docket sheet are attached hereto as Exhibits A, B, and C, respectively.

Turner Excavating alleges Defendant Blackhawk “again” wired \$57,324.62 from its account at Trust Bank to the same account at Chase (hereinafter the “Wire Transfer”). (Compl. ¶¶ 20-23). The Complaint alleges Chase accepted the Wire Transfer funds into the account “purportedly belonging to Belo Consulting,” at which time the funds were withdrawn, and the account closed. (Compl. ¶¶ 24-25).

Turner Excavating alleges it not associated with “Belo Consulting,” and further, that Blackhawk, Trust Bank, and Chase failed to call Turner Excavating to determine whether it was “in any way, associated with an entity known as ‘Belo Consulting’ in Sugarland, Texas.” (Compl. ¶¶ 25-26).

In its Complaint, Turner Excavating alleges (1) Blackhawk breached the Master Services Agreement by failing to pay for the excavating services, labor, and equipment provided Turner Excavating provided (Count One); (2) Blackhawk, Trust Bank, and Chase were negligent in their actions with regard to the Wire Transfer because they “knew and/or should have known that [Turner Excavating] was not in any way associated with any entity known as ‘Belo Consulting’ in Sugarland, Texas” (Count Two); (3) Blackhawk, Trust Bank, and Chase committed constructive fraud with regard to the Wire Transfer (Count Three); (4) Defendant John Doe intentionally misrepresented that “Belo Consulting” was the proper entity to receive the Wire Transfer funds on behalf of Turner Excavating (Count Four); and (5) Defendant John Doe was unjustly enriched by the receipt of the Wire Transfer in the amount of \$57,324.62 (Count Five).

Because the issues in this matter are complex and require specialized knowledge regarding payment orders and electronic funds transfers under the Uniform Commercial Code (“UCC”) and the Rules Governing the Clearing House Interbank Payments System, specialized treatment will

improve the expectation of a fair and reasonable resolution of this matter. Accordingly, Chase requests that this matter be transferred to the Business Court Division.

### **III. LEGAL STANDARD**

West Virginia Trial Court Rule 29.06 provides that “[a]ny party . . . may seek a referral of Business Litigation to the [Business Court] Division by filing a Motion to Refer to the Business Court Division with the Clerk of the Supreme Court of Appeals of West Virginia.” Tr. Ct. R. 29.06(a). “Business Litigation” is defined as follows:

(a) “Business Litigation”-- one or more pending actions in circuit court in which:

(1) the principal claim or claims involve matters of significance to the transactions, operations, or governance between business entities; and

(2) the dispute presents commercial and/or technology issues in which specialized treatment is likely to 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; and

(3) the principal claim or claims do not involve: consumer litigation, such as products liability, personal injury, wrongful death, consumer class actions, actions arising under the West Virginia Consumer Credit Act and consumer insurance coverage disputes; non-commercial insurance disputes relating to bad faith, or disputes in which an individual may be covered under a commercial policy, but is involved in the dispute in an individual capacity; employee suits; consumer environmental actions; consumer malpractice actions; consumer and residential real estate, such as landlord-tenant disputes; domestic relations; criminal cases; eminent domain or condemnation; and administrative disputes with government organizations and regulatory agencies, provided, however, that complex tax appeals are eligible to be referred to the Business Court Division.

Tr. Ct. R. 29.04(a).

#### IV. ANALYSIS

##### **A. This action meets the criteria for “Business Litigation” and would benefit from transfer to the Business Court Division.**

All the named parties in this matter are business entities: Turner Excavating, Blackhawk, Trust Bank, and Chase. Per Tr. Ct. R. 29.04(a)(1), the principle claims in this case involve matters of significance to the transactions, operations, and governance between those business entities. Businesses in West Virginia transfer funds daily via electronic funds transfers. And with paper checks become increasingly less frequent, cybercriminals routinely target both payors and payees. Turner Excavating’s claims raise issues regarding the roles and responsibilities in the complex system of payment orders and electronic funds transfers, and whether the Defendants committed negligence and fraud in discharging their obligations.

Per Tr. Ct. R. 29.04(a)(2), this dispute also presents commercial and technology issues in which specialized treatment is likely to improve the expectation of a fair and reasonable resolution of the controversy because of the need for specialized knowledge or expertise in payment orders and electronic funds transfers, as well as familiarity with the West Virginia UCC. W. Va. Code § 46-1-101, *et seq.*, the Rules Governing the Clearing House Interbank Payments System (“CHIPS”), and related CHIPS’ Administrative Procedures. The funds at issue were paid pursuant to a contract between business entities and were transferred between two banks utilizing a complex electronic funds transfer system, whose operation is governed by specific laws —CHIPS and the UCC—which is explicitly designed to (1) “simplify, clarify, and modernize the law governing commercial transactions,” (2) “permit the continued expansion of commercial practices through custom, usage and agreement of the parties,” and (3) “make uniform the law among the various jurisdictions.” W. Va. Code § 46-1-103.

Put simply, this action is a model case for transfer to the Business Court Division. Its resolution will undoubtedly benefit from the specialized knowledge of the Business Court Division, both legal and substantive, regarding interpretation of contracts, financial services, and complex financial systems.

Finally, this action does not fall within any of the disqualifying categories listed in Rule 29.04(a)(3).

WHEREFORE, pursuant to Rule 29 of the West Virginia Trial Court Rules, JPMorgan Chase, N.A., moves the Chief Justice of the West Virginia Supreme Court of Appeals to refer this case to the Business Court Division.

Respectfully submitted this 29<sup>th</sup> day of August, 2022.

**JPMORGAN CHASE BANK, N.A.**

**By Counsel,**

/s/Andrew P. Smith

Andrew P. Smith (WV #12338)

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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

JPMORGAN CHASE BANK, N.A.,

*Petitioner/Defendant,*

v.

TURNER EXCAVATING, INC.,

*Respondent/Plaintiff,*

BLACKHAWK SUB, LLC,  
1<sup>ST</sup> TRUST BANK, INC., and  
JOHN DOE,

*Respondents/Defendants,*

BOONE COUNTY CIRCUIT COURT  
CIVIL ACTION NO. 22-C-56

The Honorable Stacy L. Nowicki-Eldridge

TO: THE HONORABLE CHIEF JUSTICE

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that, this day, the 29<sup>th</sup> day of August 2022, I served the foregoing **MOTION TO REFER CASE TO BUSINESS COURT DIVISION** with attachments by first class mail to the following:

Matthew M. Hatfield  
HATFIELD & HATFIELD, PLLC  
P.O. Box 598  
Madison, WV 25130  
*Counsel for Plaintiff Turner Excavating*

The Honorable Stacy L. Nowicki-Eldridge  
Boone County Courthouse  
200 State Street  
Madison, WV 25130

Samuel R. Burns  
Boone County Circuit Clerk  
Boone County Courthouse  
200 State Street, Suite 202  
Madison, WV 25130

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

/s/Andrew P. Smith

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# EXHIBIT A



IN THE CIRCUIT COURT OF BOONE COUNTY, WEST VIRGINIA

TURNER EXCAVATING, INC., a West Virginia corporation,

Plaintiff,

v.

Civil Action No.: 22-C-\_\_\_\_\_  
Honorable Stacy L. Nowicki-Eldridge

BLACKHAWK SUB, LLC, a Delaware limited liability company; 1<sup>ST</sup> TRUST BANK, INC., a Kentucky corporation; J. P. MORGAN CHASE BANK, a Delaware corporation; and JOHN DOE, an unknown person/entity,

Defendants.

COMPLAINT

Parties, Jurisdiction and Venue

1. Plaintiff Turner Excavating, Inc. is a West Virginia corporation with a principal office address in Boone County, West Virginia and, at all relevant times mentioned herein, conducted business in West Virginia, including Boone County, West Virginia, wherein it engaged in providing excavating services, labor and equipment to the coal mining industry, among other industries.

2. Defendant Blackhawk Sub, LLC ("Blackhawk") is a Delaware limited liability company which at all relevant times conducted business in the State of West Virginia, including Boone County, wherein it engaged in, among other things, the mining and selling of coal, operating both surface and underground coal mines, and providing workers/labor to the coal industry.

3. Defendant 1<sup>st</sup> Trust Bank, Inc. ("defendant Trust Bank") is a Kentucky corporation which at all relevant times conducted business in the State of West Virginia, including Boone County, West Virginia, wherein it engaged in, among other things, the banking and financial services industry.

4. Defendant J. P. Morgan Chase & Co. ("defendant Chase") is a Delaware corporation with offices and places of business throughout the world, including West Virginia, Texas, among many other locations, wherein it engaged in, among other things, the banking and financial services industry.

5. That upon information and belief, an unknown individual(s)/entity(s) opened and/or procured a bank account with defendant Chase under the name of "Belo Consulting" and was otherwise involved in the conduct set forth below. Accordingly, defendant Doe is being named as a party herein to ensure the proper individual(s)/entity(s) are named as a party defendant as further set forth below.

6. Pursuant to W.Va. Code §56-1-1, venue is proper in the Circuit Court of Boone County, West Virginia because the plaintiff supplied excavating services, labor and equipment for use on properties located within Boone County, West Virginia. Additionally, the cause of action occurred, at least in part, in Boone County, West Virginia.

7. Pursuant to W.Va. Code §51-2-2, among other statutes and case law, jurisdiction is proper in the Circuit Court of Boone County, West Virginia.

#### Facts

8. That at all relevant times herein, the plaintiff maintained a bank account with United Bank in Danville, Boone County, West Virginia.

9. Upon information and belief, defendant Blackhawk, at all relevant times herein, maintained a bank account and/or otherwise paid vendor(s) and service provider(s), including the plaintiff, through an account with defendant Trust Bank.

10. Upon information and belief, a fictitious entity known as "Belo Consulting" maintained and/or held an account with defendant Chase Bank in Sugarland, Texas.

11. That on or about March 17, 2021, the plaintiff and defendant Blackhawk entered into a Master Services Agreement ("Agreement") wherein the plaintiff would provide excavating services, labor and equipment to various coal mines owned, operated, managed and/or controlled by defendant Blackhawk located in Boone County, West Virginia, among other places in this State.

12. The plaintiff provided the excavating services, labor and equipment unto defendant Blackhawk at various coal mines in Boone County, West Virginia on various dates through June, 2021.

13. That the plaintiff submitted invoices to defendant Blackhawk for the above-referenced excavating services, labor and equipment provided at various coal mines in Boone County, West Virginia.

14. Defendant Blackhawk paid the plaintiff on numerous occasions via wire transfer from its account maintained and/or held at defendant Trust Bank to the plaintiff's bank account at United Bank in Danville, Boone County, West Virginia (i.e., defendants Blackhawk and Trust Bank were aware of the plaintiff's banking information including, but not limited to, the applicable routing number and account number).

15. Defendant Blackhawk did not, however, pay all monies due the plaintiff for the remaining invoices for the said services.

16. That on or about October 26, 2021, the plaintiff and defendant Blackhawk entered into a Settlement Agreement wherein the said defendant agreed to pay the plaintiff in monthly installments in the amount of Fifty-Seven Thousand Three Hundred Twenty-Four Dollars and Sixty-Two Cents (\$57,324.62) until the amount owed was paid in full.

17. That pursuant to the terms of the above-referenced Settlement Agreement, the defendant was to make its first monthly installment on November 1, 2021.

18. Upon information and belief, defendant Blackhawk did not make the initial payment of Fifty-Seven Thousand Three Hundred Twenty-Four Dollars and Sixty-Two Cents (\$57,324.62) to the plaintiff or unto the plaintiff's establish bank account at United Bank in Danville, Boone County, West Virginia.

19. Rather, defendant Blackhawk, upon information and belief, had the first monthly installment of Fifty-Seven Thousand Three Hundred Twenty-Four Dollars and Sixty-Two Cents (\$57,324.62) due the plaintiff "wired" from defendant Trust Bank to an account with defendant Chase Bank and purportedly belonging to an entity known as "Belo Consulting" in Sugarland, Texas.

20. Upon information and belief, defendant Chase Bank had flagged the account purportedly belonging to "Belo Consulting" as being fraudulent and/or not associated with the plaintiff.

21. Upon information and belief, both defendant Blackhawk and defendant Trust Bank were advised that the account with defendant Chase Bank purportedly belonging to "Belo Consulting" was fraudulent and/or not associated with the plaintiff.

22. That despite all the above, defendant Blackhawk had the first monthly installment of Fifty-Seven Thousand Three Hundred Twenty-Four Dollars and Sixty-Two Cents

(\$57,324.62) due the plaintiff again "wired" from defendant Trust Bank to an account with defendant Chase Bank and purportedly belonging to an entity known as "Belo Consulting" in Sugarland, Texas.

23. That despite all the above, defendant Trust Bank again "wired" the first monthly installment of Fifty-Seven Thousand Three Hundred Twenty-Four Dollars and Sixty-Two Cents (\$57,324.62) due the plaintiff to the account at Chase Bank purportedly belonging to "Belo Consulting".

24. That despite all the above, defendant Chase Bank accepted the first monthly installment of Fifty-Seven Thousand Three Hundred Twenty-Four Dollars and Sixty-Two Cents (\$57,324.62) due the plaintiff and deposited the said funds in the account purportedly belonging to "Belo Consulting".

25. That shortly after the Fifty-Seven Thousand Three Hundred Twenty-Four Dollars and Sixty-Two Cents (\$57,324.62) due the plaintiff was deposited in the account at defendant Chase Bank purportedly belonging to "Belo Consulting", the said entity known as "Belo Consulting" immediately withdrew the said funds and closed the bank account.

26. The defendants, further, did not call and/or communicate with the plaintiff prior to making the first monthly installment of Fifty-Seven Thousand Three Hundred Twenty-Four Dollars and Sixty-Two Cents (\$57,324.62) to determine whether the plaintiff was, in any way, associated with any entity known as "Belo Consulting" in Sugarland, Texas.

27. The plaintiff is not in any way associated with any entity known, and/or referred to, as "Belo Consulting" and did not conduct business in Sugarland, Texas, all of which is known and/or should have been known to all defendants.

COUNT ONE

**Breach Of Contract – Defendant Blackhawk**

28. The plaintiff and defendant Blackhawk entered into a Master Services Agreement ("Agreement") wherein the plaintiff would provide excavating services, labor and equipment to various coal mines owned, operated, managed and/or controlled by defendant Blackhawk at various locations, including Boone County, West Virginia, in exchange for payment.

29. That the Contract between defendant Blackhawk and the plaintiff required, and/or it was implied, defendant Blackhawk would timely and properly submit payment to the plaintiff upon performance of the work/services and receipt of the appropriate invoices.

30. That on various dates through June, 2021, the plaintiff provided excavating services, labor and equipment to defendant Blackhawk at various coal mines in Boone County, West Virginia.

31. Defendant Blackhawk has breached its contract with the plaintiff by failing to pay the said plaintiff for the excavating services, labor and equipment provided herein.

32. Defendant Blackhawk currently owes Fifty-Seven Thousand Three Hundred Twenty-Four Dollars and Sixty-Two Cents (\$57,324.62) for the excavating services, labor and equipment provided by the plaintiff to the said defendant at various coal mines located in Boone County, West Virginia.

33. As a direct and proximate result of the breaches set forth above, plaintiff has suffered substantial damages, including economic loss resulting from the said defendants' breach of contract, aggravation, annoyance and inconvenience, consequential and incidental damages and other damages.

## COUNT TWO

### **Negligence – Defendants Blackhawk, Trust Bank and Chase**

34. Through the conduct more particularly described in paragraphs 1 through 27 of this Complaint, defendants Blackhawk, Trust Bank and Chase knew, and/or should have known, that the plaintiff was not in any way associated with any entity known as "Belo Consulting" in Sugarland, Texas.

35. That despite the fact defendants Blackhawk, Trust Bank and Chase knew, or should have known, that the plaintiff was not in any way associated with an entity known as "Belo Consulting" in Sugarland, Texas, the said defendants, nevertheless engaged in the conduct more particularly described in paragraphs 1 through 27 of the Complaint.

36. That defendants Blackhawk, Trust Bank and Chase breached the duty of care owed the plaintiff by engaging in the conduct more particularly described in paragraphs 1 through 27 of the Complaint.

37. That the plaintiff has suffered damages due to defendant Blackhawk's, defendant Trust Bank's and defendant Chase's negligence all as set forth herein.

## COUNT THREE

### **Constructive Fraud – Defendants Cline and Sons, Cline and Doe**

38. Defendants Blackhawk, Trust Bank and Chase owed legal and equitable duties to the plaintiff in connection with the transactions described herein.

39. Through the conduct more particularly described in paragraphs 1 through 27 of this Complaint, defendants Blackhawk, Trust Bank and Chase breached their duties to plaintiff and, even if done without intent to deceive, defendants did deceive plaintiff and thus defendants' actions constitute constructive fraud.

40. As a direct and proximate result of defendant Blackhawk's, defendant Trust Bank's and/or defendant Chase's conduct, plaintiff has suffered substantial damages, including economic loss, aggravation, annoyance, inconvenience, humiliation, embarrassment, worry, loss of business reputation and other damages.

#### COUNT FOUR

##### **Intentional Misrepresentation/Fraud – Defendant Doe**

41. Through the conduct more particularly described in paragraphs 1 through 27 of this Complaint, defendant Doe intentionally misrepresented that an entity purportedly known as or named "Belo Consulting" in Sugarland, Texas was associated with the plaintiff and the proper entity to receive payment on behalf of the plaintiff, all done with the intent to deceive.

42. Through the conduct more particularly described in paragraphs 1 through 27 of this Complaint, the actions of defendants Doe constitutes intentional misrepresentation and/or fraud.

43. As a direct and proximate result of defendant Doe's actions, inactions, misrepresentations and conduct set forth herein, plaintiff has suffered substantial damages, including economic loss, aggravation, annoyance, inconvenience, humiliation, embarrassment, worry and other damages.

44. Defendant Doe, its agents and/or apparent agents as asserted herein, acted with actual malice toward the plaintiff or a conscious, reckless and outrageous indifference to the health, safety and welfare of others warranting an assessment of punitive damages against the said defendant.



COUNT FIVE

**Unjust Enrichment – Defendant Doe**

45. Defendant Doe knew and was aware that it was not entitled to the Fifty-Seven Thousand Three Hundred Twenty-Four Dollars and Sixty-Two Cents (\$57,324.62) due the plaintiff.

46. Defendant Doe willfully, wantonly, maliciously and recklessly received and retained the Fifty-Seven Thousand Three Hundred Twenty-Four Dollars and Sixty-Two Cents (\$57,324.62) due the plaintiff.

47. Defendant Doe had no valid claim to the Fifty-Seven Thousand Three Hundred Twenty-Four Dollars and Sixty-Two Cents (\$57,324.62) due the plaintiff.

48. Defendant Doe has been unjustly enriched by the receipt of the Fifty-Seven Thousand Three Hundred Twenty-Four Dollars and Sixty-Two Cents (\$57,324.62) due the plaintiff because it would be inequitable and unconscionable to permit defendant Doe to retain the said monies under the circumstances set forth herein.

49. As a direct and proximate result of defendant Doe's conduct, plaintiff has suffered substantial damages, including economic loss, aggravation, annoyance, inconvenience, humiliation, embarrassment, worry and other damages.

WHEREFORE, the plaintiff demands judgment against defendants, jointly and severally, as follows:

- a. Judgment against defendants Blackhawk, Trust Bank, Chase and Doe in the amount of Fifty-Seven Thousand Three Hundred Twenty-Four Dollars and Sixty-Two Cents (\$57,324.62); jointly and severally.

- b. Prejudgment and post-judgment interest as provided by law from the date this cause of action accrued;
- c. Costs and attorneys' fees incurred in the prosecution of this matter;
- d. Punitive damages against defendant Doe in an amount to be determined by a jury;
- e. Compensatory damages as provided by law; and
- f. Such other and further relief as may be just and proper; but in no event and under no circumstance shall the total amount sought, or to be awarded by a trial jury or other trier of fact, equal or exceed the sum of \$75,000, exclusive of interest and costs, as set forth in 28 USC 1332(a), reference to which is hereby made. Accordingly, the plaintiff expressly limits its prayer for relief to an amount less than the federal jurisdictional amount as expressed in 28 USC 1332(a) and is hereby so bound at the trial of this matter.

PLAINTIFF DEMANDS A TRIAL BY JURY.

TURNER EXCAVATING, INC.,  
*By Counsel*

/s/ Matthew M. Hatfield  
MATTHEW M. HATFIELD (WVSB #8710)  
Hatfield & Hatfield, PLLC  
Post Office Box 598  
Madison, West Virginia 25130  
304-369-1162  
*Counsel for Plaintiff*

# EXHIBIT B

**IN THE CIRCUIT COURT OF BOONE COUNTY, WEST VIRGINIA**

**TURNER EXCAVATING, INC.,**

**Plaintiff,**

**v.**

**BLACKHAWK SUB, LLC,  
1<sup>ST</sup> TRUST BANK, INC.,  
JPMORGAN CHASE BANK, N.A., and  
JOHN DOE,  
Defendants.**

**Civil Action No. 22-C-56**

**Honorable Stacy L. Nowicki-Eldridge**

**ANSWER OF DEFENDANT JPMORGAN CHASE BANK, N.A.  
TO PLAINTIFF'S COMPLAINT**

Now comes Defendant JPMorgan Chase Bank, N.A. ("Chase")<sup>1</sup> and for its Answer to the Complaint does state:

**FIRST DEFENSE**

1. As to the allegations contained in Paragraphs 1, 2, 3, 5, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 21, 27, 28, 29, 30, 31, 32, and 33 of the Complaint, Chase is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in those Paragraphs and therefore denies the allegations contained in those Paragraphs.

2. As to the allegations contained in Paragraph 4, Chase denies it is a Delaware corporation. It is a National Association. Chase admits the remaining allegations contained in Paragraph 4 of Plaintiff's Complaint.

3. Chase states that no response is needed with respect to the allegations contained in Paragraphs 6 and 7 of the Complaint, but to the extent that a response is deemed to be required, Chase denies all allegations contained in those Paragraphs.

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<sup>1</sup> Incorrectly identified in the caption of Plaintiff's Complaint as "J.P. Morgan Chase Bank."

4. As to the allegations contained in Paragraphs 10, 20, and 25 of the Complaint directed at Chase, pursuant to applicable banking laws, Chase cannot confirm nor deny the identities of its banking customers, and Chase cannot confirm nor deny transactions relating to any such customers, and at this time, Chase denies those allegations.

5. As to the allegations contained in Paragraphs 19, 22, 23, and 24 of the Complaint directed at Chase, pursuant to applicable banking laws, Chase cannot confirm nor deny the identities of its banking customers, and Chase cannot confirm nor deny transactions relating to any such customers, and at this time, Chase denies those allegations. As to the remaining allegations contained in Paragraphs 19, 22, 23, and 24 directed at other parties, Chase is without knowledge or information sufficient to form a belief as to the truth or falsity of those allegations and therefore denies the allegations contained in Paragraphs 19, 22, 23, and 24 directed at other parties.

6. Chase states that no response is needed with respect to the allegations contained in Paragraphs 6 and 7 of the Complaint, but to the extent that a response is deemed to be required, Chase denies all allegations contained in those Paragraphs.

7. As to the allegations contained in Paragraphs 26, 41, 42, 43, 44, 45, 46, 47, 48, and 49 of the Complaint, those allegations are directed at parties other than Chase and no response from Chase is needed with respect to the allegations contained in those Paragraphs, but to the extent that a response is deemed to be required, Chase is without knowledge or information sufficient to form a belief as to the truth or falsity of those allegations and therefore denies the allegations contained those Paragraphs.

8. Chase denies the allegations contained in Paragraphs 34, 35, 36, 37, 38, 39, and 40 of the Complaint.

9. Plaintiff's "WHEREFORE" clause is a claim to relief to which Chase denies Plaintiff is entitled.

### **SECOND DEFENSE**

Chase did not owe Plaintiff a duty of care because Plaintiff was not a customer of Chase, nor did a special relationship exist between Plaintiff and Chase.

### **THIRD DEFENSE**

Plaintiff does not have standing to bring claims against Chase because Plaintiff has no privity with Chase, nor was Plaintiff party to any transaction with Chase.

### **FOURTH DEFENSE**

Plaintiff's claims against Chase are barred in whole or in part by Article 4A of the Uniform Commercial Code as adopted at West Virginia Code § 46-1-101 *et seq.*, and/or the Rules Governing the Clearing House Interbank Payments System ("CHIPS"), including but not limited to Rule 10, and related CHIPS' Administrative Procedures.

### **FIFTH DEFENSE**

Chase acted in good faith at all times relevant to the allegations in the Complaint and in compliance with applicable statutes, regulations, and procedures.

### **SIXTH DEFENSE**

Plaintiff has failed to join all parties necessary for the complete and just adjudication of the claims asserted in the Complaint.

### **SEVENTH DEFENSE**

Plaintiff has failed to state a claim upon which relief can be granted as against Chase.

#### **EIGHTH DEFENSE**

Plaintiff's claims are barred in whole or in part by the doctrines of waiver, estoppel, laches, ratification, unjust enrichment, release, and/or related equitable defenses.

#### **NINTH DEFENSE**

Any damages suffered by Plaintiff were caused by persons not within the authority, control, and/or agency of Chase.

#### **TENTH DEFENSE**

Plaintiff's claims are barred in whole or in part by the intervening acts and/or torts of parties not within the authority, control, and/or agency of Chase.

#### **ELEVENTH DEFENSE**

Plaintiff has failed to mitigate its damages and/or minimize its damages.

#### **TWELFTH DEFENSE**

Plaintiff's claims are barred in whole or in part due to intervening or superseding causes.

#### **THIRTEENTH DEFENSE**

If Plaintiff was injured or damaged, which Chase denies, any and all such injury or damage was as a proximate result of Plaintiff's own actions and conduct or that of its agents and/or representatives, which actions and negligence were the sole proximate cause of any damages or injury suffered by Plaintiff.

#### **FOURTEENTH DEFENSE**

Plaintiff assumed the risk of all losses and damages now complained of as the result of its own conduct.

### **FIFTEENTH DEFENSE**

Chase reserves the right to add additional defenses as additional facts are learned through discovery.

WHEREFORE, Defendant JPMorgan Chase Bank, N.A., prays that all of the claims against it be dismissed with prejudice, that Chase be awarded all of its attorneys' fees and costs incurred herein, and for such further relief as the Court deems to be necessary and just.

Respectfully submitted,

/s/ Andrew P. Smith

Andrew P. Smith (WV #12338)

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*Counsel for JPMorgan Chase Bank, N.A.*



**IN THE CIRCUIT COURT OF BOONE COUNTY, WEST VIRGINIA**

**TURNER EXCAVATING, INC.,**

**Plaintiff,**

**v.**

**BLACKHAWK SUB, LLC,  
1<sup>ST</sup> TRUST BANK, INC.,  
JPMORGAN CHASE BANK, N.A., and  
JOHN DOE,**

**Defendants.**

**Civil Action No. 22-C-56**

**Honorable Stacy L. Nowicki-Eldridge**

**CERTIFICATE OF SERVICE**

I certify that, on the 26<sup>th</sup> day of August, 2022, I served the foregoing “*Answer of Defendant JPMorgan Chase Bank, N.A. to Plaintiff’s Complaint*” with the Clerk of the Court via West Virginia E-File which will serve an electronic copy upon counsel of record:

Matthew M. Hatfield  
HATFIELD & HATFIELD PLLC  
P.O. Box 598  
Madison, West Virginia 25130  
*Counsel for Plaintiff*

/s/ Andrew P. Smith

# EXHIBIT C

Court:

Judge:

Case Type:

Style:

Circuit

Stacy L. Nowicki-Eldridge

Civil

TURNER EXCAVATING, INC., a West Virginia corporation v. BLACKHAWK SUB, LLC, a Delaware limited

County:

Created Date:

Case Sub-Type:

03 - Boone

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Tort

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