

**IN THE CIRCUIT COURT OF MARSHALL COUNTY, WEST VIRGINIA
BUSINESS COURT DIVISION**

GITO, INC. d/b/a NELLO
CONSTRUCTION COMPANY, for the use
and benefit of COST COMPANY,
Plaintiff,

vs.

Civil Action No. 13-C-13
Hon. Thomas C. Evans, III
Presiding Judge

BOARD OF EDUCATION OF THE
COUNTY OF MARSHALL, WEST VIRGINIA,
Defendant/Third-Party Plaintiff,

vs.

SCALISE INDUSTRIES CORPORATION,
a wholly owned subsidiary of EMCOR GROUP, INC.;
McKINLEY & ASSOCIATES, INC.; and PROJECT AND CONSTRUCTION
SERVICES, INC.,
Third-Party Defendants.

ORDER

(Re: Motion of Plaintiff, GITO, Inc., d/b/a Nello Construction Company, for the Use and
Benefit of Cost Company to Compel Mediation)

Pending before this Court is the "Motion of Plaintiff, GITO, Inc., d/b/a Nello Construction Company, for the Use and Benefit of Cost Company to Compel Mediation" which was filed herein on February 18, 2015. The Court requested all counsel filed a response to said Motion by February 20, 2015. Having received all submissions from counsel the Court denies in part and grants in part the Motion to Compel Mediation.

The Court finds that defendant McKinley & Associates has a legitimate desire to have scheduled depositions completed prior to mediation. The Court also finds that Project Construction Services unavailability of key officers and representatives is an appropriate reason to continue mediation so that all may meaningfully participate.

Therefore, the Court DENIES in part the Motion to Compel Mediation and declines to Ordered to mediation occur on February 26 and 27, 2015, for the reasons stated.

Upon consideration of which, the Court does hereby GRANTS in part the Motion to Compel Mediation as follows:

1. Mediation shall occur in a two (2) day period between March 9, 2015 and March 31, 2015.
2. If counsel cannot agree to a date and time for Mediation to take place by February 27, 2015 at 4:00 p.m., counsel shall notify the Court and the Court will designate a date for the Mediation to occur.

The Clerk is instructed to forward attested copies of this Order to all counsel of record, and the Business Court Division Central Office at the Berkeley County Judicial Center, 380 W. South Street, Suite 2100, Martinsburg, West Virginia.

All of which is **ORDERED**, accordingly.

Entered:



The Honorable Thomas C. Evans, III
Presiding Judge
Business Court Division