

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

2014 JUL -8 A 11:33

BOONE MOTOR SALES, INC. D/B/A  
STEPHENS AUTO CENTER,

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Plaintiff,

vs.

CIVIL ACTION NO.: 14-C-98

THORNHILL GROUP, INC. D/B/A  
THORNHILL FORD LINCOLN and  
FORD MOTOR COMPANY,

Defendants.

**RESPONSE OF PLAINTIFF BOONE MOTOR SALES, INC., D/B/A STEPHENS AUTO  
CENTER IN OPPOSITION TO MOTION TO REFER CASE TO THE BUSINESS  
COURT DIVISION**

Now comes the Plaintiff, Boone Motor Sales, Inc., d/b/a Stephens Auto Center, by counsel, William T. Forester and Forester Law Offices, and submits the following Response in opposition to Defendant Thornhill Group, Inc., d/b/a Thornhill Ford Lincoln's Motion to Refer Case to the Business Court Division. The Plaintiff opposes the requested referral because the case does not meet the procedural and substantive requirements for a complex business case. Specifically, (1) the dispute does not present highly technical commercial and/or technology issues in which specialized treatment is likely to improve the expectation of a fair and reasonable resolution of the controversy, and (2) the dispute does not present a need for specialized knowledge or expertise in the subject matter or familiarity with some specific law or legal principles that may be applicable.

**BACKGROUND**

West Virginia's Business Court Division was created by the West Virginia Legislature due to a finding that the "complex nature of litigation involving highly technical commercial issues" requires a "separate and specialized court docket". Rule 29.06 of the West Virginia Trial Court Rules promulgated by the Supreme Court of Appeals West Virginia requires the movant to establish that the subject lawsuit is "business litigation". W. Va. Tr. Ct. R. 29.06(a)(1).

"Business Litigation" is defined as follows:

"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." W. Va. Tr. Ct. R. 29.04(a).

The subject lawsuit must meet all three (3) elements of the definition as detailed above by virtue of the use of the word "and" as a conjunctive.

### **ARGUMENT**

The subject litigation fails to satisfy element two (2) of said definition in that (1) the dispute does not present highly technical commercial and/or technology issues in which specialized

treatment is likely to improve the expectation of a fair and reasonable resolution of the controversy, and (2) the dispute does not present a need for specialized knowledge or expertise in the subject matter or familiarity with some specific law or legal principles that may be applicable.

First, the lawsuit is factually simple and not complex. (See Complaint attached hereto as Exhibit "A") A Ford Sales and Service Agreement dated October 9, 2000 was executed by Ford Motor Company (hereinafter "Ford Motor") and Boone Motor Sales, Inc. d/b/a Stephens Auto Center (hereinafter "Stephens Ford") in order to establish Stephens Ford as an authorized dealer in Ford Motor Company products including vehicles, to set forth the respective responsibilities of Ford Motor Company in producing and selling those products to Stephens Ford and those of Stephens Ford in reselling and providing service for them. Pursuant to said Ford Sales and Service Agreement (hereinafter "FSSA") Ford Motor established Stephens Ford's locality, primary market area and/or area of sales responsibility (hereinafter "PMA"), which included all of Boone County, West Virginia, the established place of business for Stephens Ford. Likewise, Ford Motor established Thornhill Group, Inc. d/b/a Thornhill Ford Lincoln's (hereinafter "Thornhill Ford") locality, primary market area and/or area of sales responsibility, which included all of Logan County, West Virginia, the established place of business for Thornhill Ford.

Thornhill Ford made a relocation request to Ford Motor requesting approval to move its dealership from 63 Admiral Road, Chapmanville, Logan County, West Virginia to a tract of land located at 60 Traders Town Road, Chapmanville, Boone County, West Virginia. Said proposed relocation would position Thornhill Ford's established place of business in Boone County, West Virginia and encroach into Stephens Ford's designated PMA. Stephens Ford objected to the

proposed relocation on the general grounds that said relocation violates the FSSA, violates the West Virginia Dealer's Act (West Virginia Code §55-13-1, et. seq.), would devalue Stephens Ford and ultimately result in damage to its business. Rather than deny Thornhill Ford's relocation request to the proposed Boone County property or assist Thornhill Ford in finding a suitable location within their own designated PMA, Ford Motor approved the request and advised Stephens Ford that it intended to revoke two (2) census tracts from Stephens Ford and unilaterally assign them to Thornhill Ford such that Thornhill Ford's new PMA encroaches into Boone County and actually includes the land directly across the highway from Stephens Ford's dealership location.

Ford Motor thereafter advised Stephens Ford that Thornhill Ford's relocation request was approved and that Stephens Ford's assigned area of responsibility would be modified as set forth above. Specifically, Stephens would lose and no longer be responsible for Boone County census tracts 54005958300 and 54005958800. Stephens Ford appealed Ford Motor's approval of Thornhill Ford's relocation request and modification of Stephens Ford's PMA to the Ford Motor Company Dealer Policy Board, but said appeal was denied by letter dated March 11, 2014.

Second, the causes of action and issues of law presented are common with no need for specialized knowledge or expertise in the subject matter. The applicable law and legal principles are not complex. It is alleged generally that Ford Motor breached the Ford Sales and Service Agreement with Stephen's Ford, that Thornhill Ford tortiously interfered with Stephens Ford's Agreement with Ford Motor, that Ford Motor and Thornhill Ford engaged in a civil conspiracy and that Ford Motor and Thornhill Ford violated the West Virginia Dealer Act (West Virginia Code §17A-6A-1, et. seq.) (See Exhibit "A") The Plaintiff seeks relief in the form of a declaration of the parties' rights and obligations pursuant to West Virginia Uniform Declaratory


Judgment Act (West Virginia Code §55-13-1, et. seq.), remedies as set forth in the West Virginia Dealer Act (West Virginia Code §17A-6A-1, et. seq.), injunctive relief and compensatory damages. Essentially, this case is grounded in the basic rules of contract construction and interpretation and tortious conduct incident thereto. This matter does not present any complex commercial or technology issues which makes specialized treatment necessary to improve the expectation of a fair and reasonable resolution and there is no need for specialized knowledge or expertise in the subject matter or familiarity with some specific law or legal principles.

**CONCLUSION**

In summary, this Motion for Referral to the Business Court Division should be denied because there are no commercial and/or technology issues that require specialized treatment by the court, there will not be any requirement of specialized knowledge in the subject matter of the dispute nor any requirement that the Judge be familiar with some specific law or legal principles in order to provide an expeditious and fair resolution of the issues in the case.

BOONE MOTOR SALES, INC.  
D/B/A STEPHENS AUTO  
CENTER,

By Counsel



William T. Forester (WV Bar # 5737)  
Forester Law Offices  
P. O. Box 1036  
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(304) 752-7252

**CERTIFICATE OF SERVICE**

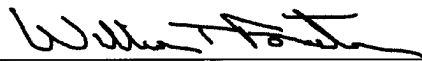
I, William T. Forester, do hereby certify that on the 2nd day of July, 2014, a true and exact copy of the forgoing *Response of Plaintiff Boone Motor Sales, Inc. D/B/A Stephens Auto Center in Opposition to Motion to Refer Case to the Business Court Division* has been served upon on the following counsel of record by depositing the same in the United States Postal Service, postage paid and addressed as follows:

Andrew G. Fusco  
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Judge William Thompson  
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Madison, WV 25130

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



William T. Forester,  
Counsel for Plaintiff

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