

15-BCD-04

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

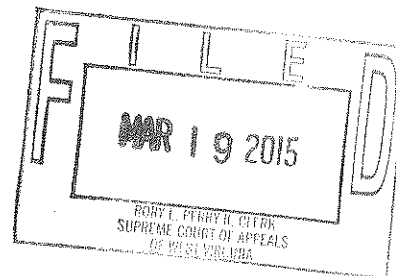
W. HARLEY MILLER CONTRACTORS, INC.,  
Plaintiff/Petitioner,

vs.

Jefferson County Circuit Court  
Civil Action No. 15-C-61

JEFFERSON COUNTY BOARD OF EDUCATION,  
HELBING LIPP RECNY ARCHITECTS, INC.  
d/b/a HELBING LIPP RECNY ARCHITECTS,  
and DAVID LIPP,  
Defendants/Respondents.

TO: THE HONORABLE CHIEF JUSTICE



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

Pursuant to Rule 29.06 of the West Virginia Trial Court Rules, the Plaintiff/Petitioner, W. Harley Miller Contractors, Inc., by and through its counsel, Susan R. Snowden, Esq. and Martin & Seibert, L.C., respectfully requests the above-styled case be referred to the Business Court Division.

In regard to additional related actions:

☒ **There are no known related actions.**

☐ The following related actions could be the subject of consolidation, and are

☐ now pending

or

☐ may be filed in the future. (Please list case style, number, and Court if any)

\_\_\_\_\_  
This action involves: (Please check all that apply)

☒ **Breach of Contract;**

☐ Sale or Purchase of Commercial Entity;

☐ Sale or Purchase of Commercial Real Estate;

☐ Sale or Purchase of Commercial Products Covered by the Uniform Commercial Code;

☐ Terms of a Commercial Lease;

☐ Commercial Non-consumer debts;

☐ Internal Affairs of a Commercial Entity;

☐ Trade Secrets and Trademark Infringement;

☐ Non-compete Agreements;

☐ Intellectual Property, Securities, Technology Disputes;

☐ Commercial Torts;

☐ Insurance Coverage Disputes in Commercial Insurance Policies;

☐ Professional Liability Claims in Connection with the Rendering of Professional Services to a Commercial Entity;

☐ Anti-trust Actions between Commercial Entities;

☒ **Injunctive and Declaratory Relief Between Commercial Entities;**

☐ Liability of Shareholders, Directors, Officers, Partners, etc.;

(continued on next)

- |  |  |
|--|--|
| <input type="checkbox"/> Mergers, Consolidations, Sale of Assets, Issuance of Debt, Equity and Like Interest;<br><input type="checkbox"/> Shareholders Derivative Claims;<br><input type="checkbox"/> Commercial Bank Transactions;<br><input type="checkbox"/> Franchisees/Franchisors; | <input type="checkbox"/> Internet, Electronic Commerce and Biotechnology<br><input type="checkbox"/> Disputes involving Commercial Entities; or<br><input checked="" type="checkbox"/> <b>Other (Describe) Dispute between commercial entity and government entity and its agents concerning the acceptance of a bid for a construction project.</b> |
|--|--|

In support of this motion, this matter contains issues significant to businesses, and presents novel and/or complex commercial or technological issues for which specialized treatment will be helpful, as more fully described here:

**This matter stems from an invitation to bid issued by the Defendants on February 13, 2015, with respect to the construction of the Jefferson County Schools Bus Maintenance Facility Renovation, HLRA Project # 114504. As part of their solicitation for bids, the Defendants issued Bid Instructions, Addenda and Form Proposals which outlined the specifications for the project and the requirements for submission of an acceptable bid for consideration. More specifically, the bidding documents issued to all prospective bidders included Addendum #1 which provided that all bids must be quoted in two ways, "First, if requisitions for payment are paid in cash and, second, if they are paid with a credit card." Despite these clear instructions, the Defendants (a) waived the requirement for submission of a separate quote associated with payments made via credit card for one prospective bidder; (b) failed to contact all other prospective bidders to inform them that bids could be submitted without submission of a separate quote associated with payments made via credit card; (c) failed to issue an Addenda rescinding the requirement that ALL bids include a separate quote associated with payments made via credit card; and (d) awarded the contract to a bidder which had submitted a bid that was incomplete, irregular and/or erroneous. The failure of the Defendants to follow proper procedure with respect to the bid process created an inequity amongst prospective bidders. More specifically, the Plaintiff's proposed bid would have been materially affected if it had also been given advance knowledge that certain requirements were being waived.**

In further support of this Motion, please find attached hereto an accurate copy of the operative complaint(s), the operative answer(s), the docket sheet, and the following other documents:

**See Verified Complaint and Petition for Injunctive Relief attached hereto as Exhibit A.**

In regard to expedited review, the Movant:

- ☐ DOES NOT request an expedited review under W.Va. Trial Court Rule 29.06(a)(4), and gives notice that all affected parties may file a memorandum stating their position, in accordance with W.Va. Trial Court Rule 29.
- ☒ hereby REQUESTS that the Chief Justice grant this Motion to Refer without responses, pursuant to W.Va. Trial Court Rule 29.06(a)(4), and contends that the following constitutes good cause to do so:


As reflected by the Invitation to Bid (See Exhibit 1 attached to Verified Complaint), the Defendants desire to complete the project this year. In addition, the Defendants have awarded the project to another bidder and have authorized it to begin construction. In that regard, time is of the essence and the expedited consideration of the matter would benefit all parties involved.

WHEREFORE, the undersigned hereby MOVES, pursuant to W.Va. Trial Court Rule 29, the Chief Justice of the West Virginia Supreme Court of Appeals to refer this case to the Business Court Division.

**W. HARLEY MILLER CONTRACTORS, INC.,**  
By Counsel,

MARTIN & SEIBERT, L.C.

BY:

  
Susan R. Snowden (WV Bar No.3644)  
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Facsimile:(304) 260-3377

**CERTIFICATE OF SERVICE**

I, Susan R. Snowden, counsel for W. Harley Miller Contractors, Inc., do hereby certify that on this 18<sup>th</sup> day of March, 2015, I have served the foregoing **MOTION TO REFER CASE TO BUSINESS COURT DIVISION**, with attachments by U.S. Mail, First Class, postage prepaid, and by facsimile, upon the following:

Ms. Laura E. Storm, Clerk  
Circuit Court of Jefferson County  
Post Office Box 1234  
Charles Town, WV 25414  
(By facsimile (304) 728-3398)

Judge David H. Sanders  
Jefferson County Courthouse  
100 E. Washington Street  
Charles Town, WV 25414  
(By facsimile (304) 728-3251)


Business Court Division Central Office  
Berkeley County Judicial Center  
380 West South Street, Suite 2100  
Martinsburg, WV 25401.  
(By facsimile (304) 267-3731)

Jefferson County Board Of Education  
c/o Officer or Board Member  
110 Mordington Avenue  
Charles Town, West Virginia 25414  
(By facsimile (304) 728-9274)

Jefferson County Board Of Education  
c/o Ralph Lorenzetti, Prosecuting Attorney  
201 N. George Street, 2nd Floor  
Charles Town, West Virginia 25414  
(By facsimile (304) 728-3293)

Helbing Lipp Recny Architects, Inc.  
d/b/a Helbing Lipp Recny Architects  
8032 Leesburg Pike  
Suite 201  
Vienna, Virginia 22182  
(By facsimile (703) 448-7555)

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Susan R. Snowden