IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

Joe Holland Chevrolet, Inc.,
Plaintiff(s),

vs.

Liberty Mutual Insurance Company and Greg Chandler's Frame and Body, LLC,
Defendant(s).

2015 MAY 12 PM 1:33

Kanawha County Circuit Court
Civil Action No. 13-C-978

TO: THE HONORABLE CHIEF JUSTICE

JUDICIAL MOTION TO REFER CASE TO THE BUSINESS COURT DIVISION

Pursuant to Rule 29.06 of the West Virginia Trial Court Rules, the Honorable Joanna I. Tabit 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.;
- ☐ Mergers, Consolidations, Sale of Assets, Issuance of Debt, Equity and Like Interest;
- ☐ Shareholders Derivative Claims;
- ☐ Commercial Bank Transactions;
- ☐ Franchisees/Franchisors;
- ☐ Internet, Electronic Commerce and Biotechnology
- ×Disputes involving Commercial Entities; or
- ×Other (Describe): Wrongful/Retaliatory Termination of Contractual Relationship; Tortious Interference with Prospective Business Relations; Civil Conspiracy to Interfere with Prospective Business Relations; Unfair and Deceptive Business Practices; and Business Disparagement.

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:

Plaintiff, Joe Holland Chevrolet, Inc., is seeking to recover damages from Defendant, Liberty Mutual Insurance Company and Defendant Greg Chandler's Frame and Body, LLC, arising from Defendant Liberty Mutual's decision to require body shops on its "preferred body shop list" to utilize used crash parts to repair all vehicles. Because Plaintiff Joe Holland Chevrolet, Inc. felt Liberty Mutual's decision in this regard violated *W.Va. Code §46A-6B-3* (regarding vehicle warranty issues and original manufacturer parts), Plaintiff Joe Holland Chevrolet, Inc. was removed from Defendant Liberty Mutual's preferred body shop list, and Plaintiff Joe Holland Chevrolet, Inc. alleges yearly loss of business/customers in its body shop, as well as revenue. This case involves the rights and responsibilities of insurance companies and third-party service providers, more specifically auto body shops, when entering into preferred provider arrangements and whether or not damaged businesses may recover under the various legal theories as stated above.

The Plaintiff previously sought to refer this matter to the Business Court Division, and the Defendants argued against the same due to the matter of *Liberty Mutual Insurance Company and Greg Chandler's Frame & Body, LLC v. Patrick Morrisey, Attorney General,* Case No. 13-0195, which was then pending before the West Virginia Supreme Court of Appeals and presented nearly identical issues. The Supreme Court denied Plaintiff's request for referral by Order entered on November 21, 2013, finding referral premature due to the *Liberty Mutual* matter. Thereafter, this Court issued a stay in this matter by Order entered on January 27, 2014, until such time as the Supreme Court issued a ruling in the *Liberty Mutual* matter. The Supreme Court issued a ruling in *Liberty Mutual* on June 11, 2014, No. 13-0195.

It appears this matter is now ripe for referral to the Business Court Division.

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:

Letter dated March 2, 2015, from Susan R. Snowden, Esq., Martin & Seibert, L.C. (with attachment).

In regard to expedited review, this Court:

× 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: _____

_____

WHEREFORE, the undersigned Judge 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.

Respectfully submitted, this 12nd day of May, 2015,

Joanna I. Tabit

Joanna I. Tabit, Circuit Judge

CERTIFICATE OF SERVICE

I, Joanna I. Tabit, do hereby certify that on this 12th day of May, 2015, I have served the foregoing "Judicial Motion to Refer Case to Business Court Division," with attachments by either hand delivery or first class mail to: (1) Judge Joanna I. Tabit; (2) Stuart Calwell, Esq. and Alex McLaughlin, Esq., The Calwell Practice PLLC, Law and Arts Center West, 500 Randolph Street, Charleston, WV 25302; (3) Clarence E. Martin, III, Esq. and Matthew R. Whitler, Esq., Martin & Seibert, L.C., 1453 Winchester Avenue, P.O. Box 1286, Martinsburg, WV 25402; (4) the Kanawha

5/18/15
Certified mailed sent to counsel of parties
SCalwell
CMartin III
Other
certified fax hand delivery interoffice mail
Clerk of Court
Deputy Circuit Clerk

County Circuit Clerk's Office; and (4) the Business Court Division Central Office, Berkeley County Judicial Center, 380 West South Street, Suite 2100, Martinsburg, WV 25401.

Joanne L. Pratt

Sender Signature