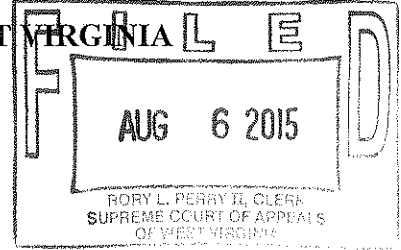


## IN THE CIRCUIT COURT OF MARION COUNTY, WEST VIRGINIA



**JOHN J. MENTUS,**

**Petitioner,**

**v.**

**Petition No. 15-P-63**

**Judge Robert B. Stone**

**FRANK WASHENITZ, and  
R&W CABLE CO., INC.,  
a West Virginia corporation,**

**Respondents,**

**and**

**FRANK WASHENITZ,**

**Respondent/Third-Party Plaintiff,**

**v.**

**J&J MINE SERVICE LLC,**

**Third-Party Defendant.**

**MOTION TO REFER CASE TO THE BUSINESS COURT DIVISION  
AND REQUEST FOR STAY PENDING RECOMMENDATION FOR REFERRAL**

Pursuant to Rule 29.06 of the West Virginia Trial Court Rules, Respondent/Third-Party Plaintiff Frank Washenitz, by counsel Andrew G. Fusco, Michael C. Cardi and the law firm Bowles Rice LLP, respectfully moves this Court to refer the above-styled case to the Business Court Division.

1. The nature of this action involves: (i) a petition for judicial dissolution; (ii) breach of corporate duties; (iii) misappropriation of assets; (iv) conspiracy; (v) a demand for receivership; (vi) accounting demands for a corporation and a limited liability company; and (vii)

will most likely include additional counterclaims concerning additional commercial/business issues, all of which will create further complexity and require aid of the West Virginia's Business Court Division (hereinafter "Business Court Division). *See Petition*, Exhibits A; *Frank Washenitz's Response to Petition, Third-Party Complaint and Cross-Petition*, Exhibit B.

2. The Business Court Division is designed to address the "complex nature of litigation involving highly technical commercial issues" in "actions involving commercial issues and disputes between businesses." W. Va. Code § 51-2-15(a).

3. Any party may seek to refer "Business Litigation" to the Business Court Division after the time to answer the complaint has expired. W. Va. Tr. Ct. R. 29.06(a)(1)-(2).

4. To qualify for referral to the Business Court Division, a matter must be "Business Litigation," as defined by Trial Court Rule 29.04(a). Business Litigation is litigation in which: (1) "the principal claim or claims involve matters of significance to the transactions, operations, or governance between business entities," (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 needs 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 are not of the types listed in West Virginia Trial Court Rule 29.04(a)(3). W. Va. Tr. Ct. R. 29.04(a).

5. The present matter satisfies all elements of "Business Litigation" as defined by Trial Court Rule 29.04(a).

6. Moreover, referral of this case to the Business Court Division is necessary because the pending claims and anticipated counterclaims “present commercial . . . issues in which specialized treatment is likely to improve the expectation of a fair and reasonable resolution of the controversy because of the needs for specialized knowledge or expertise in the subject matter or familiarity with some specific law or legal principles that may be applicable.” W. Va. Tr. Ct. R. 29.04(a)(2).

7. There currently are no known related actions pending.

8. Pursuant to Trial Court Rule 29.06(b), the Circuit Court Judge may stay a civil action upon the filing of a motion to refer. In this particular circumstance, a stay of the civil action is reasonable and in the best interest of the parties and the judiciary for the following reasons:

- (a) the present motion to refer is being filed prior to any ruling or determination being made by the Circuit Court of Marion County, West Virginia in this action; and
- (b) a stay will not prejudice any of the parties should good cause be found and the matter transferred before proceedings begin in Marion County.

9. There is good cause to transfer this case to the Business Court Division prior to the expiration of the time to answer the complaint because, as alleged by Petitioner and admitted by Respondent Frank Washenitz, the two directors of R&W Cable Co., Inc. (“R&W Cable”) are deadlocked and R&W Cable loses money every day it is in business. The Business

Court Division is equipped to handle the many complex commercial issues present in this matter, and time is of the essence in addressing the same.

WHEREFORE, Respondent/Third-Party Plaintiff Frank Washenitz respectfully requests that this matter be referred to the Business Court Division and that the civil action be stayed until a determination on referral is made.

Submitted this 4<sup>th</sup> day of August 2015.

**FRANK WASHENITZ**

By counsel

/s/ Andrew G. Fusco  
Andrew G. Fusco [WVSB # 1317]  
Michael C. Cardi [WVSB # 12228]  
Bowles Rice LLP  
7000 Hampton Center  
Morgantown, West Virginia 26505  
(304) 285-2500 (Telephone)  
(304) 285-2575 (Facsimile)

IN THE CIRCUIT COURT OF MARION COUNTY, WEST VIRGINIA

JOHN J. MENTUS,

Petitioner,

v.

Petition No. 15-P-63  
Judge Robert B. Stone

FRANK WASHENITZ, and  
R&W CABLE CO., INC.,  
a West Virginia corporation,

Respondents,

and

FRANK WASHENITZ,

Respondent/Third-Party Plaintiff,

v.

J&J MINE SERVICE LLC,

Third-Party Defendant.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing **MOTION TO REFER CASE TO THE BUSINESS COURT DIVISION AND REQUEST FOR STAY PENDING RECOMMENDATION FOR REFERRAL** was this day filed with the Supreme Court of Appeals of West Virginia and electronically filed with the Clerk of the Court of Marion County, West Virginia and served upon the parties of record by placing a true and exact copy thereof in the United States mail, postage prepaid and addressed as follows:

George Armistead  
168 Chancery Row  
Morgantown, WV 26507-0835  
*Counsel for John J. Mentus*

Rory L. Perry II, Clerk of Court  
Supreme Court of Appeals of West Virginia

State Capitol Rm E-317  
1900 Kanawha Blvd. East  
Charleston WV 25305

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

Dated this 4<sup>th</sup> day of August 2015.

/s/ Andrew G. Fusco

Andrew G. Fusco [WVSB # 1317]

Michael C. Cardi [WVSB # 12228]