

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

ZURICH AMERICAN INSURANCE  
COMPANY, as subrogee of TURNER  
CONSTRUCTION COMPANY,  
TURNER CORPORATION, and  
TOMPKINS BUILDERS, INC., foreign  
corporations,

Plaintiff,

vs.

THRASHER ENGINEERING, INC. d/b/a  
THRASHER ENGINEERING, a  
West Virginia Corporation, and  
MASCARO CONSTRUCTION  
COMPANY, LP, a foreign entity,

Defendants,

vs.

SKIDMORE, OWINGS & MERRILL, LLP  
and GEOCONCEPTS ENGINEERING, INC.,

Third Party Defendants.

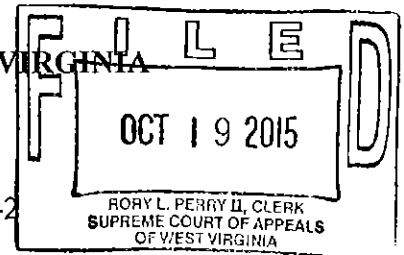
**REPLY MEMORANDUM IN SUPPORT OF JUDICIAL MOTION TO REFER CASE  
TO THE BUSINESS COURT DIVISION**

Defendant, Mascaro Construction Company, LP, by and through its undersigned attorneys, hereby consents to and does not have any objection to the Motion filed pursuant to West Virginia Trial Court Rule 29.06 by the Hon. Thomas A. Bedell requesting that the above-styled matter currently pending in the Circuit Court of Harrison County, WV be referred to the Business Court Division.

As Judge Bedell points out on page 5 of his Motion, the parties were directed to confer and work with the FBI to prepare an agreed upon Protective Order that will permit the parties to conduct meaningful discovery in keeping with the FBI's governmental safety concerns as to any

Civil Action No. 14-C-391-2

Hon. Thomas A. Bedell




production, use and disclosure of information and documents relating to or showing the inter-relationship or connectivity of system components of certain areas of the FBI CJIIS Division Complex in Clarksburg, WV that is the subject of this lawsuit. Counsel for Mascaro Construction has had multiple conversations by telephone and e-mail and has been attempting to negotiate terms of a Stipulated Protective Order with legal counsel for the FBI. Unfortunately, an agreement on language of a Protective Order acceptable to the FBI and all parties to this lawsuit has not been reached at the time of the filing of this Reply Memorandum. As a result, discovery in this case remains at a standstill. While the Trial Court conducted a Scheduling Conference and entered a Pre-Trial and Scheduling Order shortly before the filing of a Judicial Motion to Refer to the Business Court Division, Mascaro Construction believes that depending upon how long it takes to rule upon the pending Judicial Motion, to assign the case to a Presiding Judge, and to work out and present to the Court for entry a Stipulated Protective Order agreeable to the FBI, it may be necessary to re-visit the deadline set forth in the Pre-Trial and Scheduling Order entered by the Trial Court. Accordingly, Mascaro Construction requests that if the Judicial Motion to Refer to the Business Court Division is granted that the Presiding Judge conduct a Case Management and Scheduling Conference as contemplated by Trial Court Rule 29.08(c).

WHEREFORE, Defendant, Mascaro Construction Company, LP, consents to a does not have any objection to the Judicial Motion to Refer to the Business Court Division and respectfully request that it be granted; and that a Presiding Judge be assigned who shall conduct a Case Management and Scheduling Conference.

Respectfully submitted,

**MARSHALL, DENNEHEY, WARNER,  
COLEMAN & GOGGIN, P.C.**

By:   
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Counsel for Defendant,  
**Mascaro Construction Company, LP**

**CERTIFICATE OF SERVICE**

I, Edward A. Miller, Esquire, do hereby certify that true and correct copies of the foregoing **Reply Memorandum in Support of Judicial Motion to Refer Case to the Business Court Division** were sent on this 16<sup>th</sup> day of October, 2015 by U.S. Mail to all of the following individuals:

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COLEMAN & GOGGIN, P.C.

By:   
Edward A. Miller, Esquire

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