

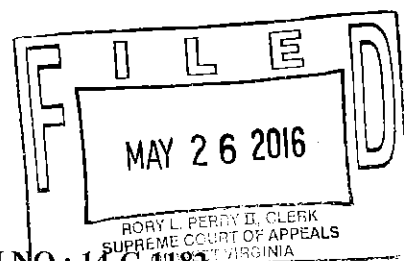
IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

J. F. ALLEN CORPORATION
a West Virginia Corporation,

Plaintiff,

v.

CIVIL ACTION NO.: 14-C-1182
JUDGE KAUFMAN



THE SANITARY BOARD OF
THE CITY OF CHARLESTON,
WEST VIRGINIA, and
BURGESS AND NIPLE, INC.
an Ohio Corporation.

Defendants.

MOTION FOR REFERRAL TO THE BUSINESS COURT DIVISION

COMES NOW the Plaintiff, J. F. Allen Corporation, by counsel, Charles M. Johnstone, II, Johnson W. Gabhart, and the law firm of Johnstone & Gabhart, LLP, and hereby moves pursuant to Rule 29.06 of the West Virginia Trial Court Rules for a referral to the Business Court Division. In support of its Motion, the Plaintiff states as follows:

1. The matter to be referred is an action for breach of contract involving a public works construction project providing for a series of improvements to the City of Charleston's municipal water system.
2. During performance a series of disputes arose between the parties that involve complex factual and legal issues related to interpretation and application of the contract documents, adequacy of notice, subsequent oral agreements affecting the relationship of the parties, and waiver of contractual provisions relating to notice, amendment, and payment for changed or extra work.
3. The case also involves a claim of professional negligence by the Plaintiff Contractor against the Defendant Owner's Engineer, Burgess & Niple, Inc. An Answer was filed by Burgess & Niple, Inc., more than a year ago but that claim has been on hold pending resolution of the Sanitary Board's Rule 12(b)(6) Motion.

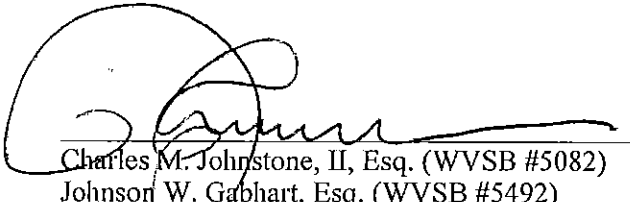
4. The complexity of the issues to be addressed in the action are reflected in the fact that the parties have spent more than eighteen (18) months litigating Rule 12(b)(6) motions and an appeal and an answer has only just now been filed. *Copies of the Complaint, Amended Complaint, Trial Court's Order Granting Defendants' Motion to Dismiss, the Decision of the Supreme Court of Appeals Reversing and Remanding, Burgess & Niple, Inc.'s Answer, and The Sanitary Board of The City of Charleston's Answer and Counterclaim are attached hereto as Exhibits A-F.*

5. The Plaintiff states that there are no related actions pending, nor is there the likelihood of related actions being filed in the future.

6. For these reasons, the Plaintiff does hereby respectfully request that this matter be referred to the Business Court Division for further litigation.

Respectfully submitted,

J. F. ALLEN CORPORATION
By Counsel:



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CERTIFICATE OF SERVICE

I, Johnson W. Gabhart, hereby certify that I served the foregoing, "MOTION FOR REFERRAL TO BUSINESS COURT DIVISION" upon the following on the 26th day of May, 2016, by depositing a true and exact copy in the United States mail, postage prepaid, to the following addresses:

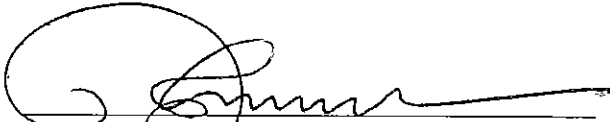
The Honorable Tod J. Kaufman
13th Judicial Circuit Court Judge
Kanawha County Judicial Building
111 Court Street
Charleston, West Virginia 25301

Kanawha County Circuit Clerk
Kanawha County Judicial Annex
111 Court Street
Charleston, West Virginia 25301

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