

IN THE CIRCUIT COURT OF PRESTON COUNTY, WEST VIRGINIA

GREATWIDE CHEETAH TRANSPORTATION, LLC,  
a Delaware Limited Liability Company,  
successor in interest to,  
CHEETAH TRANSPORTATION, LLC,

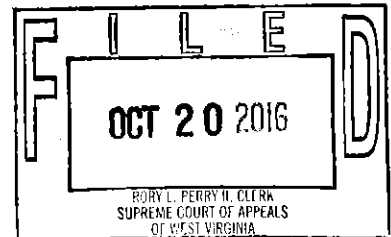
Plaintiff,

v.

Civil Action No. 14-C-106  
Judge Lawrance S. Miller

RONALD O. SLEMBOSKI, JR., an individual,  
SANDRA L. SLEMBOSKI, an individual,  
d/b/a MTF AGENCY, and MEDALLION  
TRANSPORT AND LOGISTICS, LLC, a North  
Carolina Limited Liability Company,

Defendants.



**MEDALLION TRANSPORT AND LOGISTICS, LLC'S**  
**REPLY MEMORANDUM IN OPPOSITION TO THE CIRCUIT**  
**COURT OF PRESTON COUNTY, WEST VIRGINIA'S**  
**JUDICIAL MOTION TO REFER ACTION**  
**TO THE BUSINESS COURT DIVISION**

Now comes Defendant Medallion Transport and Logistics, LLC (hereinafter "Medallion"), by the undersigned counsel, and, pursuant to West Virginia Trial Court Rule 29.06(a)(4), submits this Reply Memorandum in Opposition, to the Circuit Court of Preston County, West Virginia's Judicial Motion to Refer (the above-styled) Action to the Business Court Division.

**STATEMENT OF THE CASE**

The Court's Motion to Refer this action is thorough and accurate, and Medallion believes, reflective of the fact that the movant, the Honorable Lawrance S. Miller, Jr., presiding Judge of the Circuit Court of Preston County, West Virginia, is very well apprised of the factual background and legal issues in the case.

Medallion writes now to illustrate that the factual background of the case, though specific to the trucking industry, and, in particular, its reliance on the use of independent sales agents to solicit, and facilitate, business transporting freight for customers, is capable of brief and straightforward explanation, so that the Court can make proper and informed rulings, without the necessity of referring the case to Judges with specialized knowledge. Medallion also writes to illustrate that the legal issues presented are fundamental matters of contract law which are within the experience and knowledge of a Judge of a Court of general jurisdiction, and thus, certainly within the experience and knowledge of the Honorable Judge Miller.

Trucking companies, such as the Plaintiff Greatwide Cheetah Transportation, LLC and Defendant Medallion, who engage in interstate transportation of freight, are motor carriers registered with the United States Secretary of Transportation, and granted authority to provide interstate transportation of freight, and/or broker the transportation of freight to other registered and authorized motor carriers, and are subject to federal regulation when conducting these activities. 48 U.S.C.A §§ 13101-14916. This is irrelevant to the instant case, except to explain the roles of independent trucking agents, and how they differ from the roles of owners and operators of trucks that are leased to authorized and regulated trucking companies.

Independent sales agents are simply individuals or companies that solicit, on behalf of federally authorized and regulated trucking companies, business from customers who need freight transported interstate. They may do this on behalf of any number of trucking companies with whom they have contracts to act as agents, in which case the consideration they receive for the contract is limited to the commissions they

receive for the business they solicit. They may also enter into a contract to solicit exclusively for one trucking company, in which case, additional consideration must be provided for their agreement to remain exclusive for a specified period of time.

If the motor carrier for which an independent sales agent is soliciting business is also authorized to broker the transportation of freight to another carrier, the sales agent may solicit freight transportation jobs to be brokered by one authorized carrier to another. Both the brokering carrier, and the carrier who will transport the freight, receive payment in the form of fees and/or brokerage commissions, and the agent earns a commission for soliciting the brokered business.

Federally authorized and regulated trucking companies also lease trucks and hire drivers to transport the freight for the customers the sales agents solicit for them. The lease agreements by federally authorized and regulated motor carriers like Greatwide and Medallion, are required to be individual leases for each truck, which is to be specifically identified in the lease, and the leases must be for a specified period, and include a date and time for the transfer of the truck to and from the regulated carrier. 49 CFR §376.11, 12. For this reason, truck leases are entirely separate from any other contractual agreement, as mandated by federal law. Independent sales agents may assist in locating drivers to be hired by, and trucks to be leased by the carriers, in order to facilitate the transportation of freight for a customer the agent has solicited. However, the carrier alone must oversee the hiring of those drivers, and leasing of each truck, pursuant to its federal authority, and subject to federal regulation.

The above summary is everything a Court would need to know about the trucking industry, and the role of independent sales agents in it, in order to issue rulings in the instant case.

Plaintiff Greatwide has alleged, as thoroughly set forth in Judge Miller's motion, that either Defendants Sandra L. Slemboski, and Ronald O. Slemboski, Jr., or both of them, were under exclusive contract to solicit business for Greatwide, when Sandra L. Slemboski entered into an exclusive sales agent contract with Medallion, and began soliciting freight business for Medallion. As it pertains to their allegations against Medallion, Greatwide alleges, alternatively, that Medallion tortiously interfered with Sandra L. Slemboski's alleged exclusive agency contract with Greatwide by contracting with her to act as Medallion's own sales agent, or that Medallion conspired with Sandra L. Slemboski to tortiously interfere with Ronald O. Slemboski, Jr.'s alleged exclusive agency contract, by inducing him to solicit business for Medallion.

Discovery is now closed in this action. Medallion has filed and notice for hearing a Motion for Summary Judgment on the basis that: 1. Sandra L. Slemboski undisputedly had no written exclusive agency contract with Greatwide at the time she entered into a contract with Medallion, had undisputedly been a party to separate written contracts from Ronald O. Slemboski, Jr. at any previous time when she had acted as an agent for Greatwide, whether exclusive or not; had undisputedly received no consideration for any exclusive contract with Greatwide at the time she entered into a contract with Medallion; and had undisputedly not carried out any business for profit with Ronald O. Slemboski, Jr., so as to be a party to a contract with him; 2. Ronald O. Slemboski, Jr. undisputedly had no exclusive agency contract with Greatwide with which Sandra L.

Slemboski and Medallion could tortiously interfere because Greatwide undisputedly offered him no consideration for such a contract, and undisputedly breached the terms of any contract that might be evidenced by its own writings and testimony; and 3. There is undisputedly no evidence that Medallion engaged in any conduct that could constitute a conspiracy to interfere with any contract between either Slemboski defendant and Greatwide because all of Medallions activities were limited to, a) contracting with Sandra Slemboski, who undisputedly approached Medallion seeking to act as its agent and accurately represented that she was under no contract with anyone else that might prevent her doing so, and b) leasing trucks from Ronald O. Slemboski, Jr. and/or hiring drivers who had previously driven vehicles leased by Greatwide, neither of which activities was governed by any agency agreement alleged by contract, and could not be, as a matter of law, under federal regulation, as explained above.

While these legal issues are tedious to state, they will be resolved by reference to the basic requirements for existence of a contract, for existence of a partnership, and up to two federal trucking regulations mandating individual and specific contracts for the lease of trucks by federally regulated motor carriers. All of this is well within the experience and knowledge of a Judge of a trial court of general jurisdiction. Judge Miller's own statement of the case demonstrates all of the familiarity with these legal issues that he would need to issue proper rulings in this case.

Judge Miller's Motion to Refer this case refers briefly to an extensive discovery dispute involving electronic documents, and potential spoliation issues. Judge Miller's own very hard and thorough work [resulting in the Court's issuance of two approximately thirty (30) page Orders] on those issues has resolved them. As a part of

Medallion's participation in those discovery disputes, it has maintained disputed documentary and electronic evidence for *in camera* review, as required, and Judge Miller now has extensive knowledge of the matters to be considered in such a review.

Finally, Medallion accepts and understands that the docket of the Circuit Court of Preston County presents scheduling conflicts created by a criminal case that must take precedence, and/or by other matters, that may well result in the current January of 2017 trial date being unavailable, should a trial be necessary. However, it remains likely that any alternative trial dates in the Circuit Court of Preston County will be sooner than any trial date that could be scheduled by the Business Court Division.

#### **ARGUMENT**

Medallion agrees with Judge Miller's assertion that his judicial motion to refer this case to the Business Court Division is procedurally proper, and that the nature of the case would meet the definition of business litigation (due to commercial, but not technological, issues), as set forth in West Virginia Trial Court Rule 29.04(a)(1).

The basis for Medallion's opposition to the judicial motion to refer the case, is that, unfortunately, doing so now, more than two years after Medallion has been brought into the case, would actually frustrate the purpose of the Business Court Division, as expressed in the preamble to Trial Court Rule 29, "for efficiently managing and resolving litigation involving commercial issues and disputes..."

Medallion has spent a great deal of time and incurred tens of thousands of dollars in attorney fees and other case-related expenses to arrive at the point so well-summarized by Judge Miller in the pending Motion to Transfer. To require Medallion and the other litigants to now educate both a Presiding Judge and a Resolutions Judge

about this case, and wait for further scheduling of a hearing on dispositive motions, alternative dispute resolution meetings, a new trial date, if necessary, and such other matters as the Business Court, in its discretion, may deem necessary will be a highly inefficient way to manage and resolve this litigation.

Such an action at this point in the case, is not justified, unless the matter is so factually or legally complex, that the Circuit Court of Preston County would need specialized knowledge to handle the management and resolution tasks that remain. Medallion respectfully submits that though this case has required a great deal of the Court's time and energy, and the Court is faced with potential additional scheduling issues, the case is not one where, at this point, efficient resolution is likely to be benefitted by the transfer of the case to judges with more specialized knowledge.

**WHEREFORE**, Medallion respectfully requests that the Circuit Court of Preston County, West Virginia's Judicial Motion for Transfer to the Business Court Division be denied.

MEDALLION TRANSPORT  
and LOGISTICS, LLC,  
By Counsel,

  
Heather M. Noel, W. Va. Bar No. 7814

James D. Stacy, W.Va. Bar No. 6095

MacCorkle Lavender PLLC

2004 White Willow Way

Morgantown, WV 26505

Telephone: (304) 599-5600

Facsimile: (304) 599-8141