

IN THE CIRCUIT COURT OF HANCOCK COUNTY, WEST VIRGINIA

**WINE AND BEVERAGE MERCHANTS
OF WEST VIRGINIA, INC.;
ATOMIC DISTRIBUTING COMPANY;
BEVERAGE DISTRIBUTORS, INC;
J.C. DISTRIBUTING COMPANY LLC;
PHILLIP JAY SHIFFLETT;
JO'S GLOBE DISTRIBUTING COMPANY; and
MARTIN DISTRIBUTING COMPANY,
Plaintiffs,**

v.

Civil Action No. 17-C-91
Judge David J. Sims

**MOUNTAIN STATE BEVERAGE, INC.;
MOUNTAIN EAGLE, INC.;
NORTHERN EAGLE, INC.;
WILLIAM J. RUCKER, JR.;
SCOTT PARKES; and
JOHNSON BROTHERS LIQUOR COMPANY,
Defendants.**

MOTION TO REFER TO THE BUSINESS COURT DIVISION

The Court respectfully refers this matter to the Business Court Division pursuant to Rule 29.06 of the West Virginia Trial Court Rules.

I) Nature of the Action

Plaintiffs' Complaint alleges as follows:

1. A huge national alcohol company and its West Virginia arm and partners are monopolizing wine distribution in West Virginia, using illegal, anticompetitive [*sic*] tactics to eliminate local, family-owned businesses. This action seeks to block the monopoly and compensate the family businesses that have been harmed.
2. Late last year, Johnson Brothers Liquor Company (Johnson Brothers) of Minnesota, a manufacturer, supplier, and distributor of alcoholic beverages with operations spanning half the country and annual revenues exceeding \$2 billion, acquired majority ownership of Mountain State Beverage (MSB), a wine distributor that, when Johnson Brothers bought it, controlled approximately 50% of the wine distribution market in West Virginia. Johnson Brothers' national operations run the gamut of the alcohol business: It is a supplier and distributor of beer, wine, and malt beverages, and a distiller and broker of liquor. In West Virginia, MSB's range of activities is also broad: It is a wine and beer distributor and liquor broker, and it has a dominant market presence in the rapidly growing craft beer segment.

3. Since 2011, MSB has systematically used unlawful, anticompetitive [*sic*] practices in an attempt to monopolize wine distribution in West Virginia. MSB has induced more than a dozen wine suppliers to refuse to deal with its competitors, costing those competitors tens of millions of dollars in lost sales. In late 2016, in order to complete its planned monopoly, MSB's owner sold a majority interest in MSB to Johnson Brothers. Part of the deal was that Johnson Brothers would secure an exclusive-dealing agreement between MSB and the last major wine supplier that still deals with Mountain State's competitors: E&J Gallo Winery (Gallo). In early January 2017, consistent with this plan, Gallo suddenly announced its refusal to deal with Atomic Distributing Company (Atomic), a multigenerational, family-owned, West Virginia wine distributor based in Huntington—and a reliable Gallo partner for 35 years.

4. At the same time, Johnson Brothers delivered an ultimatum to the remaining Gallo distributors in West Virginia: sell MSB your Gallo businesses at a cut-rate price or we will take them away from you for nothing. If these distributors accede to Johnson Brothers' demand, MSB will control at least approximately 75% of the wine distribution business in West Virginia, which would give it market power in the wine distribution market. And if MSB gains that degree of control over the wine distribution market, it likely would force many or all of its competitors out of the wine distribution business altogether, giving MSB even greater market power. Johnson Brothers' and MSB's demand that its competitors sell them bulk of the remaining wine business in West Virginia is an unlawful attempt to monopolize wine distribution in this state.

5. Johnson Brothers' acquisition of MSB, which was a key step in the plan to monopolize, was itself illegal. West Virginia law prohibits the owner of a wine manufacturer from also owning a wine distributor. The prohibition extends to immediate family members of owners. Yet the same Johnson family that acquired a majority of MSB already owned - and continues to own - a wine manufacturer, making the acquisition a plain violation of the law.

Plaintiffs have alleged the following causes of action against Defendants: 1) Restraint of Trade in violation of W.Va. Code §47-18-3; 2) Monopolization in violation of W.Va. Code §47-18-4; 3) Tortious Interference; and 4) Unjust Enrichment.

II) Basis for the Request

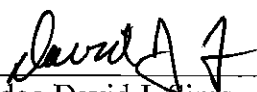
The Business Court has significantly more experience than this Court in dealing with complex civil matters involving allegations of statewide restraint of trade, monopolies and anti-trust.

III) Related Actions

The Court is unaware of any related actions.

It is **ORDERED** that this matter is Stayed pending resolution of this Motion.

Respectfully Submitted,



Judge David J. Sims,
First Judicial Circuit

CERTIFICATE OF SERVICE

Service of the foregoing MOTION TO REFER TO THE BUSINESS COURT DIVISION
was had this 14th day of September, 2017, by mailing a true copy thereof by U.S. Mail, postage
prepaid, to the following:

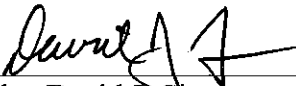
Eric B. Snyder
Steven R. Ruby
Isaac R. Forman
Bailey & Glasser LLP
209 Capitol Street
Charleston, WV 25301

William J. Ihlenfeld, II
Bailey & Glasser LLP
2001 Main Street, Suite 203
Wheeling, WV 26003
Counsel for Plaintiffs

Robert J. D'Anniballe, Jr.
Erica M. Pietranton
333 Penco Road
Weirton, WV 26062
Counsel for Defendants,
Mountain State Beverage, Inc.,
Mountain Eagle, Inc.,
Northern Eagle, Inc.,
William J. Rucker, Jr.,
Scott Parkes, and
Johnson Brothers Liquor Company

Chuck Wright, Clerk
Circuit Court of Hancock County
Hancock County Courthouse
P.O. Box 428
New Cumberland, WV 26047

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



Judge David J. Sims,
First Judicial Circuit