

IN THE CIRCUIT COURT OF MONONGALIA COUNTY, WEST VIRGINIA

WEST VIRGINIA RADIO CORPORATION,
Plaintiff,

vs.

CIVIL ACTION NO. 13-C-468
(JUDGE THOMAS C. EVANS, III)

WEST VIRGINIA UNIVERSITY BOARD OF
GOVERNORS, WEST VIRGINIA UNIVERSITY
FOUNDATION, INC., WEST VIRGINIA MEDIA
HOLDINGS, LLC, ANDREW A. PAYNE, III, DAVID B.
ALVAREZ, ALBERT BRAY CARY, JR., RALPH
BALLARD, RICHARD BALLARD, OLIVER LUCK,
JAMES P. CLEMENTS, and IMG COLLEGE, LLC.
Defendants.

ORDER

The **PRESIDING JUDGE'S MOTION TO REFER CIVIL ACTION TO
THE BUSINESS COURT DIVISION** is now ORDERED filed. A copy of this
order and the motion shall be mailed by the Circuit Clerk to all of the
attorneys of record for the parties herein.

ENTER: September 12, 2013



Thomas C. Evans, III, Circuit Judge
Designated Judge, Seventeenth Judicial
Circuit, State of West Virginia

IN THE CIRCUIT COURT OF MONONGALIA COUNTY, WEST VIRGINIA

WEST VIRGINIA RADIO CORPORATION,
Plaintiff,

vs.

CIVIL ACTION NO. 13-C-468
(JUDGE THOMAS C. EVANS, III)

WEST VIRGINIA UNIVERSITY BOARD OF
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FOUNDATION, INC., WEST VIRGINIA MEDIA
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ALVAREZ, ALBERT BRAY CARY, JR., RALPH
BALLARD, RICHARD BALLARD, OLIVER LUCK,
JAMES P. CLEMENTS, and IMG COLLEGE, LLC.
Defendants.

**PRESIDING JUDGE'S MOTION TO REFER CIVIL ACTION TO
THE BUSINESS COURT DIVISION**

The undersigned Judge, pursuant to Rule 29.06 of the West Virginia Trial Court Rules, moves that the above-styled action be referred to the West Virginia Business Court Division. This action involves various claims between several corporations, a state entity, and a 501(c)(3) corporation. The plaintiff has alleged claims for Breach of Fiduciary Duty, Violation of the Solicitation of Charitable Funds Act, Constructive Fraud, Civil Conspiracy, and Violations of the Freedom of Information Act. Therefore, this matter meets the definition of "Business Litigation" pursuant to Rule 29.04(a) of the West Virginia Trial Court Rules.

In support of this request, the above-style action contains a high level of complexity, novel issues, and other issues requiring specialized treatment. The bidding process for third-tier media rights is just one

example of the issues that arise in this matter. This action presents matters that should be resolved in a judicious and timely manner.

WHEREFORE, the Presiding Judge moves to have the above-styled action referred to the West Virginia Business Court Division.

The Clerk shall provide copies of this request to all counsel of record,, the Clerk of the Supreme Court of Appeals, and the Business Court Division Central Office, Berkeley County Judicial Center, 380 W. South Street, Suite 2100, Martinsburg, West Virginia 25401.

Date: September 12, 2013



Thomas C. Evans, III, Circuit Judge
Special Judge, Seventeenth Judicial
Circuit, State of West Virginia



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August 29, 2013

The Honorable Thomas C. Evans III
Sitting in the Circuit Court of
Monongalia County
Jackson County Courthouse
PO Box 800
Ripley, WV 25271

Via Email and First Class Mail

RE: *West Virginia Radio Corporation v.
West Virginia University Board of
Governors, et. al.*
Civil Action No. 13-C-468
Business Court Assignment

Dear Judge Evans:

Yesterday our team met to review and assign tasks for the prosecution of these claims. We also further considered the proposed "formal" assignment of these proceedings to the Business Court pursuant to Trial Court Rule 29.

After careful consideration, it is our preference that we continue on our current track, without the imposition of time constraints imposed by Trial Court Rule 29. Many factors have influenced this decision, including (1) that, at this point, we are unable to determine when we will have complete copies of the WVU Purchasing files for both 900027802X and 90003005, and until that point, cannot fully evaluate the competing proposals; (2) the magnitude of the anticipated discovery to further substantiate many of the predicate facts set forth in the Amended and Supplemental Complaint; and (3) the complexity of the case, particularly considering the multiple parties involved.

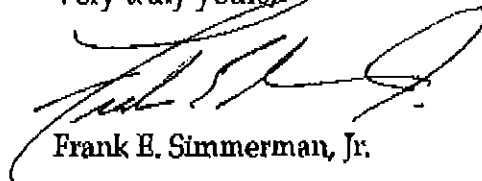
August 29, 2013

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Obviously, we felt it prudent to promptly notify the Court of our reconsidered position.

Finally, as previously expressed, I thank the Court for its courtesies extended to all parties August 26th, and I'm sure that we all appreciate your, as well as your staff's, exhaustive preparation.

Very truly yours,



Frank E. Simmerman, Jr.

FES, Jr./slf

cc: Lindsay M. Gainer-Law Clerk
Jeffrey M. Wakefield, Esq.
John R. Hoblitzell, Esq.
Benjamin L. Bailey, Esq.
Shawn P. George, Esq.
Michael J. Romano, Esq.
Robert P. Fitzsimmons, Esq.
William E. Galeota, Esq.
* J. Michael Benninger, Esq. *
Heather Heiskell-Jones, Esq.

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FITZSIMMONS

LAW FIRM

August 30, 2013

Via Facsimile Transmission and U.S. Mail
304-372-4407

The Honorable Thomas C. Evans III
Sitting in the Circuit Court of Monongalia County
Jackson County Courthouse
P.O. Box 800
Ripley, WV 25271

Re: West Virginia Radio Corporation v. West Virginia
Board of Governors, et al
Circuit Court of Monongalia County
Civil Action No. 13-C-468

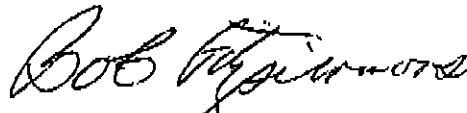
Dear Judge Evans:

At the hearing held on August 26, 2013, you requested the parties to communicate their positions on possibly transferring the above-styled matter to the Business Court Division.

On behalf of my client, Oliver Luck, and on behalf of Michael J. Romano's client, David B. Alvarez, we have no objection to Mr. Simmerman's suggestion that the matter remain in the Circuit Court.

Very truly yours,

FITZSIMMONS LAW FIRM PLLC



Robert P. Fitzsimmons

RPF/klc

cc: Michael J. Romano Esq.
Frank E. Simmerman Jr. Esq.
Clifford B. Levine Esq.
Jeffrey M. Wakefield Esq.
Benjamin Bailey Esq.
Shawn P. George Esq.
William E. Galeota Esq.
Allison Williams Esq.
J. Michael Benninger Esq.
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Teresa J. Dumire Esq.

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After-Hours Extension 165

August 30, 2013

Via E-mail and U.S. Mail
The Honorable Thomas C. Evans III
Jackson County Court House
P.O. Box 800
Ripley, West Virginia 25271

Re: West Virginia Radio Corp. vs. West Virginia University Board of Governors, et al.;
Circuit Court of Monongalia County, Civil Action No. 13-C-468
Business Court Referral

Dear Judge Evans:

I write to respond to your inquiry of the parties during the hearing on August 26, 2013, regarding referral of this matter to the Business Court. West Virginia University Foundation favors such a referral. This matter has some significant commercial issues in terms of the University's procurement process and the specialized nature of the media rights market underlying the dispute which make referral to the Business Court appropriate. Of equal importance from the Foundation's perspective is the expedited process available through the Business Court to resolve the case.

For decades, the WVU Athletic Department has been tasked by University administrators to be self-supporting. The revenues generated from the football and basketball programs by the Athletic Department and generous annual support from private donors make self-sufficiency an attainable goal.¹ From the student perspective, these revenue sources provide the opportunity to participate in a wide range of non-revenue sports. The complaint lodged by the West Virginia Radio Corp. as an unsuccessful bidder for a portion of the media-rights package challenges the procurement processes employed by the Athletic Department.

¹ In the context of the University's mandate to the Athletic Department to operate on a self-supporting basis, good stewardship required Athletic Department administrators to recognize that the Department's 20th Century, no-bid radio broadcast contract with West Virginia Radio Corporation deprived the Athletic Department of a substantial revenue stream available to the Department in a 21st Century media environment.



Honorable Thomas C. Evans III

August 30, 2013

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To support its challenge, West Virginia Radio Corp. makes many yet-to-be-proven allegations assaulting the actions, character and good faith of numerous individuals involved in the operation of the Athletic Department. As the court has recognized, allegations of this character, even though unproven, are harmful both to the individuals involved and to the public's confidence in the University's management. These allegations also have the potential to undermine confidence among donors whose continued support is important to my client's success in fulfilling its mission of support to West Virginia University. For these reasons, this case should be adjudicated as quickly as reasonably possible through the Business Court.

West-Virginia University Foundation

By:

John R. Hoblitzell (WVSB #1746)

Kay Casto & Chaney PLLC

JRH/spw

cc: Counsel of Record – via e-mail and U.S. Mail

BAILEY & GLASSER_{LLP}

Lawyers
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August 30, 2013

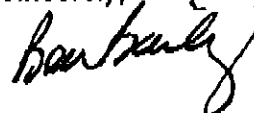
Honorable Thomas C. Evans, III
Jackson County Courthouse
P. O. Box 800
Ripley, WV 25271

**Re: West Virginia Radio Corporation v. West Virginia University Board of
Governors, et al.
Civil Action No. 13-C-468**

Dear Judge Evans:

West Virginia Media and Bray Cary concur in the Chief Justice's suggestion that
this case be referred to the Business Court.

Sincerely,



Benjamin L. Bailey

BLB/sdh

cc: Counsel of Record – via email and US Mail

GEORGE & LORENSEN, PLLC

ATTORNEYS AT LAW PROFESSIONAL LIMITED LIABILITY CORPORATION
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CHARLES O. LORENSEN

TELEPHONE (304) 343-5555
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August 30, 2013

VIA EMAIL AND US MAIL

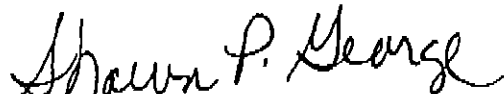
Judge Thomas C. Evans, III
Sitting in the Circuit Court of
Monongalia County
Jackson County Courthouse
P.O. Box 800
Ripley, WV 25271

Re: West Virginia Radio Corporation v. West Virginia University
Board of Governors, et al.
Civil Action No.: 13-C-468

Dear Judge Evans:

Andrew A. Payne, III consents to the transfer of this action to the Business Court.

Sincerely,


Shawn P. George

cc: Frank E. Simmerman, Esquire
Clifford B. Levine, Esquire
Robert P. Fitzsimmons, Esquire
Michael J. Romano, Esquire
William E. Galeota, Esquire
Jeffrey M. Wakefield, Esquire
J. Michael Benninger, Esquire
Benjamin Bailey, Esquire
Stephen A. Weber, Esquire
Teresa Dumire, Esquire
Heather H. Jones, Esquire



SPILMAN THOMAS & BATTLE, PLLC

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September 4, 2013

VIA E-MAIL & U.S. MAIL

Honorable Thomas C. Evans III
Sitting By Designation In The Circuit
Court of Monongalia County
Jackson County Courthouse
P.O. Box 800
Ripley, WV 25271

**Re: West Virginia Radio Corporation v. West Virginia University Board of
Governors, et al.
Civil Action No.: 13-C-468
Circuit Court of Monongalia County, West Virginia**

Dear Judge Evans:

As a follow-up, and to restate the position placed on the record at the hearing held Monday, August 26, 2013, in this matter, IMG College, LLC, favors referral of the above-referenced case to the West Virginia Business Court with you remaining as the presiding Judge.

Thank you for your attention to this matter.

Sincerely,

Heather Heiskell Jones

FHJ/ses: 5199583 v1

Enclosure

cc: Lindsay Gainer, Law Clerk (via E-mail)
Frank E. Simmerman, Jr., Esq. (via E-mail and U.S. Mail)
Clifford B. Levine, Esq. (via E-mail and U.S. Mail)
Jeffrey M. Wakofield, Esq. (via E-mail and U.S. Mail)
Teresa J. Dumire, Esq. (via E-mail and U.S. Mail)
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August 30, 2013

VIA EMAIL ONLY: evansjudge@hotmail.com

Hon. Thomas C. Evans, III
Circuit Judge
Jackson County Courthouse
100 Court Street
Ripley, West Virginia 25271

Re: *West Virginia Radio Corporation, Inc. v. West Virginia University Board
of Governors, et al.*
Civil Action No.: 13-C-468 (Judge Evans)
Circuit Court of Monongalia County, West Virginia

Dear Judge Evans:

Per your request at the hearing on August 26, 2013, I am writing to advise that our client, James P. Clements, defers to the Court's discretion as to whether this action should be referred to the Business Court Division pursuant to Trial Court Rule 29.

Please let me know if you need anything else.

Very truly yours,

A handwritten signature in black ink, appearing to read 'William E. Galcota'.

William E. Galcota

WEG/abw
pc (via email): All counsel



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August 30, 2013

VIA E-MAIL AND REGULAR MAIL

The Honorable Thomas C. Evans, III
Sitting in the Circuit Court of
Monongalia County
Jackson County Courthouse
PO Box 800
Ripley, WV 25271

Re: West Virginia Radio Corporation v.
West Virginia University Board of Governors, et al.
Circuit Court of Monongalia County
Civil Action No. 13-C-468

Dear Judge Evans:

At the hearing held on August 26, 2013, the Court requested that West Virginia University Board of Governors ("WVU") communicate its position on possible transfer of the above-captioned matter to the Business Court Division under Rule 29 of the Trial Court Rules and to do so by today.

WVU defers to the Court's discretion in deciding whether referral to the Business Court Division under Trial Court Rule 29.06 should occur. WVU notes that Your Honor will continue to preside over this action regardless of the choice and that the Court will have the authority to fashion an appropriate schedule for disposition of the matter under either Trial Court Rule 29.08 or West Virginia Rule of Civil Procedure 16.

I was copied on Mr. Simmerman's letter of August 29, 2013, wherein West Virginia Radio Corporation ("WVRC") advised the Court of its position on transfer to the Business Court Division. I must dispute any contention by WVRC that WVU has failed to provide complete copies of the purchasing files for both RFP 900027802X or RFP 90003005 and that such an assertion can serve as a basis for opposing referral to the Business Court Division. WVU has fully met its obligations under FOIA and has produced the purchasing files for both RFP's, subject to appropriate statutory exemptions.

If you have any questions concerning this matter or I may be of any assistance, please do not hesitate to call.

Sincerely,



Jeffrey M. Wakefield

JMW/adm/09326.26086

fsblaw.com



Page 2

cc: Frank E. Simmerman, Jr., Esq./Chad L. Taylor, Esq./Frank E. Simmerman, III, Esq.
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