

**IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA**

**GRAPHITE INVESTMENTS, LLC**

**Plaintiff,**

**V.**

**Civil Action No. 13-C-1795**

**JACOBS FINANCIAL GROUP, INC., and  
FIRST SURETY CORP.**

**Defendants.**

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A TRUE COPY

TESTED  
CIRCUIT COURT KANAWHA COUNTY, W. VA.

**MOTION TO REFER TO THE BUSINESS COURT DIVISION**

Pursuant to Rule 29 of the West Virginia Trial Court Rules, the defendants move to refer this action to the Business Court Division for all further proceedings. In support of its motion, the defendants state the following:

**The Nature of the Action Sought to Be Referred**

This action seeks damages for the refusal of the defendants to redeem certain shares of Series B preferred stock in the defendant Jacobs Financial Group, Inc. (hereinafter, "JFGI") or to exchange or swap Series B preferred stock held by the plaintiff for an equivalent value of Series A preferred stock in JFGI.

More specifically, the plaintiff is an investor in the defendant JFGI, holding a significant amount of preferred stock, identified as Series B preferred shares. The plaintiff contends that over a period of several years, it has sought to either exchange its Series B preferred stock for

Series A preferred stock in JFGI or to redeem the stock for cash. The plaintiff further contends that to a very limited extent, it has been successful in redeeming a small percentage of that stock for cash. The plaintiff seeks damages in an amount equivalent to the alleged value of the Series B preferred stock that it holds in JFGI together with interest and costs.

The defendant First Surety Corp. is a wholly-owned subsidiary of the defendant JFGI and operates an insurance company regulated by the West Virginia Office of the Insurance Commissioner. The defendant, First Surety Corp. contends that it was not party to the Subscription Agreement, through which the plaintiff acquired its series B preferred stock in JFGI And is for all practical purposes a stranger to the transactions between the plaintiff and JFGI and to the dispute giving rise to this action.

The defendant JFGI contends that under the terms of the subscription agreement, by which the plaintiff acquired its Series B preferred shares in JFGI, it was at no time obliged, compelled or financially capable to either redeem that stock or to exchange it for Series A preferred stock in JFGI. Further, the defendant JFGI asserts that for significant portions of the time material to this action, it was constrained from either redeeming the plaintiff's shares or exchanging those shares by the explicit or implicit Order of the West Virginia Office of Insurance Commissioner.

### **The Basis for the Request to Refer This Action to the Business Court Division**

This is a highly technical civil action requiring the trial court, to a great extent, to apply or interpret and apply sophisticated contracts dealing with the issuance of stock and the rights of the stockholder to redeem or exchange its shares.

(1) The principal claim or claims in this action involve matters of significance to the transactions, operations and governance between the plaintiff and defendant business entities and raise issues of contractual and securities law that may be of first impression in West Virginia.

(2) This dispute represents commercial issues in which specialized treatment is likely to improve the expectation of a fair and reasonable resolution of the controversy because of the need for specialized knowledge or expertise in the subject of contract and securities law and familiarity with some specific law or legal principles that may be applicable

(3) The principal claim or claims do not involve, or even touch upon, any of the species of claims and actions that are described in Rule 29.04 (a) (3) of the West Virginia Trial Court Rules.

### **Additional Related Actions That Are Pending or That May Be Filed in the Future.**

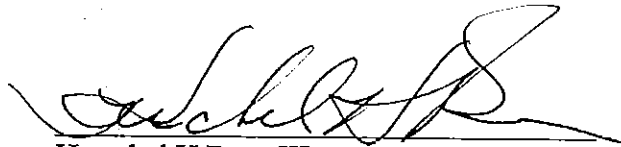
These defendants are unaware of any additional related actions that are pending or that may be filed in the future that relate in any fashion to the issue of the redemption or exchange of the shares of Series B preferred stock of JFGI held by the plaintiff or any other action that raises similar claims or issues.

**The Filing Date of the Action.**

This action was filed on or about the 20<sup>th</sup> September, 2013.

JACOBS FINANCIAL GROUP, INC. and  
FIRST SURETY CORP.

By Counsel

A handwritten signature in black ink, appearing to read 'Herschel H Rose III', written over a horizontal line.

Herschel H Rose III

(WVSB # 3179)

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FILED

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Defendants.

CERTIFICATE OF SERVICE

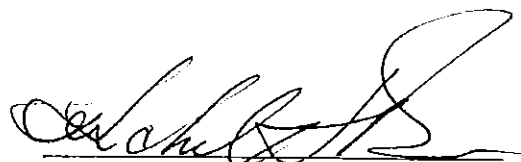
I hereby certify that I have this 31<sup>st</sup> day of October, 2013 mailed to

The Hon. Louis "Duke" Bloom, Chief Judge  
13<sup>th</sup> Judicial Circuit  
Kanawha County Judicial Annex  
111 Street  
Charleston, WV 25301

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

Edward D McDevitt and Patrick C Timony,  
Bowles Rice LLP, 600 Quarrier St.,  
PO Box 1386 Charleston, WV 25325-1386,  
Attorneys for Plaintiff,

a copy of the foregoing "Motion to Refer to the Business Court Division" in an envelope properly addressed and stamped.



Herschel H Rose III