IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA
(BUSINESS COURT DIVISION)

VANDALIA CAPITAL II, LLC, UNITED BANK, INC., RALPH BALLARD, III, STEPHEN B. FARMER, DAVID P. FERRETTI, SHAWN P. GEORGE, MARK A. GRIMMETT, ROBERT HUGGINS, ANDREW B. JORDAN, R. SCOTT LONG, ANDREW A. PAYNE, III, ROOKE ASSET PARTNERS, LP, ANDREW K. ROOKE and TIMOTHY K. WILCOX,

Plaintiffs,

v.

DAVID P. PRAY, Individually and as Trustee of the DAVID P. PRAY REVOCABLE TRUST, DAVID P. PRAY REVOCABLE TRUST, and JOHN/JANE DOE,

Defendants.

v.

THE WOODS DEVELOPMENT COMPANY, LLC,

Third-Party Defendant.

Case No. _____
Kanawha County Civil Action No. 13-C-570
(The Honorable Louis H. Bloom)

VANDALIA CAPITAL II LLC'S, UNITED BANK INC.'S, THE NON-BREACHING VANDALIA AFFILIATES', AND THE WOODS DEVELOPMENT COMPANY LLC'S MOTION TO REFER CIVIL ACTION TO THE BUSINESS COURT DIVISION

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I. INTRODUCTION

Pursuant to Trial Court Rule 29.06, United Bank, Inc. ("United"), Vandalia Capital II, LLC ("Vandalia"), the Non-Breaching Vandalia Affiliates,[1] and The Woods Development Company, LLC ("WDC") respectfully move to refer this action to the Business Court Division ("Business Court").[2] As required by Rule 29.06(a)(1), the following information is provided:

Rule 29.06(a)(1) Question	Answer
Identification of the nature of the action sought to be referred	This action arises from a web of overlapping agreements among sophisticated business parties that stem from a $28.2 million commercial real estate loan. All of the claims asserted in the action relate to the litigants' duties, obligations, and rights under these agreements. *See infra* §§ II.A., IV.A.
Basis for the requested referral	The claims asserted in this action raise significant questions with respect to the web of commercial agreements that link all of the litigants, all of whom are sophisticated business parties. *See infra* §§ II.B., IV.A. The complexity and unprecedented nature of the claims asserted by the parties are such that litigation in the Business Court will likely "improve the expectation of a fair and reasonable resolution of the controversy because of the need for specialized knowledge or expertise." *See infra* § IV.B.
Whether additional related actions are pending or may be filed in the future	No additional related actions are pending or expected to be filed in the future.

This action is ideally-suited to adjudication in the Business Court and if it does not qualify for referral, it is hard to imagine any case that does. All of the litigants are sophisticated business parties inextricably bound together by a web of overlapping commercial agreements arising out of a $28,212,594 commercial real estate loan. Moreover, these agreements—and the intricate web of

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[1] The Non-Breaching Vandalia Affiliates are plaintiffs, along with United and Vandalia, in the action below and they are: Ralph Ballard III, Stephen B. Farmer, David P. Ferretti, Shawn P. George, Mark A. Grimmett, Robert Huggins, Andrew B. Jordan, R. Scott Long, Andrew A. Payne III, Rooke Asset Partners LP, Andrew K. Rooke, and Timothy K. Wilcox. Like Defendants David P. Pray and the David P. Pray Revocable Trust, the Non-Breaching Vandalia Affiliates are either members of Vandalia or they are related to or affiliated with one of Vandalia's members.

[2] In accordance with Rule 29.06(a)(1), copies of the following documents are attached as exhibits: (1) Amended Complaint (Exhibit A); (2) Answer, Counterclaims, and Third-Party Complaint (Exhibit B); (3) the docket sheet (Exhibit C); and (4) United Bank, Inc.'s Motion to Dismiss David P. Pray's and the David P. Pray Revocable Trust's Counterclaim and Incorporated Memorandum of Law (Exhibit D).

relationships that arise from them—have spawned a series of complex and novel claims that require the specialized treatment that can be obtained in the Business Court.

Although this Court denied a previous motion to refer, this action has changed so dramatically since then that it is essentially a different action. Following the denial of the previous motion, an amended complaint was filed that added 12 additional party plaintiffs (i.e., the Non-Breaching Vandalia Affiliates), along with additional factual allegations that crystallize the complexity of the commercial issues of fact and law presented in this action. Moreover, a counterclaim and third-party complaint have been filed that magnifies the complexity of the action and adds an additional party. Thus, the case before this Court today is a fundamentally different case from the one that was previously before this Court.

In sum, this Court should find that this action is well-suited to review in the Business Court and that referral will facilitate a fair and reasonable resolution of this action.

II. STATEMENT OF THE CASE

This action began with the filing of the original Complaint on March 26, 2013, in the Circuit Court of Kanawha County by Plaintiffs United and Vandalia against Defendants David P. Pray and the David P. Pray Revocable Trust (collectively, "Pray").[3] The Non-Breaching Vandalia Affiliates became co-plaintiffs following the filing of an Amended Complaint on March 21, 2014. WDC became a party upon Pray's filing of a Counterclaim and Third-Party Complaint on June 30, 2014. These parties—and the web of intersecting commercial agreements that connect them and give rise to the claims asserted in this action—are summarized in Section II.A., below.

[3] Because the Amended Complaint alleges that David P. Pray and the David P. Pray Revocable Trust are alter egos of each other, both are referred to collectively. [*See* Ex. A, Am. Compl. ¶ 19.]

A. Summary of Pertinent Facts

The controversy in the circuit court radiates from a $28,212,594 commercial real estate loan ("Loan"), memorialized by a "Loan Agreement" signed on October 30, 2006, between United and WDC. [*See* Ex. A, Loan Agreement (Ex. 3 to Am. Compl.).] The Loan Agreement is at the center of a web that connects all of the parties. Under the Loan Agreement, United agreed to loan WDC $28,212,594 at an interest rate of 7.80 percent, while WDC agreed to pay interest on a quarterly basis, until May 1, 2008 when WDC agreed to repay to all unpaid principal and interest. The Loan enabled WDC to purchase 275 acres of land in North Carolina that it planned to develop into a residential subdivision comprising approximately 202 individual home lots for sale to the public. [Ex. A, Pray Consulting Agreement at 1-2 (Ex. 6 to Am. Compl.).]

Although they are not parties to the Loan Agreement, the Non-Breaching Vandalia Affiliates and Pray are expressly mentioned in the Loan Agreement. In fact, the Loan Agreement indicated that each of them would execute Guaranty Agreements (i.e., "Guaranties") that irrevocably and unconditionally guaranteed payment of the Loan. [*See* Ex. A, Loan Agreement at 1 (Ex. 3 to Am. Compl.).] The Loan Agreement also provided that each agreed to provide United with Letters of Credit to serve as collateral security. [*See id.* at 3.] Execution and delivery of the Guaranties and the Letters of Credit were express conditions precedent to United's obligations. [*See id.* at 12-13.]

With respect to the Guaranties, each Guarantor[4] agreed that his Guaranty was made "to induce" United to make the Loan. [*See, e.g.*, Ex. A, § 2 at 1, Pray Guaranty (Ex. 5 to Am. Compl.).][5] In addition, each Guarantor represented and warranted that the Guaranty was being executed at WDC's request and that each Guarantor was satisfied with respect to WDC's financial

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[4] "Guarantors" refers to both the Non-Breaching Vandalia Affiliates and Pray, collectively.

[5] The Pray Guaranty is identical in every pertinent respect to the Guaranties signed by the other Guarantors.

condition and its intended use of the Loan proceeds. [*Id.* § 12 at 2.] Each Guarantor "absolutely and unconditionally" guaranteed the payment and performance of WDC's Loan obligations. [*See id.*]

Vandalia is the glue that binds the Guarantors—including Pray—together. That is, all of them are either members of Vandalia or they are closely related to a member.[6] In turn, Vandalia is linked to WDC through an agreement between them that is known as the "Fee Agreement." [Ex. B, Counterclaim ¶ 15 at 14.] Under the Fee Agreement, WDC agreed to pay Vandalia a "fee" in exchange for Vandalia's agreement to "facilitate" the making of the Loan and "in consideration for the members of Vandalia (the 'Guarantors') executing Guaranty Agreements in favor of United . . . to enable [WDC] to obtain such financing from United." [Ex. B, Fee Agreement at 1 (Ex. A to Counterclaim).] In exchange for Vandalia's "facilitation" services with respect to the Loan and the Guarantors' agreement to execute Guaranties in favor of United, WDC agreed to pay Vandalia a "fee" that could potentially range from a minimum of $12 million to more than $24 million. [*See* Ex. B, Counterclaim ¶¶ 14-15; Fee Agreement 2-3 (Ex. A to Counterclaim).]

WDC and Vandalia—and Pray specifically—are further linked by an additional agreement known as the "Consulting Agreement." [*See* Ex. A, Consulting Agreement (Ex. 6 to Am. Compl.).] The Consulting Agreement was executed by Vandalia and PrayWorks, LLC ("PrayWorks") on July 14, 2008, for the benefit of WDC and Vandalia. PrayWorks is a West Virginia limited liability company managed by David P. Pray that provides consulting and project management services with respect to commercial real estate development projects. [*Id.* at 1.] The Consulting Agreement recited that WDC was engaged in the North Carolina commercial real estate "Project" and that it had "experienced delays and difficulties with respect to site development and other operational issues." [*Id.* at 1-2.] Because of these delays and difficulties, Vandalia retained

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[6] For example, although Pray, individually, is a Guarantor, he is not a member of Vandalia in an individual sense. Rather, Pray's affiliation with Vandalia arises from the fact that his revocable trust is a member of Vandalia.

PrayWorks to provide comprehensive consulting and project management services to it and WDC. [*See id.* at 2.] The Consulting Agreement indicated that David P. Pray, individually, would perform all of the professional services to be provided by PrayWorks under the agreement. [*See id.* at 5.][7]

"[A]dverse market conditions and other development issues[,]" however, prevented WDC from repaying the Loan by its original maturity date of May 1, 2008. [Ex. A, Am. Compl. ¶ 30.] Consequently, United and WDC have entered several amendments to extend the Loan's maturity date. [*See id.*] Nevertheless, by the fall of 2009, WDC was unable to make the required interest payments. [*See id.* ¶ 34.] To avoid a default, and "to keep the Project afloat until the economy and real estate markets recovered[,]" Vandalia's members agreed to make interest payments to United that, combined with the payment of property taxes, exceed $1.3 million per year. [*Id.* ¶¶ 35, 37.] Pray agreed to this strategy and contributed his pro-rata share of such payments (*see* Am. Compl. ¶¶ 36, 40-41), until he stopped contributing to these payments in April of 2011 (*see id.* ¶ 41). As a result of Pray's actions, the Non-Breaching Vandalia Affiliates were forced to increase the amounts of their individual payments. [*See id.*] Pray also allowed his Letter of Credit to lapse. Around the same time, the services Pray provided to Vandalia and WDC, through PrayWorks, ended. [*See id.* ¶ 39.]

B. Summary of Procedural History and Factual Allegations

As noted above, this action began with the filing of the original Complaint on March 26, 2013, by Plaintiffs United and Vandalia. Weeks later, United and Vandalia filed a motion to refer to the Business Court on April 17, 2013, which was opposed by Pray, and was denied on June 25, 2013. After the denial of the motion to refer, United and Vandalia were granted leave to file an Amended Complaint. The Amended Complaint, which was filed on March 21, 2014, added the

[7] The Consulting Agreement indicated that David P. Pray would be providing services at an hourly rate of $195 and that Laura J. Pray would be providing "bookkeeping and administrative" services at an hourly rate of $45. [*See* Ex. A, Consulting Agreement at 5 (Ex. 6 to Am. Compl.).] No other individuals were identified in the agreement.

Non-Breaching Vandalia Affiliates as party plaintiffs and provided additional factual allegations. The Amended Complaint asserts eight separate claims as follows:

Count	Claim	Plaintiff(s) Asserting Claim
Count I	Declaratory judgment with respect to the rights of the Non-Breaching Vandalia Affiliates vis-à-vis Pray and an order expelling him from Vandalia	Vandalia Non-Breaching Vandalia Affiliates
Count II	Breach of contract based on: failure to pay pro rata share of commercial real estate Loan payments in the amount of $110,000 per year, failure to maintain a letter of credit in the amount of approximately $1.1 million, and refusing to provide services	Vandalia Non-Breaching Vandalia Affiliates
Count III	Breach of the implied covenant of good faith and fair dealing stemming from failures to pay Loan payments to United Bank and to maintain a letter of credit	Vandalia Non-Breaching Vandalia Affiliates
Count IV	Declaratory judgment that Pray is in default of his Guaranty with United Bank that covers the $28,212,594 Loan and an order directing Pray to pay amounts owing under his Guaranty	United Bank
Count V	Breach of contract for failing to maintain a letter of credit in the approximate amount of $1.1 million	United Bank
Count VI	Malicious Conduct and Common Law Bad Faith for knowingly, willfully, intentionally, and maliciously refusing to act in conformity with the $28,212,594 Loan Agreement and the Guaranty and conduct associated with the failure to maintain a letter of credit	Vandalia Non-Breaching Vandalia Affiliates United Bank
Count VII	Fraudulent Transfers impairing United Bank's ability to execute on the Pray Guaranty and subjecting the Non-Breaching Vandalia Affiliates to greater potential liability	Vandalia Non-Breaching Vandalia Affiliates United Bank
Count VIII	Equitable Contribution with respect to the Non-Breaching Vandalia Affiliates being forced to assume Pray's pro rata payments of Loan interest in the amount of $110,000 per year	Non-Breaching Vandalia Affiliates

On April 21, 2014, Pray moved to dismiss the Amended Complaint. On June 6, 2014, the circuit court denied Pray's motion to dismiss. Pray then filed his Answer, Counterclaims and Third-Party Complaint ("Counterclaim") on June 30, 2014, which asserts the following claims:

Count	Claim	Target(s) of Claim(s)
Count I	Declaratory judgment that the Loan Agreement is in default	United Bank WDC
Count II	Tort claim, putatively captioned as a "Lender Liability" claim, purportedly asserted on behalf of Vandalia by Pray derivatively	United Bank

	based on the allegation that the appraisal obtained by United Bank was inaccurate	
Count III	Fraud claim alleging that Pray was fraudulently induced into signing the Vandalia Operating Agreement and his Guaranty	Vandalia
Count IV	Indemnification and/or contribution under the Fee Agreement	WDC
Count V	Set-Off or Recoupment	United Bank Vandalia

On August 4, 2014, United and Vandalia filed motions to dismiss the counterclaims asserted against them, while WDC filed an Answer denying every allegation and any entitlement to relief. [*See, e.g.*, Ex. D, United's Mot. to Dismiss and Inc. Mem. of Law.] Except for the motions to dismiss, no motions are pending. Only limited discovery has been propounded. Although a scheduling order has been entered, it has not be amended to reflect the Counterclaim or the addition of WDC.

III. LEGAL STANDARD

In 2010, the West Virginia Legislature found that the "complex nature of litigation involving highly technical commercial issues" created a need for a separate and specialized court division with jurisdiction over actions involving "commercial issues and disputes between businesses." W. Va. Code § 51-2-15(a). The Legislature also authorized the Supreme Court of Appeals to designate a Business Court Division and to promulgate rules governing its operation. *See* W. Va. Code § 51-2-15(b) & (c). On this basis, the Supreme Court of Appeals enacted Trial Court Rule 29 in 2012 and thereby "adopted a process for efficiently managing and resolving litigation involving commercial issues and disputes between businesses . . . ." W. Va. Tr. Ct. R. 29.01.

Under Trial Court Rule 29.06, "[a]ny party or judge may seek a referral of Business Litigation . . . by filing a Motion to Refer . . . with the Clerk of the Supreme Court of Appeals of West Virginia." W. Va. Tr. Ct. R. 29.06(a)(1). "Business Litigation" is defined to mean:

one or more pending actions in circuit court in which:

> (1) the principal claim or claims involve matters of significance to the transactions, operations, or governance between business entities; and
>
> (2) the dispute presents 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 matter or familiarity with some specific law or legal principles that may be applicable; and
>
> (3) the principal claim or claims do not involve: consumer litigation, such as products liability, personal injury, wrongful death, consumer class actions, [and] actions arising under the West Virginia Consumer Credit and Protection Act . . . .

W. Va. Tr. Ct. R. 29.04(a). Thus, Trial Court Rule 29 authorizes the transfer of "Business Litigation" to the Business Court, as long as the criteria specified in Rule 29.04(a) are satisfied.

IV. ARGUMENT

This Court should find that all of the claims asserted in this action involve significant questions stemming from a web of commercial agreements among sophisticated business entities and that adjudication in the Business Court is likely to improve the expectation of a fair and reasonable resolution of the controversy. In opposing the previous motion to refer, Pray argued:

- This case is not a "business-to-business dispute" and "instead involves two businesses that have sued an individual and an individual trustee (who are the same . . .)."
- This case "does not involve the types of complex issues that the . . . Legislature and the . . . Supreme Court envisioned would be handled by the Business Court Division."
- "This is a straightforward case that will not require any specialized knowledge or expertise."
- Referring this case to the Business Court would "open the floodgates to bring every case in which a financial institution has sued an individual—be it for a delinquent mortgage, a delinquent credit card account, or any such delinquency—into the jurisdiction of the Business Court Division."

If these arguments were ever valid, they no longer are and there can be no question that this action qualifies for referral to the Business Court and that this action would benefit from referral.

A. The claims in this action involve significant questions that arise out of a web of overlapping commercial agreements between business entities.

Under the first prong of the Business Litigation standard, "the principal claim or claims [must] involve matters of significance to the transactions, operations, or governance between business entities." W. Va. Tr. Ct. R. 29.04(a)(1). This Court should find that this action satisfies the first prong for two reasons. First, all of the litigants—including Pray—are sophisticated business parties. Second, all of the claims—whether asserted in the Amended Complaint or in the Counterclaim—"involve matters of significance to the transaction, operations, or governance" between, and with respect to, various businesses.

1. Every party to this action is a business entity.

Pray previously opposed referral by arguing that "[a]s Mr. Pray is not a 'business entity,' this case does not fall within the definition of Business Litigation . . . and should not be referred to the Business Court." In essence, Pray argued that a business entity is limited to artificial corporate bodies and that because he is (and was sued as) a natural person, this case could never satisfy Rule 29.04(a)(1)'s definition of Business Litigation. This Court, however, should find that there are at least two reasons why Pray is a "business" or a "business entity" under Rule 29.04(a).

First, neither the West Virginia Code nor Trial Court Rule 29 explicitly or implicitly excludes cases brought by or against natural persons from litigation in the Business Court. In fact, the opposite is true. With respect to the Legislature, the Business Court's enabling legislation cited a need for specialized treatment with respect to "actions involving [] commercial issues and disputes between **businesses**." W. Va. Code § 51-2-15(a) (emphasis added). The same is true with respect to this Court, which noted in the preamble to Rule 29 that it had "adopted a process for efficiently managing and resolving litigation involving commercial issues and disputes between **businesses**."

W. Va. Tr. Ct. R. 29.01 (emphasis added). Significantly, common dictionary definitions of "business" are not predicated upon the presence of an artificial corporate body.[8]

To be sure, Rule 29.04(a)(1) includes the phrase "between business entities," but neither this phrase nor anything within Rule 29 as a whole explicitly or implicitly excludes cases brought by or against natural persons from the Business Court. Importantly, this Court has referred multiple cases brought by or against natural persons to the Business Court.[9] Although the order denying the previous motion to refer was based on a determination "that the principal claims in the action are not between business entities as required by Trial Court Rule 29(a)(1)," the order did not hold that Rule 29.04(a)(1) categorically excludes cases in which a party is a natural person. Order, *Vandalia Capital II, LLC v. Pray* (June 25, 2013). Indeed, this Court has referred cases that included natural persons before and after its prior order in this case. *See supra* note 9. Moreover, significant developments subsequent to the prior order—including Pray's filing of his Counterclaim that includes claims asserted derivatively on behalf of Vandalia—have effectively made this a new case.

Second, this Court should find that a straightforward, commonsensical definition of "business entity" includes natural persons engaged in business. With respect to the common dictionary definition of entity, it specifically includes natural persons:

> 1. Something that exists as a particular and discrete unit: *Persons and corporations are equivalent entities under the law.*
>
> 2. The fact of existence; being.
>
> 3. The existence of something considered apart from its properties.

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[8] *See, e.g.,* American Heritage Dictionary of the English Language (4th ed. 2008) (italics in original) (defining "business," inter alia, as "The occupation, work, or trade in which a person is engaged: *the wholesale food business.*"; "Commercial, industrial, or professional dealings: *new systems now being used in business.*"; "A commercial enterprise or establishment: *bought his uncle's business.*").

[9] *See, e.g.,* Ex. E, *Dobkin v. Shriver* (July 30, 2014) (Davis, C.J.); *Pauley v. Appalachian Stream Restoration, LLC, Christopher J. White, and Anthony J. White* (June 17, 2014) (Davis, C.J.); *Rashid v. Tarakji* (Jan. 16, 2014) (Workman, Acting C.J.); *Holley, as Member and on behalf of WV Land Services, LLC v. Beirne* (May 10, 2013) (Benjamin, C.J.).

American Heritage Dictionary of the English Language (4th ed. 2008) (italics in original). Consistent with this definition, this Court should find that the term entity includes both natural and artificial persons. As a result, this Court should find that neither the presence of David P. Pray nor any other natural person precludes referral to the Business Court.

Finally, this Court should refuse to adopt any interpretation of the phrase "between business entities" that would exclude natural persons engaged in business because such an interpretation would be contrary to the letter and spirit of W. Va. Code § 51-2-15(a) and Rule 29.01. Both West Virginia Code § 51-2-15(a) and Rule 29.01 broadly indicate that the Business Court is open to disputes "between businesses." Based on this language, this Court should resist any interpretation of the rule that would elevate form over substance and thwart the salutary goals of West Virginia Code § 51-2-15(a) and Rule 29. This Court "has inherent power to do all things that are reasonably necessary for the administration of justice within the scope of its jurisdiction." Syl. Pt. 3, *Stern v. Chemtall Inc.*, 217 W. Va. 329, 617 S.E.2d 876 (2005) (internal quotation marks omitted). As a result, this Court should avoid any interpretation of Rule 29 that would stymie the Business Court by excluding a broad swath of litigation from its purview. Simply stated, nothing in West Virginia Code § 51-2-15 or Rule 29 suggests that the salutary benefits of the Business Court should be conditioned upon whether a party is a natural or artificial person.

In sum, the Court should find that this action is eligible for referral to the Business Court because Pray is a sophisticated business party and because any other determination would be contrary to the letter and spirit of West Virginia Code § 51-2-15 and Rule 29 and would largely defeat the usefulness of the Business Court.

2. The claims asserted in this action involve "matters of significance to the transactions, operations, or governance between business entities."

All of the claims asserted in this action arise out of a web of commercial agreements that link and bind all of the parties. Moreover, these claims raise significant questions with respect

to the parties' rights and obligations under these agreements. With respect to Pray and United, the claims asserted in the Amended Complaint are based upon Pray's failure to abide by fundamental obligations imposed upon him by his Guaranty. Pray's Guaranty admits that he "induced" United to loan approximately $28.2 million to WDC and, as a result, he expressly assumed various obligations with respect to United that were designed to protect United's interests. With respect to Pray, Vandalia, and the Non-Breaching Vandalia Affiliates, the Amended Complaint is premised upon Pray's failure to satisfy various obligations imposed upon him by the Vandalia Operating Agreement, the Guaranties, the Loan Agreement, and other agreements between and among Pray, Vandalia, and the Non-Breaching Vandalia Affiliates. As a result of Pray's failures to abide by his various obligations, the other parties to this action have suffered concrete and demonstrable harm.

In sum, there can be no doubt that this action involves "matters of significance to the transactions, operations, or governance between business entities."

B. The claims concern issues of a commercial nature that are highly complex and unprecedented in this State, and there can be no doubt that the specialized treatment available in the Business Court Division would improve the expectation of a fair and reasonable resolution of the controversy.

This action arises out of a complex web of overlapping commercial agreements that link and bind all 17 of the parties. At the center of this web is the Loan Agreement, which memorializes a $28,212,594 commercial real estate loan, between United and WDC. [*See* Ex. A, Loan Agreement, Ex. 3 to Am. Compl.] Pray and the other Guarantors (i.e., the Non-Breaching Vandalia Affiliates) are linked to each other and to United by their Guaranties and Letters of Credit. Vandalia, and its members by extension, are linked to WDC by the "Fee Agreement," which contemplates that Vandalia may eventually receive a "Fee" ranging from $12 million to more than $24 million. Based on information and belief, very few, if any, cases involving factual and legal issues comparable to those presented in this case have been brought in the courts of this State.

With respect to the Counterclaim, Pray alleges claims that are unparalleled in the courts of this State. For example, Pray purports to bring various claims against United derivatively for the benefit of Vandalia. On information and behalf, very few, if any, claims have been pursued derivatively by a member of a West Virginia limited liability company for its benefit.

Based on the complexity and novel nature of the commercial claims asserted in this action, there can be no doubt that litigation in the Business Court will "improve the expectation of a fair and reasonable resolution of the controversy."

C. This action implicates no "consumer" issues that would preclude referral.

In opposing the prior motion to refer, Pray argued that referral would "open the floodgates to bring every case in which a financial institution has sued an individual—be it for a delinquent mortgage, a delinquent credit card account, or any such delinquency—into the jurisdiction of the Business Court Division." This action, however, is nothing like the claims that typically arise out of "a delinquent mortgage" or "a delinquent credit card account." Rather, this is a case in which a sophisticated businessman and investor (i.e., David P. Pray) consciously and deliberately induced a West Virginia bank to make a $28,212,594 commercial real estate loan. In return for United's agreement to make the Loan, Pray (and the other Guarantors) agreed to provide unconditional and irrevocable Guaranties and Letters of Credit. Nor were Pray's promises to provide his Guaranty and a Letter of Credit illusory given that he stood (and potentially still stands) to reap between $1 million and more than $2 million as a result of the "Fee Agreement" between Vandalia and WDC. As a result of Pray's failure to abide by his obligations to United, Vandalia, and the Non-Breaching Vandalia Affiliates, all have suffered significant damages.

In short, this is an action between sophisticated business parties who are parties to an overlapping web of agreements radiating from a $28.2 million commercial real estate loan.

V. CONCLUSION

Based on the foregoing, this Court should find that this is an action that involves significant matters of concern between business entities and that referral to the Business Court is likely to improve the expectation of a fair and reasonable resolution of the controversy because of the need for specialized knowledge or expertise.

VANDALIA CAPITAL II, LLC; UNITED BANK, INC.; RALPH BALLARD, III; STEPHEN B. FARMER; DAVID P. FERRETTI; SHAWN P. GEORGE; MARK A. GRIMMETT; ROBERT HUGGINS; ANDREW B. JORDON; R. SCOTT LONG; ANDREW A. PAYNE, III; ROOKE ASSET PARTNERS, LP; ANDREW K. ROOKE; and TIMOTHY K. WILCOX; and THE WOODS DEVELOPMENT COMPANY, LLC,

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