

**IN THE CIRCUIT COURT FOR THE HARRISON COUNTY, WEST VIRGINIA
BUSINESS COURT DIVISION**

**ZURICH AMERICAN INSURANCE
COMPANY, as subrogee of TURNER
CONSTRUCTION COMPANY, TURNER
CORPORATION, and
TOMPKINS BUILDERS, INC., foreign
corporations,**

Plaintiffs,

v.

**THRASHER ENGINEERING, INC.
d/b/a THRASHER ENGINEERING,
a West Virginia Corporation,**

and

**MASCARO CONSTRUCTION
COMPANY LP, a foreign entity,**

Defendants.

CIVIL ACTION NO. 14-C-391

Presiding Judge: James J. Rowe

**Resolution Judge: Paul T. Farrell and
Russell M. Clawges, Jr.**

FILED IN 15TH
CIRCUIT COURT
2015 DEC 30 P 2:05

ORDER


On a prior date came the Plaintiff, Zurich American Insurance Company, as subrogee of Turner Construction Company, Turner Corporation and Tompkins Builders, Inc., through its undersigned counsel of record, dismissing its action against defendants Thrasher Engineering, Inc., d/b/a Thrasher Engineering and Mascaro Construction Company, LP, with prejudice, under the authority of West Virginia Rule of Civil Procedure 41(a)(1)(ii). Rule 41(a)(1)(ii) provides that an action may be dismissed by the plaintiff without order of court by filing a stipulation of dismissal signed by all the parties who have appeared in the action. The parties provided the Court with such a stipulation.

Defendant/Third Party Plaintiff Thrasher Engineering Inc., d/b/a Thrasher Engineering through its undersigned counsel of record, also dismissed its third party action against Turner Construction Company with prejudice and its third party action against Skidmore, Owings and Merrill LLP and GeoConcepts Engineering Inc., as well as its crossclaim against

Mascaro Construction Company, LP without prejudice. Rule 41(c) applies to dismissal of such counterclaims, cross-claims, or third-party claims but requires that voluntary dismissal, like that provided here, may only be made "before a responsive pleading is served or, if there is none, before the introduction of evidence at the trial or hearing." Because answers to these claims have been filed, voluntary dismissal must be approved by order of the court as outlined in West Virginia Rule of Civil Procedure 41(a)(2).

THEREFORE, the Court has undertaken a review of the case and Stipulation of Dismissal. The Court finds the terms and conditions of the dismissal proper and hereby accepts the voluntary dismissal of the parties. ACCORDINGLY, it is hereby ORDERED that the above-referenced matters are each DISMISSED as agreed as to all parties, with each party to bear its own attorneys' fees and costs. This being a FINAL ORDER, the Court directs the Circuit Clerk of Harrison County to retire the above-captioned matter from the docket and place it among the causes ended. The Circuit Clerk of Harrison County is directed to distribute attested copies of this Order to all counsel of record; the Resolution Judges, the Honorable Paul T. Farrell at the Cabell County Courthouse, 750 Fifth Avenue, Huntington, WV 25701, and the Honorable Russell M. Clawges, Jr., at the Monongalia County Courthouse, 243 High Street, Division 2, Morgantown, WV 26505; and the Business Court Division Central Office, Berkeley County Judicial Center, 380 W. South Street, Martinsburg, West Virginia 25401.

ENTER this 23rd day of December, 2015


JAMES J. ROWE, PRESIDING JUDGE
BUSINESS COURT DIVISION

STATE OF WEST VIRGINIA
COUNTY OF HARRISON, TO-WIT

I, Donald L. Kopp II, Clerk of the Fifteenth Judicial Circuit and the 18th
Family Court Circuit of Harrison County, West Virginia, hereby certify the
foregoing to be a true copy of the ORDER entered in the above styled action
on the 23 day of December, 2015.

IN TESTIMONY WHEREOF, I hereunto set my hand and affix
the Seal of the Court this 30 day of December, 2015.

Donald L. Kopp II
Fifteenth Judicial Circuit & 18th Family Court
Circuit Clerk
Harrison County, West Virginia

DKM