

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA
BUSINESS COURT DIVISION

STATE OF WEST VIRGINIA, ex rel.
PATRICK MORRISEY, ATTORNEY
GENERAL, et al.,

2020 DEC 16 AM 8:42
KATHY S. GATSON, CLERK
KANAWHA COUNTY CIRCUIT COURT

Plaintiffs,

v.

Civil Action No.: 17-C-41
Presiding Judge: Hon. James H. Young
Resolution Judge: Hon. Christopher Wilkes

See 17-C-2-41

CRH, plc, et al.,

Defendants.

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA
BUSINESS COURT DIVISION

CITY OF CHARLESTON,
and all others similarly situated, et al.,

Plaintiffs,

v.

Civil Action No. 16-C-1552 (lead)

(Consolidated with 16-C-661-B -Raleigh;
16-C-337-DS -Mercer; 16-C-425 -Wood;
16-C-1598 -Kanawha; 16-C-666-Cabell)

Presiding Judge: Hon. James H. Young
Resolution Judge: Hon. Christopher Wilkes

WEST VIRGINIA PAVING, INC., et al.,

Defendants.

AGREED ORDER OF DISMISSAL

The State of West Virginia, ex rel. Patrick Morrissey, Attorney General, Byrd E. White, in his official capacity as Secretary of Transportation and Commissioner of Highways, West Virginia Department of Transportation and the Cities of Charleston, Beckley, Bluefield, Huntington,

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Parkersburg, and the Kanawha County Commission (the “Settling Plaintiffs”) and Defendants, CRH, PLC, Oldcastle, Inc., Oldcastle Materials, Inc., West Virginia Paving, Inc., Southern West Virginia Paving, Inc., Southern West Virginia Asphalt, Inc., and Camden Materials, LLC (collectively, the “WVP Defendants”), have advised the Court that they have reached a settlement, and have jointly moved the Court to enter this Agreed Order of Dismissal. Pursuant to the settling parties’ separate Settlement Agreement, and for good cause shown, it is therefore ordered that:

1. The WVP Defendants, are hereby dismissed from the above-referenced actions, with prejudice.
2. No portion of the WVP Defendants’ settlement payment of \$28 million in cash and \$71 million in project credits shall be considered a civil penalty or subject to the provisions of W. Va. Code § 47-18-18.
3. The WVP Defendants’ cash settlement payment of \$28 million shall be delivered by wire transfer of immediately available funds to the Client Trust account of Bailey & Glasser LLP pursuant to the terms of the Settlement Agreement on or before November 26, 2020. After deduction of costs and fees, the previously agreed allocations shall be disbursed by Bailey & Glasser directly to the Settling Parties. The State’s cash settlement shall be paid directly to the Division of Highways and deposited directly into the State Road Fund.
4. The WVP Defendants are hereby enjoined (without the necessity of a bond) as follows:
 - a. The WVP Defendants shall refrain from entering into any contract, combination or conspiracy to restrain trade in West Virginia in violation of the WVAA, W. Va. Code § 47-18-3, or monopolizing or attempting to monopolize Asphalt

manufacturing or Asphalt Paving Services in West Virginia, by unlawful means, in violation of the WVAA. W. Va. Code § 47-18-4.

- b. The WVP Defendants shall refrain from assisting or helping any other party to obtain or maintain a monopoly in the Asphalt manufacturing or Asphalt Paving Services in West Virginia.
 - c. The WVP Defendants shall make the structural changes set forth in Exhibit B to the Settlement Agreement.
 - d. For an eight (8) year period after the execution of the Settlement Agreement, any merger, acquisition, or joint venture by the WVP Defendants in the Mid-Ohio Valley and Southwestern Regions which involve Asphalt manufacturing or Asphalt Paving Services with a total value of over \$1 million, or any merger, acquisition, or joint venture by the WVP Defendants in the Southern Region with any competitor, or any acquisition of any competitor (or the acquisition of all, or substantially all, of a competitor's assets) in the Southern Region which involve Asphalt manufacturing or Asphalt Paving Services with a total value of over \$500,000, requires 120-day advance notice to the Secretary of the West Virginia Department of Transportation and the Attorney General prior to closing of said merger or acquisition.
5. This Court shall retain jurisdiction over the implementation, enforcement, and performance of the settling parties' Agreement and shall have exclusive jurisdiction over any suit, action, proceeding, or dispute arising out of or relating to that Agreement or the applicability of that Agreement that cannot be resolved by negotiation and agreement by the Settling Plaintiffs and WVP Defendants.

It is further **ORDERED** that the Clerk of this Court shall send certified copies of this Order to all counsel of record.

Entered this 14 day of December, 2020.

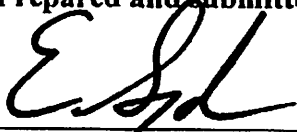
James H. Young
HONORABLE JAMES H. YOUNG

STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, SS
I, CATHY S. GATSON, CLERK OF CIRCUIT COURT OF SAID COUNTY
AND IN SAID STATE DO HEREBY CERTIFY THAT THE FOREGOING
IS A TRUE COPY FROM THE RECORDS OF SAID COURT.
GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS 16th
DAY OF December 2020
Cathy S. Gatson CLERK
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA
Udd

Date: 12/16/20
Certified copies sent to:
☒ counsel of record
☐ parties
☐ other _____
(please indicate)
By: ☒ certified/1st class mail
☐ fax
☐ hand delivery
☐ interdepartmental
Other directives accomplished:
Udd
Deputy Circuit Clerk

Bus Ct
B. Bailey
M. Hissman
R. Gordin
L. Mackey
J. Fornaciari

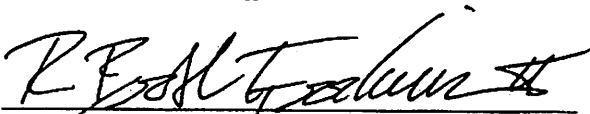
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