

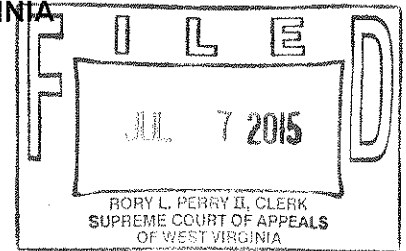
## IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

GREENBRIER HOTEL CORPORATION,  
a West Virginia corporation; and THE  
GREENBRIER SPORTING CLUB, INC., a  
West Virginia corporation,

Plaintiffs,

v.

Kanawha County Circuit Court  
Civil Action No. 15-C-562  
Honorable Tod J. Kaufman, Circuit Judge



MARSH & MCLENNAN AGENCY LLC, a  
limited liability company; THOMAS  
RUTHERFOORD, INC., a Virginia corporation;  
RUTHERFOORD INTERNATIONAL, INC., a  
Virginia corporation; RUTHERFOORD  
FINANCIAL SERVICES, INC., a Virginia  
corporation; RUTHERFOORD BENEFIT  
SERVICES, INC., a Virginia corporation;  
BENEFIT ASSISTANCE CORPORATION,  
a West Virginia corporation; ROMEO  
CONSULTING, INC.; and RICHARD  
ROMEO,

Defendants.

TO: The Honorable Chief Justice Margaret L. Workman

**MOTION OF MARSH & MCLENNAN AGENCY, LLC, THOMAS RUTHERFOORD, INC.,  
RUTHERFOORD INTERNATIONAL, INC, RUTHERFOORD FINANCIAL SERVICES, INC.,  
AND RUTHERFOORD BENEFIT SERVICES, INC. TO REFER CASE TO  
BUSINESS COURT DIVISION**

Pursuant to Trial Court Rule 29.06, the Defendants, Marsh & McLennan Agency, LLC, Thomas Rutherford, Inc., Rutherford International, Inc, Rutherford Financial Services, Inc., and Rutherford Benefit Services, Inc. [the "Rutherford Defendants"], by counsel, Jeffrey M. Wakefield and Keith R. Hoover, respectfully request that the above captioned civil action be referred to the Business Court Division. In support of this motion, the Rutherford Defendants state:

1. This matter involves claims between private business entities concerning the creation and implementation of a self-funded employee healthcare plan for over 1,000 employees of the Greenbrier Hotel and the Greenbrier Sporting Club. It involves allegations of professional liability by brokers, agents and administrators in the recommendation, management and administration of such plan. It also includes allegations of breach of contract and material representations and omissions pertaining to the structure and costs of the plan.

2. The parties to the civil action are all sophisticated business entities. The Greenbrier Hotel Corporation is a West Virginia corporation which operates the Greenbrier Hotel in White Sulphur Springs, West Virginia. The Greenbrier Sporting Club, Inc. is also a West Virginia corporation affiliated with the Greenbrier Hotel. The Rutherford Defendants are Virginia corporations. Rutherford Benefit Services, Inc. regularly consults with employers and assists them with creating and implementing employee benefit plans throughout the mid-Atlantic and Southeast Region. Marsh & McLennan, LLC is an insurance broker that operates nationwide. Benefit Assistance Corporation is a West Virginia corporation that serves as a claims administrator for self-funded employee healthcare plans. Romeo Consulting, Inc. is a West Virginia corporation which is alleged to be engaged in and offering its services to employers in managing benefits provided to employees.<sup>1</sup>

3. Under Trial Court Rule 29.04(a) "Business Litigation" is defined as follows:

- (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 and/or technology 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

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<sup>1</sup> Richard Romeo is also named as a defendant in Civil Action No. 15-C-562. He is alleged to be an insurance broker and/or agent in the State of West Virginia and is, presumably, a principal of Romeo Consulting, Inc.

actions, actions arising under the West Virginia Consumer Credit Act and consumer insurance coverage disputes; non-commercial insurance disputes relating to bad faith, or disputes in which an individual may be covered under a commercial policy, but is involved in the dispute in an individual capacity; employee suites, consumer environmental actions; consumer malpractice actions; consumer and residential real estate, such as landlord-tenant disputes; domestic relations; criminal cases; eminent domain or condemnation; and administrative disputes with government organizations and regulatory agencies, provided, however, that complex tax appeals are eligible to be referred to the Business Court Division.

4. The Rutherford Defendants assert that Civil Action No. 15-C-562 satisfies the definition of Business Litigation set forth in Trial Court Rule 29.04(a). The parties are private business entities and the claims involve matters of significance to the transactions, operations or governance between the entities. Moreover, the dispute presents sophisticated and complex commercial issues involving the analysis, recommendation, management and administration of a self-funded employee healthcare plan applicable to over 1,000 employees. Those sophisticated and complex commercial issues include claim costs, net worth costs, re-insurance costs and expenses as well as a comparison of other employee healthcare plan options in the marketplace. Thus, specialized treatment of the issues in the Business Court is warranted.

5. The Rutherford Defendants further assert that there are no related actions pending or contemplated to be filed in the future. Additionally, as required by Trial Court 29.06(a)(1), the Complaint, Answers and Docket Sheet in Civil Action No. 15-C-562 are attached and marked respectively as Exhibits 1, 2, 3 and 4 to this Motion.<sup>2</sup>

6. The Rutherford Defendants do not request an expedited review under Trial Court Rule 29.06(a)(4), and they give notice that all affected parties may file a memorandum stating their position, in accordance with Trial Court Rule 29.

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<sup>2</sup> As of the filing of this Motion, Romeo Consulting, Inc. and Richard Romeo have yet to enter an appearance in the matter.

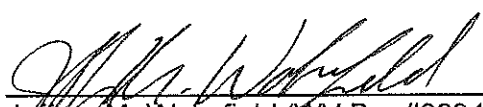
7. The Rutherford Defendants are authorized to represent that the Defendant, Benefit Assistance Corporation, consents to the filing of this Motion.

WHEREFORE, the Rutherford Defendants hereby move, pursuant to Trial Court Rule 29.06, the Chief Justice of the West Virginia Supreme Court of Appeals to refer this case to the Business Court Division together with such other relief as the Court may deem proper.

Respectfully submitted this 7th day of July, 2015.

**MARSH & MCLENNAN AGENCY LLC, THOMAS  
RUTHERFOORD, INC., RUTHERFOORD  
INTERNATIONAL, INC., RUTHERFOORD  
FINANCIAL SERVICES, INC., and  
RUTHERFOORD BENEFIT SERVICES, INC.**

**By Counsel,**



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CONSULTING, INC.; and RICHARD  
ROMEO,

Defendants.

CERTIFICATE OF SERVICE

I hereby certify that on this 7<sup>th</sup> day of July, 2015, a true and correct copy of the foregoing "Motion of Marsh & McLennan Agency, LLC, Thomas Rutherford, Inc., Rutherford International, Inc, Rutherford Financial Services, Inc., and Rutherford Benefit Services, Inc. to Refer Case to Business Court Division" was served via regular U.S. Mail, postage prepaid, to the following:

Marvin W. Masters  
The Masters Law Firm, lc  
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*Counsel for Plaintiffs*

Lenna Chambers, Esquire  
Gerard R. Stowers, Esquire  
Bowles Rice, LLP  
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*Counsel for Benefit Assistance Corporation*

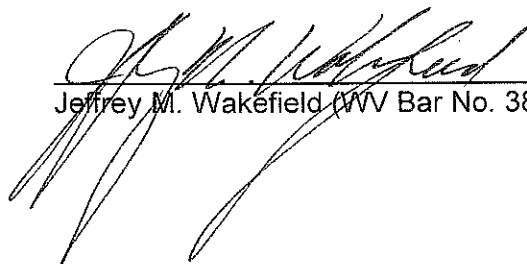
Richard Romeo  
c/o Circuit Clerk of Kanawha County  
Kanawha County Judicial Annex  
111 Court Street  
Charleston, WV 25301

Romeo Consulting, Inc.  
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Honorable Tod J. Kaufman  
Kanawha County Circuit Court  
Kanawha County Judicial Annex  
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