

**IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA**

JANIS LECKENBUSCH, individually and on  
behalf of all similarly situated,

Plaintiffs,

v.

Harrison County Circuit Court  
Case No. CC-17-2023-C-267  
**CHRISTOPHER J. McCARTHY**, Judge

*BENEDUM AIRPORT AUTHORITY, a West Virginia  
corporation, WOLFE'S EXCAVATING, LLC, a  
West Virginia limited liability company; THE THRASHER  
GROUP, INC., a West Virginia Corporation; and JOHN DOE  
PERSONS AND/OR ENTITIES,*

Defendants.

**TO: THE HONORABLE TIM ARMSTEAD, CHIEF JUSTICE**

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

Introduction

Pursuant to Rule 29.06 of the *West Virginia Trial Court Rules*, the Honorable Christopher J. McCarthy, Judge for the Fifteenth Judicial Circuit, respectfully submits his request that the above-styled civil action currently pending in this Court be referred to the Business Court Division.

No Motion to Refer has been jointly or otherwise filed herein by any of the parties' litigant. This request is initiated solely by this presiding Judge. He verily believes the Business Court Division's process for efficiently managing and resolving litigation involving commercial issues and disputes is better suited to serve these parties' litigant.

To the best of my knowledge and belief based upon my review of the pleadings filed to date, the various claims and defenses being asserted by the respective parties' litigant, and the issues involved qualify as "business litigation" pursuant to West Virginia Trial Court Rule 29.04(a).

#### Nature of the Action

This civil action includes three (3) particular claims of Negligence and/or Reckless Conduct (Count I); Interference with Riparian Rights / Unreasonable Use of Land (Count II); and Nuisance (Count III). As such, this action involves Commercial Torts and Disputes involving Commercial Entities as well as matters of significance between business entities and individuals with such dispute presenting or otherwise involving highly technological, engineering design, construction, environmental, and meteorologically related issues in which focused treatment is likely to improve the need for specialized knowledge or expertise in the subject matter or familiarity with some specific law or legal principles what me be applicable.

In support, this matter is deemed to contain issues significant to businesses as well as present novel or otherwise interestingly intertwined commercial issues for which specialized treatment would be helpful.

#### Basis for this Court's Request to Refer

Plaintiff, Janis Leckenbusch is the owner of the real property situated at 202 Maple Lake Road, Bridgeport, West Virginia 26330. (see Plaintiff's Complaint Page 1 @ Number 1). I should also note that the lead plaintiff in this matter, Janis Leckenbusch, is an employee of the Court, serving as Deputy Chief Probation Officer.

Defendant, Benedum Airport Authority (hereafter referred to as "BAA"), is asserted by Plaintiff to be "a domestic non-profit corporation organized and existing under the laws of the State of West Virginia...engaged in the business of transporting and warehousing and scheduled air transportation operating in Harrison County, West Virginia... . . .also known as North Central West Virginia Airport...a public/military airport located northeast of Bridgeport...owned by Benedum Airport Authority." (*Id.*, at no. 3).

No Pre-Trial/Scheduling Conference pursuant to Rule 16 of the West Virginia Rules of Civil Procedure have yet been held before the Court. Procedurally, the Complaint herein was filed on or about the 15<sup>th</sup> day of December, 2023.

Furthermore, there may well be additional issues arise during further evidentiary development and proceedings herein that include privity of contract, superseding/intervening causes, and potential at fault non-parties.

There are four related civil actions previously filed in Circuit Court of Harrison County, West Virginia that have been referred to the Business Court Division, to wit:

*MAPLE LAKE CLUB, INC., a West Virginia corporation, Plaintiff,  
v. BENEDUM AIRPORT AUTHORITY, a West Virginia  
corporation, WOLFE'S EXCAVATING, LLC, a  
West Virginia corporation, and THE THRASHER GROUP,  
INC., a West Virginia Corporation, Defendants.  
Civil Action No: CC-17-2023-C-44-2.*

That matter was assigned to the Business Court Division on the 26<sup>th</sup> day of July, 2023, by the Honorable Chief Justice Elizabeth D. Walker, by Administrative Order pursuant to West Virginia Trial Court Rule 29.07(a).

*PHILLIP "MARK" FETTY and PAULA N. FETTY, Plaintiffs,  
v. BENEDUM AIRPORT AUTHORITY, a West Virginia  
corporation, WOLFE'S EXCAVATING, LLC, a*

*West Virginia limited liability company; THE THRASHER GROUP, INC., a West Virginia Corporation; and, JOHN DOE PERSONS AND/OR ENTITIES, Defendants.*  
Civil Action No 17-2023-C-167-2.

That matter was assigned to the Business Court Division on the 6<sup>th</sup> day of December, 2023, by the Honorable Chief Justice Elizabeth D. Walker, by Administrative Order pursuant to West Virginia Trial Court Rule 29.07(a).

*ALL ABOUT DOGS, LLC, a West Virginia Corporation, and BRENDA SCOTCHIE and JOHN SCOTCHIE, in their individual capacities, Plaintiffs,*  
v.

*BENEDUM AIRPORT AUTHORITY, a West Virginia corporation, WOLFE'S EXCAVATING, LLC, a West Virginia Corporation; and THE THRASHER GROUP, INC., a West Virginia Corporation, Defendants.*  
Civil Action No 17-2023-C-251-2.

That matter was assigned to the Business Court Division on the 7th day of December, 2023, by the Honorable Chief Justice Elizabeth D. Walker, by Administrative Order pursuant to West Virginia Trial Court Rule 29.07(a).

*JAMES D. MILLER, MELISSA DAWN MILLER, and MILLER HOME REPAIR, LLC, Plaintiffs, v BENEDUM AIRPORT AUTHORITY, a West Virginia corporation; WOLFE'S EXCAVATING, LLC, a West Virginia limited liability company; THE THRASHER GROUP, INC., a West Virginia Corporation; JOHN DOE PERSONS AND/OR ENTITIES, Defendants.*  
Civil Action No 17-2023-C-168-2

That matter was assigned to the Business Court Division on the 7th day of December, 2023, by the Honorable Chief Justice Elizabeth D. Walker, by Administrative Order pursuant to West Virginia Trial Court Rule 29.07(a).

Accordingly, this civil action is deemed to involve multiple issues which support my *Judicial Motion to Refer Case To The Business Court Division.*

It should also be noted that Janis Leckenbusch, the lead plaintiff in the case being referred, is an employee of this Court, serving as Deputy Chief Probation Officer for Harrison County.

In keeping with West Virginia Rule 29.06(a)(1), copies of various pleadings herein are being provided along with this Judicial Motion to Refer.

In keeping with Rule 29.06(a)(3), this Judicial Motion to Refer is being filed this same day with the Clerk of the Harrison County Circuit Court as well as served on the parties herein through their respective legal counsel ***via electronic notification***, to-wit: **William M. Tiano, Esq. and Thomas G. Dyer, Esq.**, *counsel for Plaintiffs, Janis Leckenbusch*, **Teresa J. Dumire, Esq.**, *counsel for Defendant Wolfe's Excavating, LLC*; **Matthew Glenn Breneman, Esq.**, *counsel for Defendant Benedum Airport Authority*; and, **J. Mark Adkins, Esq., Unaiza Riaz Tyree, and Zachary James Rosencrance**, *counsel for Defendant The Thrasher Group, Inc.*

In further keeping therewith, I am also providing this Judicial Motion to Refer as well as pertinent pleadings and copy of this civil action's docket sheet to the Central Office of the Business Court Division.

#### Conclusion

WHEREFORE, this presiding Judge respectfully moves Chief Justice Walker to grant his Judicial Motion to Refer this Harrison County Circuit Court Civil Action to the Business Court Division upon the reasons set forth *supra*.

Furthermore, in regard to expedited review, this Court does not request an expedited review under West Virginia Trial Court Rule 29.06(a)(4), and gives notice that all affected parties may file a reply memorandum stating their respective position, in accordance with such Rule.

Respectfully submitted to you on February 12, 2024.