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November 4, 2014

Cathy S. Gatson  
Kanawha County Circuit Clerk  
Kanawha County Courthouse  
PO Box 2351  
Charleston, WV 25328

Re: *Omega Facility Services, Solutions & Surety, LLC V Jacobs & Company,  
Inc. et al.*  
Civil Action Nos. 14-C- 1745

Dear Clerk:

Enclosed for filing in the appropriate court file please find the Defendants' "*Motion to Refer to the Business Court Division*" in the above-captioned matter.

Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in cursive script, appearing to read 'Herschel H Rose III'.

Herschel H Rose III

Enclosure

cc: The Hon. Carrie Webster, Judge  
Central Office of the Business Court Division  
Brandon S Steele, Esq. and Paul O Clay, Jr. Esq.  
Stephen P Meyer, Esq.

**IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA**

**OMEGA FACILITY SERVICES, SOLUTIONS & SURETY, LLC,  
JEFFREY R. BROWN,  
SUSAN L. BROWN,**

**PLAINTIFFS,**

**v.**

**CIVIL ACTION NO. 14-C-1745**

**JACOBS & COMPANY, INC., a West Virginia Corporation  
JACOBS FINANCIAL GROUP, INC., a West Virginia  
Corporation FS INVESTMENTS, INC., a West Virginia  
Corporation  
FIRST SURETY CORPORATION, INC., a West Virginia Corporation  
TRIANGLE SURETY AGENCY, INC., a West Virginia Corporation  
JOHN M. JACOBS, a West Virginia Resident  
ROBERT J. KENNEY, a West Virginia Resident**

**DEFENDANTS.**

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

Pursuant to Rule 29 of the West Virginia Trial Court Rules, the defendants move to refer this action to the Business Court Division for all further proceedings. In support of its motion, the defendants state the following:

**The Nature of the Action Sought to Be Referred**

This civil action arises from a complicated and sophisticated series of transactions, the ultimate goal of which were to obtain a contract with the Fayette County, West Virginia Board of Education to engage in a multiyear energy-saving program.

The plaintiff, Jeffrey R Brown, was at certain times material to this action, an employee of the Casto Technical Services, Inc., (Casto) headquartered in Charleston West Virginia. Casto is not a party to this action. The general business of Casto is to install and service heating, ventilation and air conditioning (HVAC) systems for industrial, commercial and government buildings. In 2011, certain persons associated with Casto, including the plaintiff, Jeffrey R Brown, realized that West Virginia boards of education were then statutorily authorized to borrow money through the sale of bonds against prospective savings from a multiyear energy management program.

Casto was a franchisee of Trane, a manufacturer of HVAC equipment. Pursuant to the franchise contract, Casto was barred from pursuing a contract with West Virginia boards of education to provide multiyear energy management programs. In lieu of Casto pursuing the contract, the plaintiffs Brown formed Omega Facility Services, Solutions and Surety, LLC (Omega) for the purpose of proposing a multiyear energy management program to the Board of Education of Fayette County.

In order for the school board's bonds to be marketable, Omega had to guarantee the projected savings in energy costs over the life of the program, which was 15 years. As a startup company, Omega did not have the financial wherewithal to guarantee its performance from its own resources. Accordingly, Casto and Omega consulted with the several of the defendants about providing surety bonds as the source of the guarantee for the performance of the Fayette County contract.

Omega successfully entered into a multiyear energy management program contract, specifically the Fayette County Board of Education Performance Contract Energy Management Program Savings Guarantee Agreement, the Fayette County Board of Education successfully marketed the bonds and the defendant, First Surety Corporation issued surety bonds to guarantee the performance of Omega in the program.

In order to issue the surety bonds, First Surety required Omega to establish a collateral account, to which First Surety could look if it was required to make payments under the surety contracts. This collateral account was funded by the proceeds from the successful execution of the Fayette County contract in the first several years of that contract. The collateral account contains approximately one million five hundred thousand dollars.

Under the terms of the investment management agreement, collateral account control agreement and the collateral agreement for the surety bonds, Omega agreed that the defendant Jacobs & Company would serve as the investment manager for the funds in the collateral account. Likewise, Omega agreed that Triangle Surety Agency would serve as the insurance agency for the issuance of the surety bonds. Jacobs & Company, Inc. First Surety Corporation, and Triangle Surety Agency, Inc. are related. Also pursuant to the collateral account agreement, the custodian of the collateral account is the firm of Wellington Shields & Company. Wellington Shields & Company is not a party to this action.

The plaintiffs have asserted that the defendants, identified above and including Jacobs Financial Group, Inc. and FS Investments, Inc. have fraudulently induced plaintiffs to enter into various contracts for surety bonds to guarantee the Fayette County Board of Education contract, caused plaintiff, Jeffrey Brown, to leave his employment with Casto, engaged in various conspiracies among themselves and with Casto to generate illegal finder's fees and kickbacks, and churned the collateral account.

**The Basis for the Request to Refer This Action to the Business Court Division**

This is a highly technical civil action requiring the trial court, to a great extent, to apply or interpret and apply sophisticated contracts dealing with the issuance of surety bonds.

(1) The principal claim or claims in this action involve matters of significance to the transactions, operations and governance between the plaintiffs and defendants and raise issues of contractual and suretyship law that may be of first impression in West Virginia.

(2) This dispute represents 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 of contract and suretyship law and familiarity with some specific law or legal principles that may be applicable

(3) The principal claim or claims do not involve, or even touch upon, any of the species of claims and actions that are described in Rule 29.04 (a) (3) of the West Virginia Trial Court Rules.

**Additional Related Actions That Are Pending or That May Be Filed in the Future.**

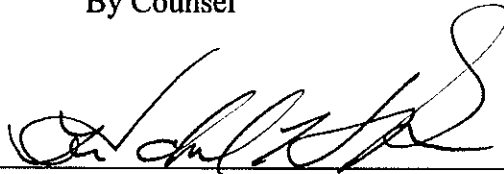
These defendants are aware of previous litigation between Casto and the plaintiffs arising from this transaction. In addition, the plaintiffs have filed complaints against John M Jacobs, Jacobs & Company and Wellington Shields & Company and Edward Herbst with the Financial Industry Regulatory Authority (FINRA). Significant counterclaims may be asserted.

**The Filing Date of the Action.**

This action was filed on or about the 23<sup>rd</sup> day of September, 2014.

**JACOBS & COMPANY, INC.  
JACOBS FINANCIAL GROUP, INC.  
FS INVESTMENTS, INC.  
FIRST SURETY CORPORATION, INC.  
TRIANGLE SURETY AGENCY, INC.  
JOHN M. JACOBS  
ROBERT J. KENNEY**

By Counsel

A handwritten signature in black ink, appearing to read 'Herschel H Rose III', is written over a horizontal line.

Herschel H Rose III  
(WVSB # 3179)  
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ROBERT J. KENNEY, a West Virginia Resident**

**DEFENDANTS.**

**CERTIFICATE OF SERVICE**

I hereby certify that I have this 21<sup>st</sup> day of November, 2014 mailed to

The Hon. Carrie Webster, Judge  
13<sup>th</sup> Judicial Circuit  
Kanawha County Judicial Annex  
111 Street  
Charleston, WV 25301

Central Office of the Business Court Division  
Berkeley County Judicial Center  
Business Court Division  
Suite 2100  
380 W. South Street  
Martinsburg, WV 25401

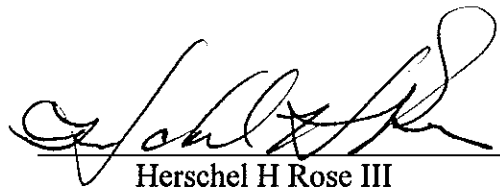
Brandon S Steele, Esq. and Paul O Clay, Junior Esq.  
Law Offices of Paul O Clay, Junior  
101 West Maple Ave.

PO Box 746  
Fayetteville, WV 25840

Stephen P Meyer, Esq.  
Meyer, Ford, Glasser, and Redman, PLLC  
PO Box 11090  
Charleston, WV 25339

Attorneys for Plaintiff,

a copy of the foregoing "Motion to Refer to the Business Court Division" in an envelope properly addressed and stamped.



Herschel H Rose III