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March 14, 2025

File No. 26386.915

VIA U.S. MAIL AND EMAIL

William D. Wilmoth, Esq.
Steptoe & Johnson, PLLC
1324 Chapline St., Suite 100
Wheeling, WV 26003
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Honorable C. Richard Wilson
Marshall County Courthouse
600 Seventh Street
Moundsville, WV 26041

Circuit Clerk of Marshall County, WV
Marshall County Courthouse
600 Seventh Street, Suite 127
Moundsville, WV 26041

Business Court Division Central Office
Berkeley County Judicial Center
380 W. South Street, Suite 4100
Martinsburg, WV 25401
tessa.bowers@courtsww.gov;
carol.miller@courtsww.gov

Re: AllTranstek, LLC and Rescar Companies v. Axial Corporation
Civil Action No. 25-C-28, Circuit Court of Marshall County, WV

All:

Enclosed please find your service copy of a ***Motion to Refer Case to the Business Court Division***, with supporting documents, which has been filed with the Supreme Court of Appeals of West Virginia.

I am emailing a file-stamped copy of the Motion only to Bill Wilmoth, as well as Tessa Bowers and Carol Miller of the Business Court Division Central Office.

Thank you.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'Michelle L. Gorman', with a long horizontal flourish extending to the right.

Michelle L. Gorman of
LEWIS BRISBOIS BISGAARD & SMITH LLP

MLG:kla
Enclosures

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

ALLTRANSTEK, LLC and
RESCAR COMPANIES

SCA EFiled: Mar 14 2025
10:55AM EDT
Transaction ID 75860390

Civil Action No. 25-C-28

Plaintiffs,

v.

AXIAL CORPORATION,

Defendant.

MOTION TO REFER CASE TO THE BUSINESS COURT DIVISION

Pursuant to Rule 29.06 of the West Virginia Trial Court Rules, the Plaintiffs, AllTranstek, LLC and Rescar Companies, by counsel, Michelle L. Gorman, Esq. and the law firm of Lewis Brisbois Bisgaard & Smith, LLP, respectfully requests the above-styled case be referred to the Business Court Division.

In regard to additional related actions:

- ☐ There are no known related actions.
- ☐ The following related actions could be the subject of consolidation, and are
 - ☐ now pending
 - or
 - ☐ may be filed in the future. (Please list case style, number, and Court if any)

X The case captioned Covestro, LLC v. Axiall Corporation, AllTranstek, LLC, and Rescar Companies, previously pending in the Circuit Court of Marshall County, West Virginia, being Civil Action No. 18-C-202, is a necessary, related action based on the subject action being a Declaratory Judgment action related to a Settlement Agreement in the Covestro case.

This action involves: (Please check all that apply):

- ☐ Breach of Contract;
- ☐ Sale or Purchase of Commercial Entity;
- ☐ Sale or Purchase of Commercial Real Estate;
- ☐ Sale or Purchase of Commercial Products Covered by the Uniform Commercial Code;
- ☐ Terms of a Commercial Lease;

- ☐ Commercial Non-consumer debts;
- ☐ Internal Affairs of a Commercial Entity;
- ☐ Trade Secrets and Trademark Infringement;
- ☐ Non-compete Agreements;
- ☐ Intellectual Property, Securities, Technology Disputes;
- ☐ Commercial Torts;
- ☐ Insurance Coverage Disputes in Commercial Insurance Policies;
- ☐ Professional Liability Claims in Connection with the Rendering of Professional Services to a Commercial Entity;
- ☐ Anti-trust Actions between Commercial Entities;
- ☐ Injunctive and Declaratory Relief Between Commercial Entities;
- ☐ Liability of Shareholders, Directors, Officers, Partners, etc.;
- ☐ Mergers, Consolidations, Sale of Assets, Issuance of Debt, Equity and Like Interest;
- ☐ Shareholders Derivative Claims;
- ☐ Commercial Bank Transactions;
- ☐ Franchisees/Franchisors;
- ☐ Internet, Electronic Commerce and Biotechnology
- ☐ Disputes involving Commercial Entities; or
- ☒ Other (Describe) A declaratory judgment action between Commercial Entities regarding a Settlement Agreement in a case previously before the Business Court.

In support of this motion, this matter contains issues significant to businesses, and presents novel and/or complex commercial or technological issues for which specialized treatment will be helpful, as more fully described here: This declaratory judgment action relates to prior action captioned Covestro, LLC v. Axiall Corporation, AllTranstek, LLC, and Rescar Companies, being Civil Action No. 18-C-202, which was previously before the Business Court Division of the Circuit Court of Marshall County, WV. The Covestro matter was settled; however, the subject action is for a Declaratory Judgment related to a Settlement Agreement in the Covestro case due to a dispute among the Defendants in the Covestro case related to the Settlement Agreement.

In further support of this Motion, please find attached hereto an accurate copy of the operative complaint(s), the operative answer(s), the docket sheet, and the following other documents: Attached is a file-stamped copy of the Complaint for Declaratory Judgment filed in the Circuit Court of Marshall County, WV on March 6, 2025, along with Exhibit 1 (the Covestro Complaint) and Exhibit 5 (the Memorandum of Understanding filed in the Covestro case which

sets forth the settlement agreement among the parties to the Covestro case). The remaining exhibits referenced in the Complaint for Declaratory Judgment are voluminous and can be provided upon request. Also being attached is Axiall's Answer and Crossclaim in response to the Covestro Complaint.

In regard to expedited review, the Movant:

- ☐ DOES NOT request an expedited review under W.Va. Trial Court Rule 29.06(a)(4), and gives notice that all affected parties may file a memorandum stating their position, in accordance with W.Va. Trial Court Rule 29.

X hereby REQUESTS that the Chief Justice grant this Motion to Refer without responses, pursuant to W.Va. Trial Court Rule 29.06(a)(4), and contends that the following constitutes good cause to do so: The underlying dispute involves some of the same parties as were previously before the Business Court Division in the related Covestro matter. The Business Court Division is already familiar with the complex issues involved in the underlying Covestro action, as the Covestro action was on the verge of trial when the settlement agreement, which is the subject of the instant declaratory judgment action, was reached. The request for declaratory relief is limited to issues between Axiall and Rescar/AllTranstek and does not involve Covestro.

WHEREFORE, the undersigned hereby MOVES, pursuant to W.Va. Trial Court Rule 29, the Chief Justice of the West Virginia Supreme Court of Appeals to refer this case to the Business Court Division.

Respectfully submitted, this 14th day of March, 2025,

Michelle L. Gorman

Michelle L. Gorman (WVSB #7329)
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Michelle.Gorman@lewisbrisbois.com
Counsel for Plaintiffs,
AllTranstek, LLC and Rescar Companies

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and correct copy of the foregoing *Motion to Refer Case to the Business Court Division* was served via email transmission and/or U.S. Mail this 14th day of March, 2024, upon the following:

William D. Wilmoth, Esq.
Steptoe & Johnson, PLLC
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William.Wilmoth@steptoe-johnson.com
Counsel for Defendant, Axiall Corporation

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/s/ Michelle L. Gorman
Michelle L. Gorman (WVSB #7329)
Counsel for Plaintiffs/Movants,
AllTranstek, LLC and Rescar Companies