

**In the Circuit Court of Marshall County, West Virginia**

**ALLTRANSTEK, LLC,  
RESCAR COMPANIES,**  
Plaintiffs,

v.

**AXIAL CORPORATION,**  
Defendant

Case No. CC-25-2025-C-28  
Judge Christopher C. Wilkes

**ORDER DENYING AXIALL'S COMBINED MOTION TO DISMISS OR STAY  
COMPLAINT FOR DECLARATORY JUDGMENT**

This matter came before the Court this 9th day of July, 2025. The Defendant, Axiall Corporation, (hereinafter "Axiall" or "Defendant"), by counsel, has filed Axiall Corporation's Combined Motion to Dismiss or Stay Complaint for Declaratory Judgment. The Plaintiffs, AllTranstek, LLC and Rescar Companies (hereinafter "Plaintiffs" or "AllTranstek and Rescar"), have filed a Response. The Plaintiffs, AllTranstek, LLC and Rescar Companies, by counsel, Michelle L. Gorman, Esq., and Defendant, Axiall Corporation, by counsel, William D. Wilmoth, Esq., have fully briefed the issues necessary. The Court dispenses with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process. So, upon the full consideration of the issues, the record, and the pertinent legal authorities, the Court rules as follows.

**FINDINGS OF FACT**

1. The Complaint for Declaratory Judgment was filed March 6, 2025, wherein Plaintiffs seek this Court to interpret a Settlement Agreement in Marshall County Civil Action Nos. 18-C-202 & 203 regarding the settlement of Covestro's claims against Rescar, AllTranstek, and Axiall related to property damage from an August 2016 railcar

chlorine rupture and leak. Plaintiffs seek a declaration related to Axiall's alleged ability or alleged waiver to seek to recover attorney's fees and costs incurred in Marshall County Civil Action Nos. 18-C-202 & 203. See Compl., ¶ 69.

2. On April 21, 2025, Axiall filed the instant Axiall Corporation's Combined Motion to Dismiss or Stay Complaint for Declaratory Judgment And Memorandum in Support Thereof, requesting this Court dismiss the Complaint for Declaratory Judgment, or, in the alternative, this Court stay the instant civil action "and allow the issue to proceed before the Allegheny County [PA] Court". See Def's Mot., p. 8.

3. On May 7, 2025, Axiall filed Axiall Corporation's Supplement to Its Motion to Dismiss or Stay Complaint for Declaratory Judgment, updating the Court that on April 24, 2025, the Allegheny County, Pennsylvania court denied a motion to stay filed by AllTranstek and Rescar to stay the Pennsylvania action pending resolution of the instant civil action. See Def's Suppl., p. 1.

4. On May 12, 2025, the Plaintiffs filed Response Memorandum of Plaintiffs, AllTranstek, LLC and Rescar Companies, in Opposition to Defendant Axiall Corporation's Combined Motion to Dismiss or Stay Complaint for Declaratory Judgment, arguing the Court should deny the motion because the Complaint is sufficiently pled pursuant to the West Virginia Uniform Declaratory Judgment Act. See Pls' Resp., p. 1. Additionally, Plaintiffs argue that a justiciable controversy exists over Paragraph 6 of the Settlement Agreement. *Id.*

5. No Reply was filed.

6. A status conference was held July 1, 2025. Conference was had regarding the briefing schedule of the instant motion.

7. The Court finds the issue ripe for adjudication.

#### **STANDARD OF LAW**

This matter comes before the Court upon a motion to dismiss, or in the alternative, to stay. Motions to dismiss are governed by Rule 12(b)(6) of the West Virginia Rules of Civil Procedure. “The trial court, in appraising the sufficiency of a complaint on a Rule 12(b)(6) motion, should not dismiss the complaint unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” Syl. Pt. 3, *Chapman v. Kane Transfer Co., Inc.*, 160 W.Va.530 (1977). “Since the preference is to decide cases on their merits, courts presented with a motion to dismiss for failure to state a claim construe the complaint in the light most favorable to the plaintiff, taking all allegations as true.” *Sedlock v. Moyle*, 222 W.Va.547, 550, 668 S.E.2d 176, 179 (2008). “We recognized, however, that liberalization in the rules of pleading in civil cases does not justify a carelessly drafted or baseless pleading.” *Par Marv. City of Parkersburg*, 183 W.Va.706, 711 (1990).

A motion to dismiss under Rule 12(b)(6) enables a circuit court to weed out unfounded suits. *Williamson v. Harden*, 214 W.Va.77, 79 (2003).

### **CONCLUSIONS OF LAW**

As an initial matter, this Court notes the background of the related West Virginia and Pennsylvania civil actions, as well as the settlement agreement involved in the parties’ arguments in the instant civil action. Both actions surround the chlorine rupture that occurred in Marshall County, West Virginia in August 2016. See Def’s Mot., p. 2. In August 2022, the Court of Common Pleas of Allegheny County, Pennsylvania entered judgment in *Axiall Corporation v. AllTranstek LLC, Rescar, Inc., and Superheat FGH Services, Inc.*, Cause No. 1016 WDA 2022. *Id.* This judgment was awarded subsequent to a jury trial in Allegheny County, Pennsylvania regarding the allocation of fault as to the aforementioned chlorine rupture that occurred in Marshall County, West Virginia in August 2016. *Id.* at 3. In West Virginia, Covestro, a neighboring facility to the chlorine

rupture, filed suit in Marshall County, West Virginia. *Id.* Axiall avers it filed its Pennsylvania case not long after Covestro's filing, and on the same day, Axiall filed an almost identical lawsuit against Rescar, AllTranstek, and Superheat in Marshall County. *Id.* The two Marshall County cases, Civil Actions 18-C-202 and 18-C-203 were consolidated and referred to the Business Court Division and assigned to the undersigned. *Id.* After the Pennsylvania judgment regarding attribution of fault, the undersigned, in 18-C-202, granted Covestro's motion to apply collateral estoppel and adopt the jury's liability findings. *Id.* Thereafter, only Covestro's damages remained as the only pending issue. *Id.*

Meanwhile, the Pennsylvania judgment was appealed to the Pennsylvania Superior Court, which affirmed the judgment in part, and remanded the matter for the determination of attorney's fees. *Id.* at 2-3. Specifically, the Superior Court found that Section 13.1 of Axiall's Terms and Conditions was "erroneously interpreted as a fee-shifting provision that permitted Axiall to recover attorneys' fees related to all first-party claims". See Pls' Resp., p. 15. Instead, the Superior Court found Section 13.1 is limited to costs Axiall directly incurred in defending itself against third-party claims. *Id.* Therefore, the Superior Court vacated the fee award, finding "[w]e vacate the judgment, in part, in the amount of \$8,324,073.25 which represents the award of attorney's fees..."). See Pls' Resp., p. 15. Accordingly, the remand order states: "We remand this case to the trial court to determine which portion of attorneys' fees, if any, directly related to the defense and settlement of third-party claims." See Pls' Resp., p. 11.

Rescar and AllTranstek filed an appeal of the Superior Court's decision to the Pennsylvania Supreme Court, which was denied on December 30, 2024. See Def's Mot., p. 3. However, before the Pennsylvania Supreme Court's denial, Rescar and AllTranstek settled Covestro's claims in 18-C-202 & 203 for themselves and for Axiall in

late 2024. *Id.* It is this Settlement Agreement that is at the heart of the instant Declaratory Judgment Complaint.

Axiall argues the Complaint for Declaratory Judgment in this civil action should be dismissed, or in the alternative, stayed, as it argues the Allegheny County Court of Common Pleas has exclusive jurisdiction to hear the dispute. See Def's Suppl., p. 2. On the other hand, Plaintiffs argue that the Pennsylvania court lacks jurisdiction to resolve Plaintiffs' claim asserted in the instant civil action. See Pls' Resp., p. 2. Plaintiffs aver the Pennsylvania court's jurisdiction on remand is limited to the specific issue identified in the Pennsylvania remand order and the Pennsylvania court can satisfy that directive without resolving the claim at the heart of the instant civil action. *Id.*

This Court considers this Declaratory Judgment Complaint asks this Court to interpret the Settlement Agreement in Marshall County Civil Action Nos. 18-C-202 & 203. See Pls' Resp., p. 5. The Settlement Agreement did not exist when final judgment was entered in the Pennsylvania action. Resolving contract disputes about the Settlement Agreement is not part of the remand order in Pennsylvania. The limited issue in the Pennsylvania remand is: "which portion of attorney's fees, if any, directly related to the defense and settlement of third-party claims." See Pls' Resp., p. 2 (*citing Axiall Corp. v. AllTranstek LLC*, 2024 Pa. Super. Unpub. LEXIS 1374, \*76-77).

The Court also considers the stage of this litigation. Rule 12(b)(6) authorizes this Court to dismiss actions for "failure to state a claim upon which relief can be granted." W. Va. R. Civ. P. 12. West Virginia Code § 55-13-2, a provision of the West Virginia Uniform Declaratory Judgment Act, provides:

Any person interested under a....written contract....may have determined any question of construction or validity arising under the...contract...and obtain a declaration of rights, status or other legal relations thereunder.

W. Va. Code § 55-13-2.

“The principal purpose of a declaratory judgment action is to resolve legal questions.” *Black v. St. Joseph’s Hosp. of Buckhannon, Inc.*, 234, W. Va. 175, 180 (2014).

The Court also considers the Settlement Agreement itself contemplates that the parties may “seek to enforce” the Settlement Agreement. See Pls’ Resp., p. 6; see also Settlement Agreement ¶ 19. In fact, the Settlement Agreement provides that West Virginia law governs all contract disputes. *Id.* at 7; see also Settlement Agreement ¶ 21. The manner in which Plaintiffs chose to do that was by filing a declaratory judgment action. At this stage of the litigation, the Court finds the declaratory judgment complaint was properly and sufficiently pled.

Next, the Court addresses Axiall’s argument that no justiciable claim or controversy exists. See Def’s Mot., p. 4-5. Before a circuit court may grant declaratory judgment relief pursuant to the Uniform Declaratory Judgment Act, West Virginia Code §§ 55-13-1, et seq., “there must be an actual, existing controversy”. *Hustead v. Ashland Oil*, 197 W. Va. 55, 62 (1996). The justiciable controversy requirement prevents parties from requesting “advisory opinions” that do not resolve an actual, real dispute between the parties. *City of Martinsburg v. Berkeley Cty. Council*, 241 W. Va. 385, 389-390 (2019)(rejecting the parties seeking “an advisory opinion in the total absence of factual circumstances and real controversy”). The Court in *Hustead* identified four factors to apply to determine whether a real controversy exists: 1) whether the claim involved uncertain and contingent events that may not occur at all; 2) whether the claim is dependent upon the facts; 3) whether there is adverseness among the parties; and 4) whether the sought after declaration would be of practical assistance in setting the underlying controversy to rest. *Hustead*, 197 W. Va. At 62. The Court will examine each factor.

First, the Court considers whether the claim involved uncertain and contingent events that may not occur at all. Axiall has stated that it intends to seek attorneys' fees in the Pennsylvania action and its position here is Pennsylvania is the appropriate venue for such relief. For this reason, even though it has not occurred yet, this Court does not find there is any uncertainty that would weigh against this first factor.

Second, the Court considers whether the claim is dependent upon the facts. Here, discovery in this civil action appears to be limited, based on the 26(f) Report to the undersigned and the arguments in the briefing of the instant motion. In the event that part of the Settlement Agreement would be deemed ambiguous, extrinsic evidence could be presented; however, the presence of potential factual issues does not warrant the dismissal of a declaratory judgment action. Accordingly, the Court finds this factor weighs in favor of Plaintiffs.

Third, the Court considers whether there is adverseness among the parties. Here, the parties' positions are adverse to one another. Plaintiffs aver they never would have paid \$11 million to settle the Covestro Action without Axiall's promise not to seek and waiver of fees Axiall incurred related to the Covestro Action. See Pls' Resp., p. 6. On the other hand, Axiall's position is that it agreed not to seek fees relating to West Virginia litigation, except for fees and expenses previously included in the Allegheny County judgment, which amounted to an agreement not to seek fees and expenses relating to West Virginia litigation that were incurred subsequent to the entry of that judgment, and that Axiall did not agree to forego fees and expenses to which it had previously been adjudged to be entitled. See Def's Mot., p. 5. The Court finds the requisite adverseness is met.

Finally, the Court considers whether the sought after declaration would be of practical assistance in setting the underlying controversy to rest. This Court's declaration

regarding the interpretations described above would have res judicata effect and would be of practical assistance in setting the controversy to rest. For example, if the Court rejected Axiall's interpretation and adopted Plaintiffs' interpretation, with res judicata effect, Axiall would be foreclosed from seeking attorneys' fees related to the Covestro/West Virginia action. The Court finds the fourth factor has been satisfied.

For all of these reasons, at this stage, the Court finds this action must survive the motion to dismiss stage.

### **CONCLUSION**

Accordingly, it is hereby ADJUDGED and ORDERED that Axiall Corporation's Combined Motion to Dismiss or Stay Complaint for Declaratory Judgment is hereby DENIED.

The Court notes the objections and exceptions of the parties to any adverse ruling herein. The Court directs the Circuit Clerk to distribute attested copies of this order to all counsel of record, and to the Business Court Central Office at West Virginia Business Court Division, 380 West South Street, Suite 4100, Martinsburg, West Virginia, 25401.

Enter: July 9, 2025

**/s/ Christopher C. Wilkes**  
Circuit Court Judge  
2nd Judicial Circuit

Note: The electronic signature on this order can be verified using the reference code that appears in the upper-left corner of the first page. Visit [www.courtswv.gov/e-file/](http://www.courtswv.gov/e-file/) for more details.