

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ABINGDON DIVISION**

THE CITY OF BRISTOL, TENNESSEE,)
)
 Plaintiff,)
)
 v.)
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 THE CITY OF BRISTOL, VIRGINIA,)
)
 Defendant.)
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)
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Case No.: 1:22-cv-00023-JPJ

**DEFENDANT’S REPLY IN SUPPORT OF ITS
MOTION FOR MEDIATION**

The City of Bristol, Virginia (“Bristol VA”) continues to seek mediation in this matter under the supervision of a Magistrate Judge or, should one not be available, a private mediator. At the City of Bristol, Tennessee (“Bristol TN”)’s recent request, Bristol VA granted Bristol TN a suspension of discovery to engage in settlement talks, but Bristol TN has declined to commit to a mediator or to a mediation process. Bristol VA has thus far not been able to engage in productive settlement discussions with Bristol TN. Given that Bristol TN *asked for and received* a benefit from Bristol VA expressly for the purpose of engaging in settlement talks, and because continued litigation is not in the public interest, this Court should order mediation to foster the needed dialogue between the two cities.

Grounds for Reply

In support of its reply, Bristol VA states as follows:

1. The parties have radically different recollections of when Bristol TN indicated it was open to mediation and when it indicated a willingness to turn off the spigot of attorneys’ fees. While such disagreements may often be dismissed as squabbles among lawyers, these differences

matter here, where 1) taxpayers are paying for the legal services, and 2) Bristol TN is asking the taxpayers of Bristol VA to pay for its lawyers' continued efforts.

2. Bristol TN never approached Bristol VA about reaching an agreement prior to filing this lawsuit.

3. Bristol VA, regardless, freely agreed to enter into a Preliminary Injunction Order and pay a quarter of a million dollars to Bristol TN. Bristol VA has already tendered the \$250,000 to Bristol TN.

4. From August 2022 to December 12, 2022, when Bristol VA filed its Motion to Mediate, Bristol VA repeatedly asked Bristol TN to engage in mediation.

5. Bristol TN *never once* offered to participate in settlement discussions, articulated any settlement demands, or even indicated that it was open to settlement discussions until after the Motion to Dismiss Hearing on November 3, 2022. Bristol TN misrepresents past events on this critical point in its filing.

6. After that hearing, Bristol VA repeatedly asked Bristol TN to engage in mediation and Bristol TN failed to provide a definite response.

7. On December 12, 2022, Bristol VA moved this Court for mediation.

8. On December 14, 2022, Bristol TN asked for a conference in which they indicated that they were open to settlement discussions and requested an indefinite extension of discovery, which Bristol VA granted.

9. Since that time, Bristol VA has not been able to obtain agreement on using a mediator, or setting a process for mediation.

10. Bristol TN's position is confused, simultaneously suggesting that mediation is premature while stating that settlement discussions are productive. But given that Bristol TN gained the benefit of an indefinite extension on discovery that otherwise was due on December 19,

2022, Bristol TN must be held to engaging in those talks in good faith through a court-approved mediator.¹

11. Continued litigation is not in the public interest. Separate and apart from this litigation, Bristol VA has been engaged on significant work on the landfill. This work has preceded under the direction of the Virginia Department of Environmental Quality (“DEQ”) and the EPA. Bristol VA anticipates entering a consent decree with DEQ as handled by the Office of the Attorney General of Virginia.

12. Though Bristol TN has attempted to take credit at every turn, in fact Bristol VA had been engaged in these remediation efforts at the landfill in spite of Bristol TN’s expensive litigation inflicted on it. Put another way, the work on the landfill would have preceded in substantially the same manner whether or not Bristol TN had expended enormous sums on lawyers, and forced Bristol VA to do the same.

13. Continued litigation is not in the public interest. Bristol VA is acting on the DEQ Expert Panel Report and will continue to do so – whatever the outcome of this litigation. On November 8, 2022, Bristol VA provided to Bristol TN a list of remediation items with a corresponding timeline that Bristol VA had drafted in conjunction with DEQ.

14. The only benefit Bristol TN can gain in this litigation that it would not otherwise receive is money damages and its attorney’s fees, and both it will attempt to extract from Bristol VA taxpayers. The only concrete money damages disclosed by Bristol TN amount to approximately \$45,000.

15. It neither make sense nor is it in the public interest for the parties to continue to spend hundreds of thousands of dollars on litigation where Bristol TN’s taxpayers stand to gain

¹ After granting the indefinite discovery extension to Bristol TN, Bristol VA received a reciprocal indefinite extension to discovery that was previously due on December 20, 2022.

little in damages – particularly when the parties could reach agreement on those matters in mediation. Bristol TN implicitly conceded this when it finally accepted Bristol VA’s repeated invitations to participate in settlement discussions and asked Bristol VA to agree to suspend indefinitely the discovery deadlines in this litigation.

In light of the foregoing, this Court should order the parties to mediation with a United States Magistrate Judge, or alternatively, if one is not available, a private mediator.

Dated: December 28, 2022

Respectfully submitted,

THE CITY OF BRISTOL, VIRGINIA

/s/ Justin D. Howard

John D. Adams (VSB 65203)

Justin D. Howard (VSB 94108)

Erin B. Ashwell (VSB 79538)

Christian E. Henneke (VSB 45457)

McGuireWoods LLP

Gateway Plaza

800 E Canal Street

Richmond, VA 23219

(804) 775-1000 (telephone)

(804) 775-1061 (fax)

jadams@mcguirewoods.com

jhoward@mcguirewoods.com

eashwell@mcguirewoods.com

chenneke@mcguirewoods.com

*Counsel for Defendant, The City of Bristol,
Virginia*

CERTIFICATE OF SERVICE

I hereby certify that on December 28, 2022, I caused the foregoing to be filed with the Clerk of the U.S. District Court for the Western District of Virginia using the Court's CM/ECF system, which will electronically serve copies of the same on counsel for all parties.

*/s/ Justin D. Howard*_____

Counsel for Defendant, The City of Bristol, Virginia

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