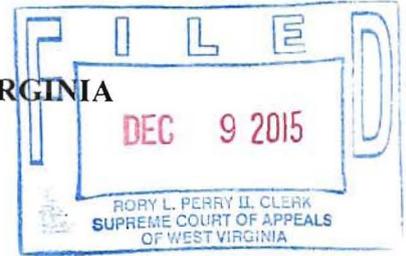


IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

DOCKET NO. 15- 1100



**STATE OF WEST VIRGINIA ex rel.  
SCOTT H. KAMINSKI,**

Petitioner,

v.

**THE HONORABLE THOMAS C. EVANS, III,**  
Judge of the Fifth Judicial Circuit of Jackson  
County, West Virginia; **A.I.O. HOLDINGS, LLC;**  
**and THOMAS T. MARTIN,**

Respondents.

---

**SUMMARY RESPONSE TO PETITION FOR WRIT OF PROHIBITION**

---

*Counsel for Respondent, A.I.O. Holdings, LLC,*

Robert L. Greer, (WV State Bar #5852)  
Greer Law Offices, PLLC  
P.O. Box 4338  
Clarksburg, West Virginia 26302  
Telephone: (304) 842-8090  
Facsimile: (304) 842-8091  
rgreer@greerlawoffices.com

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES ..... i

STATEMENT OF THE CASE..... 1

ARGUMENT ..... 1-3

    I.    A.I.O. Holdings, LLC, as a corporate client, is the sole holder of the attorney-client privilege and the only individual with authority to create or waive the privilege is its corporate representative, Gregory Anastas.....1-2

    II.   Kaminski cannot assert the attorney-client privilege because he has not provided evidence that the privilege exists, *in all its elements*, as required under West Virginia law.....2-3

CONCLUSION..... 3

CERTIFICATE OF SERVICE ..... 4-5

**TABLE OF AUTHORITIES**

**A. CASES**

*Commodity Futures Trading Commission v. Weintraub*, 471 U.S. 343 (1985).....1

*State v. Burton*, 163 W.Va. 40 (1979).....2

*State ex rel. USF & G v. Canady*, 194 W.Va. 431 (1995).....2

*Upjohn Co. v. United States*, 449 U.S. 383 (1981).....1

## STATEMENT OF THE CASE

Gregory Anastas is the sole member and corporate representative of A.I.O. Holdings, LLC because A.I.O.'s sole member is Advantage Investments, of which he is the only member.<sup>1</sup> There are no employees. Further, Mr. Anastas, did not learn about the lawsuit at issue until 2011. During the years preceding A.I.O.'s even becoming aware of the lawsuit, individuals purporting to act on A.I.O.'s behalf conducted this lawsuit and answered discovery in A.I.O.'s name. Petitioner, Mr. Kaminski, allegedly communicated with an individual named Todd Pilcher, who apparently held himself out as being affiliated with A.I.O. During Mr. Anastas' deposition in September 2011, Mr. Anastas confirmed that not only was A.I.O. unaware of an ongoing lawsuit until sometime in 2011<sup>2</sup>, he did not authorize individuals to act on A.I.O.'s behalf. In fact, Mr. Anastas testified that he did not even know Todd Pilcher<sup>3</sup> or who retained Mr. Kaminski as counsel.<sup>4</sup> The only individual with authority to act on behalf of A.I.O., including answering discovery and waiving attorney-client privilege, is and always has been Gregory Anastas.

## ARGUMENT

**I. A.I.O. Holdings, LLC, as a corporate client, is the sole holder of the attorney-client privilege and the only individual with authority to create or waive the privilege is its corporate representative, Gregory Anastas.**

It is a well-established principle that the corporation holds the attorney-client privilege. *Upjohn Co. v. United States*, 449 U.S. 383, 389 (1981). Further, it is also well-known that the power to waive the privilege is normally exercised by a corporation's officers and directors. *Commodity Futures Trading Commission v. Weintraub*, 471 U.S. 343, 348 (1985). Throughout the

---

<sup>1</sup> Deposition of Gregory Anastas, attached herein as **Exhibit 1**, at 10.

<sup>2</sup> Exhibit 1 at 18.

<sup>3</sup> Exhibit 1 at 31.

<sup>4</sup> Exhibit 1 at 18.

Petitioner's brief, Kaminski states that individuals "acted on behalf of A.I.O." However, this is not factually consistent with the evidence of record. Mr. Anastas, the sole member and corporate representative of A.I.O., did not authorize any individuals to conduct a lawsuit on A.I.O.'s behalf, a lawsuit about which A.I.O. did not even have knowledge until years after its inception.<sup>5</sup> Irrespective of assertions to the contrary, no individual other than Gregory Anastas has the ability to create or waive an attorney-client privilege on behalf of A.I.O.

**II. Kaminski cannot assert the attorney-client privilege because he has not provided evidence that the privilege exists, *in all its elements*, as required under West Virginia law.**

In order to assert the attorney-client privilege in West Virginia, three requirements, as outlined in *State v. Burton*, 163 W.Va. 40 (1979), must be met. They are as follows: 1) Both parties must contemplate that the attorney-client privilege does or will exist; 2) the advice must be sought by the client from that attorney in their capacity as legal advisor; and 3) the communication between the attorney and the client must be identified to be confidential. Syl. pt. 2, *Id.* "The burden of establishing the attorney-client privilege or the work product exception, *in all their elements*, always rests upon the person asserting it" (emphasis added). Syl. pt. 4., *State ex rel. USF & G v. Canady*, 194 W.Va. 431 (1995). Thus, because Kaminski is the person asserting the privilege, the burden of establishing its existence rests with him. However, rather than provide such evidence, Kaminski attempts to flip the burden of proof by claiming that Respondents must provide evidence that both parties did "not contemplate such a relationship to exist." Petitioner's Brief at 6. Without such evidence, Kaminski fails to positively establish the existence of any attorney-client privilege, *in all their elements*, as it pertains to any individual allegedly acting on behalf of A.I.O. Put simply,

---

<sup>5</sup> Exhibit 1 at 18.

Kaminski's analysis is not in accordance with West Virginia law and should, therefore, be disregarded.

**CONCLUSION**

A.I.O. is the sole holder of the attorney-client privilege, irrespective of the protestations of others claiming to act on its behalf. In that regard, A.I.O. is entitled to waive any attorney-client privilege as to itself and those claiming to act on its behalf. As such, A.I.O. respectfully requests this Honorable Court find that its disclosure of documents to be an affirmative and proper waiver of the attorney-client privilege, as it is A.I.O.'s sole right to do so.

Respectfully Submitted,

A.I.O. Holdings, Inc.,

By Counsel.

Handwritten signature of Robert L. Greer in cursive script, followed by the text "W. Greer #12538".

Robert L. Greer WV Bar #5852

Greer Law Offices, PLLC

P.O. Box 4338

Clarksburg, WV 26302

Telephone: (304) 842-8090

Facsimile: (304) 842-8091

rgreer@greerlawoffices.com

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

DOCKET NO. 15- 1100

STATE OF WEST VIRGINIA ex rel.  
SCOTT H. KAMINSKI,

Petitioner,

v.

THE HONORABLE THOMAS C. EVANS, III,  
Judge of the Fifth Judicial Circuit of Jackson  
County, West Virginia; A.I.O. HOLDINGS, LLC;  
and THOMAS T. MARTIN,

Respondents.

**CERTIFICATE OF SERVICE**

I, Robert L. Greer, counsel for Respondent, A.I.O. Holdings, LLC, do hereby certify that on the 9th day of December, 2015, I have served true and exact copies of the foregoing “**Summary Response to Petition for Writ of Prohibition**” thereto upon the parties and counsel of record listed below, by placing the same in the United States mail, postage prepaid, addressed as follows:

Nicholas S. Preservati, Esquire  
**Preservati Law Offices, PLLC**  
Post Office Box 1431  
Charleston, WV 25325

The Honorable Thomas C. Evans, III  
Fifth Judicial Circuit  
P.O. Box 800  
Ripley, WV 25271  
***Respondent***

David K. Hendrickson  
Raj A. Shah  
**Hendrickson & Long, PLLC**  
214 Capitol Street  
Charleston, WV 25301

 Robert L. Greer WV Bar #5852

Robert L. Greer WV Bar #5852

Greer Law Offices, PLLC

P.O. Box 4338

Clarksburg, WV 26302

Telephone: (304) 842-8090

Facsimile: (304) 842-8091

rgreer@greerlawoffices.com

***Counsel for Respondent, A.I.O. Holdings, LLC.***

**THOMAS T. MARTIN VS. A.I.O. HOLDINGS, LLC, ET AL.**  
**THE VIDEO DEPOSITION OF GREGORY P. ANASTAS**  
**SEPTEMBER 14, 2011**

Sheet 1 Page 1

IN THE CIRCUIT COURT OF JACKSON COUNTY, WEST VIRGINIA

THOMAS T. MARTIN, et. al.,  
 Plaintiffs,  
 v. CIVIL ACTION NO.: 09-C-31  
 A.I.O. HOLDINGS, LLC, et al.,  
 Defendants.

The video deposition of GREGORY P. ANASTAS, was taken pursuant to notice, in the above-entitled action, on the 14th day of September 2011, commencing at 9:00 a.m. and concluding at 10:00 a.m., at the law firm of Nicholas S. Preservati, 13 Kanawha Boulevard West, Suite 202, Charleston, West Virginia, before Pamela I. Wood, Certified Court Reporter and Notary Public, pursuant to the West Virginia Rules of Civil Procedure.

DeMuth Court Reporting, L.L.C.  
 PAMELA I. WOOD, CCR  
 Post Office Box: 701  
 Dunbar, West Virginia 25064  
 304-766-8708

Page 2

APPEARANCES

ON BEHALF OF THE PLAINTIFFS:  
 NICHOLAS S. PRESERVATI, ESQUIRE  
 PRESERVATI LAW OFFICES, PLLC  
 13 KANAWHA BOULEVARD WEST  
 SUITE 202  
 CHARLESTON, WEST VIRGINIA  
 JOSEPH C. BUNN, ESQUIRE  
 JONES & ASSOCIATES  
 POST OFFICE BOX 1989  
 CHARLESTON, WEST VIRGINIA

ON BEHALF OF THE DEFENDANTS:  
 SCOTT H. KAMINSKI, ESQUIRE  
 BALGO & KAMINSKI  
 POST OFFICE BOX 1344  
 CHARLESTON, WEST VIRGINIA

Page 3

INDEX

Witness	Examination
GREGORY P. ANASTAS	4 (Preservati)

Reporter's Certificate	Page 39
Errata Sheets	Pages 40-41

Page 4

1 September 14, 2011  
 2 VIDEOGRAPHER: The video deposition of Gregory  
 3 Anastas is being taken on September the 14th, 2011,  
 4 beginning at 9:05 a.m. Styled in a case pending, and  
 5 styled: Thomas T. Martin, et. al., vs. A.I.O. Holdings,  
 6 LLC, et al., Defendant. The Civil Action Number is 09-  
 7 C-31.  
 8 The deposition is being taken at the Offices  
 9 of Nicholas S. Preservati, Esquire, located at 13  
 10 Kanawha Boulevard East -- excuse me, Kanawha Boulevard,  
 11 West, Suite 202, in Charleston, West Virginia.  
 12 The court reporter is Pam Wood. The  
 13 videographer is Luster Doughty. I would ask Counsel to  
 14 introduce themselves and then the court reporter will  
 15 swear in the witness.  
 16 MR. PRESERVATI: I am Nick Preservati on  
 17 behalf of the Plaintiff, Mr. Martin. I will be leading  
 18 the deposition this afternoon.  
 19 MR. BUNN: Joe Bunn. I'm co-counsel, with  
 20 Jones & Associates.  
 21 MR. KAMINSKI: And Scott Kaminski. I will be  
 22 representing A.I.O. Holdings in this matter.  
 23 (Witness sworn.)

PAMELA I. WOOD, CCR  
 DEMUTH COURT REPORTING  
 304-766-8708



**THOMAS T. MARTIN VS. A.I.O. HOLDINGS, LLC, ET AL.**  
**THE VIDEO DEPOSITION OF GREGORY P. ANASTAS**  
**SEPTEMBER 14, 2011**

Sheet 3 Page 9

1 Q. Okay. Can you go through your employment  
2 history starting with your current position and take me  
3 back until you were with USC.  
4 A. Okay. I've been an entrepreneur most of my  
5 life.  
6 Q. Okay. What's your current position?  
7 A. I own a chain of liquor stores in Louisville.  
8 Q. Okay. And what's the name of that chain?  
9 A. Beverage Warehouse.  
10 Q. Okay. Do you own that by yourself or with  
11 other people?  
12 A. By myself.  
13 Q. How long have you owned that?  
14 A. I started in 2000. I think it was 2000 --  
15 February of 2005.  
16 Q. And before that, when you were in California,  
17 did you have any ventures there?  
18 A. I did. I had two liquor stores there that I  
19 owned with my father and then we had an import/export  
20 business. And then when I originally moved to  
21 Louisville, we started a mail order business there.  
22 Q. What was the name of the warehouses?  
23 A. It was Beverage Warehouse as well.

Page 10

1 Q. In California?  
2 A. It was Emilio's Beverage Warehouse.  
3 Q. Okay. Currently, as we speak right now, what  
4 are all the ventures that you're a part of?  
5 A. It's the stores, between the stores and kios,  
6 they take up most of my time. I lent Martin money  
7 through A.I.O. It's been a long time ago. I don't  
8 recall exactly the date. And then I have some small  
9 LLCs. I'm not sure. I mean, they're more holding  
10 companies or something like that.  
11 Q. Let's go into A.I.O. Holdings.  
12 A. Okay.  
13 Q. What's your position in regards to A.I.O.  
14 Holdings?  
15 A. I don't recall exactly my position. I make  
16 decisions for the company. It's owned by Advantage  
17 Investments.  
18 Q. Okay. And are you a member of Advantage  
19 Investments?  
20 A. I am.  
21 Q. Who are all the members of Advantage  
22 Investments?  
23 A. Me alone.

Page 11

1 Q. Okay. When was Advantage Investments started?  
2 A. I don't recall. It's been a long time ago.  
3 Q. Did you start it?  
4 A. I don't recall that. I think I did. At the  
5 beginning, it was me and my brother, brother and sister  
6 or something. It's changed ownerships in our family  
7 once or twice. But I know as of quite a while ago I've  
8 been the only owner.  
9 Q. Do you - and I may butcher this name - Voddy  
10 Hasan (phonetic)?  
11 A. Yeah.  
12 Q. Was he a member of --  
13 A. Oh, he might have been for a brief time.  
14 Q. Okay. What's the purpose of Advantage  
15 Investments?  
16 A. It's a holding company.  
17 Q. And what does that mean?  
18 A. It just loans money out to different entities.  
19 Q. Where does it get its money from?  
20 A. It's gotten it from mostly me in the past.  
21 Q. And is that from your personal finance  
22 holdings?  
23 A. Yes.

Page 12

1 Q. Okay. What holdings -- Does it have any  
2 specific holdings?  
3 A. Typically, no, that's it.  
4 Q. Okay. Does it have any notes with Martin  
5 Twist?  
6 A. No. I think the way we structured it was it  
7 had a note with A.I.O.  
8 Q. And what's that note for?  
9 A. I think it was -- What do you mean, what is  
10 it...  
11 Q. The way I understand it, Advantage Investments  
12 has a note through A.I.O. Holdings. Who is that note on  
13 behalf of?  
14 A. Okay. One more time.  
15 Q. I'm sorry. I'm confused. When I asked you if  
16 you had any notes with Martin Twist through Advantage  
17 Investments, you said --  
18 A. No, it just goes to A.I.O.  
19 Q. Okay. So, Advantage Investments doesn't have  
20 a note --  
21 A. With Martin Twist.  
22 Q. -- with Martin Twist and it doesn't have a  
23 note with A.I.O. Holdings.

**THOMAS T. MARTIN VS. A.I.O. HOLDINGS, LLC, ET AL.**  
**THE VIDEO DEPOSITION OF GREGORY P. ANASTAS**  
**SEPTEMBER 14, 2011**

Sheet 5 Page 17

1 A. I -- yeah.  
2 Q. And then throughout this process, on behalf of  
3 the company, who would have made the decisions on who  
4 would have attended the mediation in this case  
5 previously?  
6 MR. KAMINSKI: To the extent that that calls  
7 for any conversations between counsel, you're not to  
8 divulge any discussions you have had with me or any  
9 other attorneys relative to that question.  
10 BY MR. PRESERVATI:  
11 Q. Yeah. And let me clarify. I'm going to go  
12 into a couple of questions here. And your counsel is  
13 absolutely right. I don't want to know anything that  
14 was said between you and your attorney.  
15 A. Okay.  
16 Q. I'm going to ask you questions on when things  
17 were done --  
18 A. Right.  
19 Q. -- but not who said them, what was said or  
20 anything like that. Okay?  
21 A. Okay.  
22 Q. If there's a question, we'll go into it.  
23 A. Sure.

Page 18

1 Q. But I'd like to delve into a little bit of how  
2 you became aware of this lawsuit and the involvement in  
3 the lawsuit and the decisions that were made.  
4 When did you first become aware of this  
5 lawsuit?  
6 A. I don't recall.  
7 Q. You don't recall. I don't want any comments  
8 on the substance of the communication, but when did you  
9 first communicate with Mr. Kaminski regarding this  
10 lawsuit?  
11 A. I don't recall.  
12 Q. Do you know if it was in the last six months  
13 or two years ago?  
14 A. Maybe within the last six months. I'm not 100  
15 percent sure.  
16 Q. This case has been going on for some time.  
17 Who was managing on behalf of the -- who was actually  
18 managing the lawsuit?  
19 A. I don't know.  
20 Q. So, when there were court dates or anything  
21 like that previously, you don't know any involved?  
22 A. I have no idea.  
23 Q. Do you know who retained Mr. Kaminski?

Page 19

1 A. I don't know.  
2 Q. Do you -- Have you had any involvement in  
3 answering the interrogatories, request to admit and  
4 request for production documents in this case?  
5 A. I remember the last one is all.  
6 Q. The supplemental responses?  
7 A. I think so. I don't recall exactly what it  
8 was, but, yeah.  
9 Q. All right. We'll go through that in a minute.  
10 Do you know who answered the initial interrogatories for  
11 the company?  
12 A. No.  
13 Q. If there's no employees or anyone involved  
14 with A.I.O. Holdings other than yourself, how could have  
15 anybody else answered the interrogatories?  
16 A. I have no idea.  
17 Q. Were you aware that there was a mediation in  
18 this case over a year ago?  
19 A. I was not.  
20 Q. Did you authorize anybody to go to that  
21 mediation?  
22 A. I did not. I don't recall that.  
23 Q. So, you didn't authorize Todd Pletcher to go

Page 20

1 to the mediation with authority to set on?  
2 A. No. I don't know who that is.  
3 Q. And you said A.I.O. Holdings' primary business  
4 is basically to fund money to Martin?  
5 A. Yeah. That was the only purpose it was set up  
6 for.  
7 Q. Okay. So, then that decision came squarely  
8 from you, to fund Martin and loan him the money?  
9 A. Yeah.  
10 Q. What documents were done as part of that  
11 transaction?  
12 A. There's a note - and my memory is rusty,  
13 because this was done a long time ago - there's just,  
14 what I can recall, is there's a document of a note that  
15 Martin signed on behalf of himself I think and all his  
16 entities for me to loan the money.  
17 Q. Do you have a copy of that note?  
18 A. I do. I would, yeah.  
19 Q. Can we get a copy of that, because we haven't  
20 seen a copy of that note.  
21 A. Okay.  
22 MR. PRESERVATI: Make a note of the documents  
23 that we request here if that's all right.

**THOMAS T. MARTIN VS. A.I.O. HOLDINGS, LLC, ET AL.**  
**THE VIDEO DEPOSITION OF GREGORY P. ANASTAS**  
**SEPTEMBER 14, 2011**

Sheet 8 Page 29

1 agreed judgment that was entered in Jefferson County as  
2 a result of you foreclosing on your two million dollar  
3 loan to Martin Twist.  
4 A. Right.  
5 Q. And pursuant to this judgment, you obtained an  
6 interest in all the oil and gas leases listed here  
7 including multiple wells, the Martin 1, the Martin 2 and  
8 the Martin 4 gas wells.  
9 A. Okay.  
10 Q. So, from this document, you are now the owner  
11 of those leases --  
12 A. Okay.  
13 Q. -- in the Martin wells that's in dispute here.  
14 A. Okay.  
15 Q. Were you aware of that?  
16 MR. KAMINSKI: Before you answer, let me just  
17 object on the record to the extent that Mr. Anastas is  
18 not an attorney and that this is a legal document.  
19 Certainly, as a layperson, he can answer as best he can  
20 for you.  
21 THE WITNESS: I'm a little confused. I guess  
22 I'm confused.  
23 BY MR. PRESERVATI:

Page 30

1 Q. All right. Let me ask you this again. Were  
2 you aware that, as a result of this judgment that was  
3 entered in Kentucky, that you obtained sole interest in  
4 the Martin Number 1, the Martin Number 2 and the Martin  
5 Number 4 gas wells?  
6 A. I mean, I see it there. I guess where I'm  
7 confused is I have another lawsuit going here where I'm  
8 trying to attach those wells or gain ownership over  
9 those wells. I don't know how to say it otherwise.  
10 Q. I guess my question is, were you aware that  
11 you were granted ownership of those wells back in 2008?  
12 A. I don't know specifically, because it looks  
13 like Chinese to me, all this stuff.  
14 Q. So, you weren't aware?  
15 A. Yeah.  
16 Q. I'm not trying to get you to interpret this  
17 document.  
18 A. Okay.  
19 Q. I'm just asking your personal knowledge.  
20 A. Yeah. I was not aware.  
21 Q. So, until you came in here today, you did not  
22 know that A.I.O. Holdings, as one of its holdings, were  
23 the gas wells on Mr. Martin's property?

Page 31

1 A. Right. Yeah, I did not know until today.  
2 Q. So, that would explain why you have no day-to-  
3 day operations managing the different wells.  
4 A. Right.  
5 Q. Do you manage -- If you weren't aware of that,  
6 then you just took out a lot of my questions.  
7 Have you ever heard the name Todd Pletcher?  
8 A. Never.  
9 Q. Have you ever heard the name Jonathan Reager  
10 (phonetic)?  
11 A. Never.  
12 MR. KAMINSKI: It might be pronounced Reager.  
13 Have you ever heard that name?  
14 THE WITNESS: No.  
15 MR. KAMINSKI: Sorry.  
16 BY MR. PRESERVATI:  
17 Q. Have you ever authorized anyone to monitor or  
18 maintain the status of the Martin Number 1, the Martin  
19 Number 2 or the Martin Number 4 gas well?  
20 A. No.  
21 Q. Have you ever authorized, on behalf of A.I.O.  
22 Holdings, anyone to ever monitor the production of gas  
23 that's gone through the Martin Number 1, the Martin

Page 32

1 Number 2 and the Martin Number 4 wells?  
2 A. No.  
3 Q. Have you ever negotiated personally or on  
4 behalf of A.I.O. Holdings any contract for the sale of  
5 gas through the Martin Number 1, the Martin Number 2 or  
6 the Martin Number 4 gas wells?  
7 A. No.  
8 Q. Has A.I.O. Holdings ever received any payment  
9 whatsoever from Chesapeake or Dominion for the sale of  
10 gas from the Martin Number 1, Martin Number 2 or Martin  
11 Number 4 gas wells?  
12 A. No.  
13 Q. Do you know anything about the Martin Number  
14 1, Martin Number 2 or Martin Number 4 gas wells?  
15 A. No.  
16 Q. So, as you sit here today, on behalf of A.I.O.  
17 Holdings, you can't speak at all about the amount of gas  
18 produced from the Martin Number 1, Martin Number 2 or  
19 Martin Number 4 wells?  
20 A. No.  
21 Q. Can you speak at all to the royalty payments  
22 that were made on behalf of those wells?  
23 A. No.