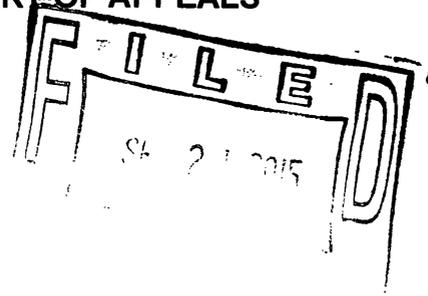


IN THE WEST VIRGINIA SUPREME COURT OF APPEALS



**JEFFREY N. EVANS, Individually and in his capacity as an Employee, Servant, or Agent of Ameriprise Financial Services, Inc., AMERIPRISE FINANCIAL SERVICES, INC., KRISTINA NICHOLLS, Individually, and STEPHEN BAYLES, Individually, Defendants Below,**

**Petitioners,**

**v.**

**No. 15-0600**

**DEBRA K. BAYLES, Plaintiff Below,**

**Respondent.**

**PETITIONERS' BRIEF**

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## I. ASSIGNMENTS OF ERROR

1. Whether the Circuit Court erred in denying Defendants' Motion to Dismiss and Compel Mandatory Arbitration, inasmuch as Respondent is an intended third-party beneficiary of the decedent's IRA Brokerage Account, which is subject to a predispute arbitration clause?

2. Whether the Circuit Court erred in denying Defendants' Motion to Dismiss and Compel Mandatory Arbitration, inasmuch as the signed Brokerage Application refers to the predispute arbitration clause found in the Brokerage Agreement and incorporates it by reference?

3. Whether the Circuit Court erred in denying Defendants' Motion to Dismiss and Compel Mandatory Arbitration, given the clear language appearing in the predispute arbitration clause?

4. Whether the absence of the decedent's signature within the Brokerage Agreement on these facts creates an ambiguity under the doctrine of *contra proferentem*?

## II. STATEMENT OF THE CASE

1. Respondent Debra K. Bayles ("Respondent") is the widow of William N. Bayles and serves as the Administratrix of the Estate of William N. Bayles, pursuant to an Order of Appointment entered on April 8, 2013 by the Marshall County Commission. *Appendix I at 22.*

2. Respondent is the step-mother of Petitioners Kristina Nicholls ("Nicholls") and Stephen Bayles ("Bayles"). *Appendix I at 11.*

3. William N. Bayles (“decedent”) died on March 26, 2013. *Appendix I at 3 and 11.* Prior to his death, the decedent opened two individual retirement accounts (“IRA Accounts”) through Petitioners Jeffrey N. Evans (“Evans”) and Ameriprise Financial Services, Inc. (“Ameriprise”). *Appendix I at 3.*

4. Respondent filed her Complaint against the petitioners on September 5, 2014, alleging negligence on the part of Evans and Ameriprise relative to the IRA Accounts. The subject IRA Accounts end in numbers 264133 and 961133, respectively. *Appendix I at 2-6.*

5. The Complaint also alleges detrimental reliance upon Evans, *respondeat superior*, breach of contract by Ameriprise, and unjust enrichment against Nicholls and Bayles. *Appendix I at 6-7.*

6. The predicate for each of Respondent’s legal claims is the IRA Accounts. *Appendix I at 2-8.*

7. On June 20, 2012, the decedent rolled his 401(k) retirement into an IRA Account with Ameriprise through Evans. In so doing, the decedent completed and signed an Ameriprise Brokerage Individual Retirement Account Application (“Brokerage Application”). *Appendix I at 24-29.* The Brokerage Application was assigned an account number ending in 264133. Part 9 of it states in pertinent part:

**You acknowledge that you have received and read the Ameriprise Brokerage Client Agreement (“Agreement”) and agree to abide by its terms and conditions as currently in effect or as they may be amended from time to time. You hereby consent to all these terms and conditions with full knowledge and understanding of the information contained in the Agreement. This brokerage account is governed by a predispute arbitration clause which is found on Section 26, page 3 of the Agreement. You acknowledge receipt of the**

**predispute arbitration clause.**

*Appendix I at 28.* (emphasis added).

8. The Ameriprise Brokerage Client Agreement (“Brokerage Agreement”) contains the predispute arbitration clause mentioned in Part 9 of the Brokerage Application. The clause appears at Paragraph 26 and states as follows:

**This agreement contains a predispute arbitration clause. By signing this Agreement the parties agree as follows:**

**(A) All parties to this agreement are giving up the right to sue each other in court, including the right to a trial by jury, except as provided by the rules of the arbitration forum in which a claim is filed.**

**(B) Arbitration awards are generally final and binding; a party’s ability to have a court reverse or modify an arbitration award is very limited.**

**(C) The ability of the parties to obtain documents, witness statements and other discovery is generally more limited in arbitration than in court proceedings.**

**(D) The arbitrators do not have to explain the reason(s) for their award unless, in an eligible case, a joint request for an explained decision has been submitted by all parties to the panel at least 20 days prior to the first scheduled hearing date.**

**(E) The panel of arbitrators may include a minority of arbitrators who were or are affiliated with the securities industry.**

**(F) The rules of some arbitration forums may impose time limits for bringing a claim in arbitration. In some cases, a claim that is ineligible for arbitration may be brought in court.**

**(G) The rules of the arbitration forum in which the claim is filed, and any amendments thereto, shall be incorporated into this Agreement.**

**By reading and accepting the terms of this Agreement, you acknowledge that, in accordance with this Arbitration**

**section, you agree in advance to arbitrate any controversies that may arise with Ameriprise Financial or AEIS. You agree that all controversies that arise between us (including but not limited to those related to your brokerage account and any service or advice provided by a broker or representative), whether arising before, on or after the date you opened your Account shall be determined by arbitration in accordance with the terms of this Agreement and the rules then prevailing of the Financial Industry Regulatory Authority.**

**Federal and state statutes of limitation, repose, and/or other rules, laws, or regulations impose time limits for bringing claims in federal and state court actions and proceedings. The parties agree that all federal or state statutes of limitation, repose, and/or other rules, laws, or regulations imposing time limits that would apply in federal or state court, apply to any dispute, claim or controversy brought under this Agreement, and such time limits are hereby incorporated by reference. Therefore, to the extent that a dispute, claim, or controversy arises under this Agreement and would be barred by a statute of limitation, repose or other time limit, if brought in a federal or state court action or proceeding, the parties agree that such dispute, claim, or controversy shall be barred in an arbitration proceeding.**

**You understand that judgment upon any arbitration award may be entered in any court of competent jurisdiction. The parties agree that venue and personal jurisdiction is proper in Minneapolis, Minnesota.**

**No person shall bring a putative or certified class action to arbitration, nor seek to enforce any pre-dispute arbitration agreement against any person who has initiated in court a putative class action; or who is member of a putative class who has not opted out of the class with respect to any claims encompassed by the putative class action until: (i) the class certification is denied; (ii) the class is decertified; or (iii) the customer is excluded from the class by the court. Such forbearance to enforce any agreement to arbitrate shall not constitute a waiver of any rights under this agreement except to the extent stated herein.**

*Appendix I at 34. (emphasis added).*

9. The decedent signed the Brokerage Application on June 20, 2012, thereby acknowledging the Brokerage Agreement and its terms. Evans called to the decedent's attention the predispute arbitration clause mentioned in the application, described arbitration, and gave the decedent the Brokerage Agreement at the time of signature. *Appendix I at 128-129.*

10. Later, on September 5, 2012, the decedent opened another IRA Account with Ameriprise through Evans. The decedent completed and signed an Active Portfolios Account Application ("Portfolios Application") for this account, which was assigned the account number ending in 961133. *Appendix I at 42-49.* The decedent indicated an investment objective of "growth with income" and a risk tolerance of "moderate." The second IRA Account received a sum certain from the Brokerage Account to begin, known as the Active Portfolios Account ("Portfolios Account"). *Appendix I at 43.*

11. In his Portfolios Application, the decedent acknowledged the following:

**You acknowledge that you have received and read the Ameriprise Portfolios Client Agreement (version K, dated 03/12), the Ameriprise Managed Accounts Client Disclosure Brochure and the Ameriprise Brokerage Client Agreement, which is hereby incorporated by reference, and agree to abide by the terms and conditions as currently in effect or as they may be amended from time to time. You hereby consent to all these terms and conditions with full knowledge and understanding of the information contained in them. This account is governed by a predispute arbitration provision which is found in Section 25, Page 9 of the Active Portfolios Client Agreement and Section 26, Page 3 of the Brokerage Client Agreement. You acknowledge receipt of the predispute arbitration provision.**

*Appendix I at 48. (emphasis added).*

12. The Portfolios Agreement contains the following predispute arbitration provision at Paragraph 25:

**Arbitration**

**This agreement contains a predispute arbitration clause. By signing this Agreement the parties agree as follows:**

- (A) All parties to this agreement are giving up the right to sue each other in court, including the right to a trial by jury, except as provided by the rules of the arbitration forum in which a claim is filed.**
- (B) Arbitration awards are generally final and binding; a party's ability to have a court reverse or modify an arbitration award is very limited.**
- (C) The ability of the parties to obtain documents, witness statements and other discovery is generally more limited in arbitration than in court proceedings.**
- (D) The arbitrators do not have to explain the reason(s) for their award unless, in an eligible case, a joint request for an explained decision has been submitted by all parties to the panel at least 20 days prior to the first scheduled hearing date.**
- (E) The panel of arbitrators may include a minority of arbitrators who were or are affiliated with the securities industry.**
- (F) The rules of some arbitration forums may impose time limits for bringing a claim in arbitration. In some cases, a claim that is ineligible for arbitration may be brought in court.**
- (G) The rules of the arbitration forum in which the claim is filed, and any amendments thereto, shall be incorporated into this Agreement.**

**By reading and accepting the terms of this Agreement, you acknowledge that, in accordance with this Arbitration section, you agree in advance to arbitrate any controversies that may arise with the Sponsor or AEIS. You agree that all controversies that arise between us (including but not limited to those related to your brokerage account and any service**

**or advice provided by a broker or representative), whether arising before, on or after the date you opened your Account shall be determined by arbitration in accordance with the terms of this Agreement and the rules then prevailing of the Financial Industry Regulatory Authority.**

**Federal and state statutes of limitation, repose, and/or other rules, laws, or regulations impose time limits for bringing claims in federal and state court actions and proceedings. The parties agree that all federal or state statutes of limitation, repose, and/or other rules, laws, or regulations imposing time limits that would apply in federal or state court, apply to any dispute, claim or controversy brought under this Agreement, and such time limits are hereby incorporated by reference.**

**Therefore, to the extent that a dispute, claim, or controversy arises under this Agreement and would be barred by a statute of limitation, repose or other time limit, if brought in a federal or state court action or proceeding, the parties agree that such dispute, claim, or controversy shall be barred in an arbitration proceeding.**

**You understand that judgment upon any arbitration award may be entered in any court of competent jurisdiction. The parties agree that venue and personal jurisdiction is proper in Minneapolis, Minnesota.**

**No person shall bring a putative or certified class action to arbitration, nor seek to enforce any pre-dispute arbitration agreement against any person who has initiated in court a putative class action; or who is member of a putative class who has not opted out of the class with respect to any claims encompassed by the putative class action until: (i) the class certification is denied; (ii) the class is decertified; or (iii) the customer is excluded from the class by the court. Such forbearance to enforce any agreement to arbitrate shall not constitute a waiver of any rights under this agreement except to the extent stated herein. This paragraph does not constitute a waiver of any right of private claim or cause of action provided by the Advisers Act.**

*Appendix I at 59-60. (emphasis added).*

13. The decedent signed the Portfolios Application on September 5, 2012, thereby acknowledging the Portfolios Agreement and the Brokerage Agreement, and their terms. *Appendix I at 49.*

14. Respondent claims that she is the intended beneficiary of the Brokerage Account and Portfolios Account, contrary to documentation she believes to indicate that Nicholls and Bayles are the primary beneficiaries of the accounts in equal shares. *Appendix I at 4.* Respondent challenges a payout by Ameriprise of Portfolio Account proceeds to Nicholls and Bayles instead of her. *Appendix I at 5.*

15. Respondent filed her Complaint in the Circuit Court of Marshall County on September 5, 2014 naming Evans, Ameriprise, Nicholls and Bayles as defendants. *Appendix I at 2-8.* In response, Petitioners filed a Motion to Dismiss and Compel Mandatory Arbitration on November 17, 2014. *Appendix I at 10-20.*

16. The Circuit Court heard oral argument on the petitioners' motion on February 27, 2015. Focusing on the Brokerage Application and Brokerage Agreement, the Circuit Court found that the signed Brokerage Application incorporated the predispute arbitration clause found in the Brokerage Agreement by reference. *Appendix II at 22.* The Circuit Court also found that there was no signature of the decedent in the Brokerage Agreement. *Appendix II at 23.* Therefore, the Circuit Court denied the motion under the rule of *contra proferentem*. *Appendix II at 23.*

17. On May 19, 2015, the Circuit Court entered an Order denying the Motion to Dismiss and to Compel Mandatory Arbitration. *Appendix I at 132-136.* The Order does not contain its finding of incorporation by reference. This appeal follows.

### **III. SUMMARY OF ARGUMENT**

Respondent's claim for IRA Account proceeds as an intended third-party beneficiary is subject to the terms and conditions of the Brokerage Application and Brokerage Agreement, which include the subject predispute arbitration clause. The Brokerage Application signed by the decedent refers to the predispute arbitration clause found in the Brokerage Agreement and incorporates it by reference. The plain text of the predispute arbitration clause is clear and unambiguous, and is entitled to its plain meaning and enforcement. The absence of a signature within the Brokerage Agreement does not create an ambiguity to be construed against the petitioners. The incorporation of the clear predispute arbitration clause by reference is dispositive of this matter. Consequently, the Circuit Court erred in its denial of the motion below and in failing to enforce the predispute arbitration clause.

### **IV. STATEMENT REGARDING ORAL ARGUMENT AND DECISION**

Petitioners submit that oral argument is necessary under Rule 20 given the error committed below, the incorporation by reference as found by the Circuit Court, and the clear language appearing in the predispute arbitration clause.

Petitioners submit that a Rule 20 argument and resulting decision will best serve not only the parties herein and the Circuit Court, but other litigants, circuit court judges and members of the bar.

## V. ARGUMENT

### A. Standard of Review

An Order denying a motion to compel arbitration is an interlocutory ruling which is subject to immediate appeal under the collateral order doctrine. *Credit Acceptance Corp. v. Front*, 231 W.Va. 518, 745 S.E.2d 556 (2013). As the Circuit Court's Order of May 19, 2015 denied Petitioners' Motion to Dismiss and Compel Arbitration, this Court shall review said Order *do novo*. *Schumacher Homes of Circleville, Inc., v. Spencer*, \_\_\_\_ W.Va. \_\_\_\_, S.E.2d \_\_\_\_ (2015).

### B. Respondent's Claims for IRA Account Proceeds are Subject to the Predispute Arbitration Clause.

Respondent claims to be an intended beneficiary of the Brokerage Account as the surviving spouse of the decedent. West Virginia law has recognized for years that an intended third-party beneficiary may receive the benefit of a contract. *Ison v. Daniel Crisp Corp.*, 146 W.Va. 786, 122 S.E.2d 553 (1961). There is no dispute as to Respondent being an intended beneficiary of the Brokerage Account when it was created on June 20, 2012. Consequently, her claims for proceeds are subject to the terms and conditions of the account contract under which she claims a benefit. Indeed, the terms and conditions include the predispute arbitration clause.<sup>1</sup> Accordingly, as a matter of law, Respondent's claims for account proceeds are subject to the predispute

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<sup>1</sup> Surely, Respondent cannot seek to obtain proceeds from the IRA Accounts without being subject to the terms and conditions of the accounts themselves. West Virginia law on intended third-party beneficiaries to contracts is meaningless without judicial enforcement of beneficiary claims being subject to the contractual terms and conditions under which they seek to benefit.

arbitration clause referenced in the signed Brokerage and Portfolio Applications, which appear in the Brokerage and Portfolio Agreements, and are incorporated into the signed applications.

**C. The Signed Brokerage Application Refers to the Predispute Arbitration Clause Found in the Brokerage Agreement and Incorporates it by Reference.**

It is well established under West Virginia law that even though writings may be separate, they will be construed together and considered to be one transaction when the parties are the same, the subject matter is the same, and the relationship between the documents is clear and apparent. *Ashland Oil, Inc. v. Donahue*, 159 W.Va. 463, 223 S.E.2d 433 (1976). Here, these conditions exist to support the Circuit Court's finding of incorporation of the predispute arbitration clause by reference.

Further, this Court has long recognized under the Federal Arbitration Act that an arbitration agreement can be incorporated by reference. *Rashid v. Schenck Constr. Co., Inc.*, 190 W.Va. 363, 438 S.E.2d 543 (1993). Arbitration agreements may be incorporated by reference so long as (1) the writing must make a clear reference to the other document so that the parties assent to the reference is unmistakable, (2) the writing must describe the other document in such terms as its identity may be ascertained beyond doubt, and (3) it must be certain that the parties to the agreement had knowledge of and assented to the incorporated document so that the incorporation will not result in surprise or hardship. *State ex rel. U-Haul Co. of West Virginia v. Zakaib*, 232 W.Va. 432, 752 S.E.2d 586 (W.Va. 2013).

As the Circuit Court found during the February 27<sup>th</sup> hearing, the underlying documents and facts demonstrate a valid and proper incorporation of the predispute

arbitration clause by reference. *Appendix II at 22*. There is no dispute that the Application documents were signed and refer to the predispute arbitration clauses appearing in the Agreement documents. Likewise, there is no dispute that the Application documents describe the Agreement documents with clarity, illuminating the identity of the documents as well as the precise location of the predispute arbitration clause. Plainly, the decedent had knowledge and assented to the predispute arbitration clauses as evidenced by his signature in both Application documents. *Appendix I at 29 and 49*. Therefore, there is no surprise as to their existence and application.

Critically, the Circuit Court recognized the incorporation of the predispute arbitration clause into the signed Brokerage Application by reference. The transcript of the February 27, 2015 hearing makes this clear. *Appendix II at 22-23*. Such a finding by the Circuit Court is paramount. Moreover, this finding is not only correct, it is also dispositive of the pending arbitration issue. Because the decedent signed the Brokerage Application, which incorporated the predispute arbitration clause by reference, any IRA Account related claim by Respondent is subject to the same.

**D. The Clear Language Appearing in the Predispute Arbitration Clause Requires Application and Enforcement.**

The Circuit Court's incorporation of the predispute arbitration clause by reference warrants a plain examination of the clause itself and, in this instance, application and enforcement.

West Virginia has long recognized that a valid written instrument, which expresses the intent of the parties in plain and unambiguous language, is not subject to judicial construction or interpretation. Instead, the plain and unambiguous language will

be applied and enforced according to such intent. *Cotiga Development Co. v. United Fuel Gas Co.*, 147 W.Va. 484, 128 S.E.2d 626 (1962) (Syl. Pt. 1).

An important backdrop to the instant incorporation by reference is West Virginia jurisprudence concerning what a circuit court is to consider when scrutinizing an arbitration clause. When ruling upon a motion to compel arbitration pursuant to the Federal Arbitration Act (“FAA”), codified at 9 U.S.C. §1 *et seq.*, the circuit court is to determine the threshold issues of (1) whether a valid arbitration agreement exists between the parties and (2) whether the claims asserted by the plaintiff fall within the substantive scope of the subject arbitration agreement. *Schumacher Homes, supra*; *State ex rel. TD Ameritrade, Inc. v. Kaufman*, 225 W.Va. 250, 692 S.E.2d 293 (2010). The incorporation of the predispute arbitration clause by reference, as found by the Circuit Court, confirms the existence of a valid arbitration agreement. The second question is to be considered in view of the FAA being a legislative declaration of a federal policy favoring arbitration agreements such that any doubt concerning the scope of arbitrable issues should be resolved in favor of arbitration. *Moses H. Cone Memorial Hosp. v. Mercury Const. Corp.*, 460 U.S. 1 (1983).

The plain text of the aforementioned arbitration language appearing in the Brokerage Application and the Brokerage Agreement is clear. Upon executing the Brokerage Application on June 20, 2012, the decedent acknowledged his agreement to abide by the terms and conditions of the Brokerage Agreement, including the predispute arbitration clause found in Paragraph 26 of the Brokerage Agreement. Paragraph 26 discusses arbitration in a clear fashion, wherein the decedent agreed that all controversies that arise shall be determined by arbitration under the prevailing rules of

the Financial Industry Regulatory Authority (“FINRA”).<sup>2</sup> The clarity and exactness of the arbitration clause applies while Respondent asserts her claim for account proceeds. The net result here, under the law, is the square application and enforcement of the presuit arbitration clause.

Notably, the Circuit Court did not find any ambiguity or confusion with the literal text of the predispute arbitration clause. Nor did the Circuit Court find that Respondent’s claims fall outside the scope of the underlying account documents and predispute arbitration clause. *Appendix II at 22-23*. Again, the plain and clear nature of the clause itself requires application and enforcement under *Cotiga* and *Schumacher Homes, supra*.

**E. The Decedent Signed the Brokerage Application. The Absence of the Decedent’s Signature within the Brokerage Agreement on these Facts Does Not Create an Ambiguity Under the Doctrine of *Contra Proferentem*.**

The Circuit Court acknowledged that Respondent pleads her claims as an intended third-party beneficiary. *Appendix I at 135*. The Circuit Court also found an incorporation of the predispute arbitration clause into the Brokerage Application by reference. *Appendix II at 22*. The Circuit Court made no findings to suggest that the actual language of the predispute arbitration clause is less than clear and unambiguous. *Appendix II at 22-23*. Nevertheless, the Circuit Court refused to enforce the arbitration clause under *contra proferentem* on the sole ground that the Brokerage Agreement

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<sup>2</sup> FINRA is a private self-regulatory organization registered under the Federal Securities Exchange Act of 1934. FINRA has the authority to create and enforce rules for its members. Ameriprise is a member of FINRA. Evans is a financial advisor associated with a FINRA member. FINRA members are required to participate in arbitration under the FINRA Code of Arbitration Procedures. Thus, the arbitration of this controversy shall be governed by FINRA as is customary in the financial services industry.

does not contain the decedent's signature. While there is no dispute as to the absence of the signature, the invocation of *contra proferentem* is misplaced in view of the predicate facts.

This Court has followed the rule of *contra proferentem* where a written instrument contains ambiguous language to where the instrument is interpreted against the drafter. More specifically, this Court has applied the rule in cases where there is doubt over particular language. *Lee v. Lee*, 228 W.Va. 483, 721 S.E.2d 53 (2011); *Henson v. Lamb*, 120 W.Va. 552, 199 S.E. 459 (1938). Here, there is no doubt as to the text and meaning of the presuit arbitration clause. Moreover, there is no doubt that the signed Brokerage Application incorporated the presuit arbitration clause found in the Brokerage Agreement by reference. *Appendix II at 22-23.*<sup>3</sup> Logically, the absence of doubt enabled the Circuit Court to make its crucial finding of incorporation by reference. Furthermore, the decedent's signature on the Brokerage Application, which incorporates the governing predispute arbitration clause by reference, effectively serves as the signature for the Brokerage Agreement. Given that these documents involve the same parties, an IRA Account, arbitration, and are clear in how they each relate to the other, the documents are to be construed together and considered to be one transaction. Also, the decedent's application signature is in plain view to show that the decedent had knowledge of and assented to the predispute arbitration clause without surprise or hardship. Indeed, the decedent's initial meeting with Evans confirms as much. *Appendix I at 128-129.*

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<sup>3</sup> Similarly, there is no doubt that the signed Portfolio Application incorporated the presuit arbitration clause found in the Portfolio Agreement by reference.

**VI. CONCLUSION**

WHEREFORE, for reasons heretofore stated, Petitioners respectfully request entry of an Order enforcing the predispute arbitration clause and reversal of the May 19, 2015 Order entered by the Circuit Court of Marshall County.

**JEFFREY N. EVANS, AMERIPRISE  
FINANCIAL SERVICES, INC., KRISTINA  
NICHOLLS, and STEPHEN BAYLES**

**By Counsel**



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and Stephen Bayles*

**IN THE WEST VIRGINIA SUPREME COURT OF APPEALS**

**JEFFREY N. EVANS, Individually and in  
his capacity as an Employee, Servant,  
or Agent of Ameriprise Financial  
Services, Inc., AMERIPRISE FINANCIAL  
SERVICES, INC., KRISTINA NICHOLLS,  
Individually, and STEPHEN BAYLES,  
Individually,  
Defendants Below,**

**Petitioners,**

**v.**

**No. 15-0600**

**DEBRA K. BAYLES,  
Plaintiff Below,**

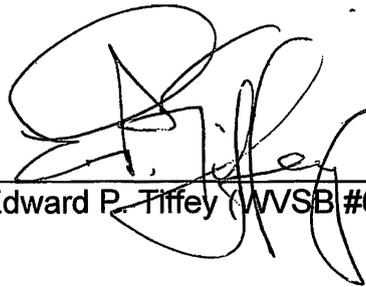
**Respondent.**

**CERTIFICATE OF SERVICE**

I, Edward P. Tiffey, counsel for Petitioners herein, do certify that on September 21, 2015, I served the foregoing **PETITIONERS' BRIEF, APPENDIX I and APPENDIX II** upon counsel of record, by depositing the same in the United States Mail, postage prepaid, in envelopes addressed as follows:

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*Counsel for Petitioners*  
*Kristina Nicholls and Stephen Bayles*

A handwritten signature in black ink, appearing to read 'E. P. Tiffey', is written over a horizontal line. The signature is stylized and somewhat illegible.

Edward P. Tiffey (WVSB #6042)