

In the Circuit Court of Kanawha County, West Virginia

CIVIL CASE INFORMATION SHEET

LEWIS CLARK TIERNEY, III, CHRISTOPHER SCOTT TIERNEY, KENNA TIERNEY 2000 IRREVOCABLE TRUST, Carolyn Kenna Tierney, Co-Trustee; CAROLYN KENNA TIERNEY GRIESEMER; and GAROL K. TIERNEY 2000 GST TRUST, Carol K. Tierney, Trustee, Each Individually and Derivatively on behalf of The Tierney Corporation and The Leatherwood Company v.

ANN TIERNEY SMITH, Individually and in her capacity as a director and officer of The Tierney Corporation and The Leatherwood Co.; C. MATTHEW S. TIERNEY, Individually and in his prior capacity as a director and officer of The Tierney Corporation and The Leatherwood Co.; DOUGLAS WOLOSHIN, Individually and in his capacity as a director and officer of The Tierney Corporation and The Leatherwood Co.; DUANE MORRIS, LLP, a Delaware limited liability partnership; and THE TIERNEY CORPORATION, a West Virginia corporation, a nominal defendant, THE LEATHERWOOD COMPANY, a West Virginia corporation, a nominal defendant.

CASE NUMBER:

18-C-90

TORTS	OTHER CIVIL	
<input type="checkbox"/> Asbestos	<input type="checkbox"/> Adoption	<input type="checkbox"/> Appeal from Magistrate Court
<input type="checkbox"/> Professional Malpractice	<input type="checkbox"/> Contract	<input type="checkbox"/> Petition for Modification of Magistrate Sentence
<input type="checkbox"/> Personal Injury	<input type="checkbox"/> Real Property	<input checked="" type="checkbox"/> Miscellaneous Civil
<input type="checkbox"/> Product Liability	<input type="checkbox"/> Mental Health	<input type="checkbox"/> Other
<input type="checkbox"/> Other Tort	<input type="checkbox"/> Appeal of Administrative Agency	<input type="checkbox"/> Mandolidis

JURY DEMAND: ☒ Yes ☐ No

CASE WILL BE READY FOR TRIAL BY (MONTH/YEAR): JULY 2019

DO YOU OR ANY OF YOUR CLIENTS OR WITNESSES IN THIS CASE REQUIRE SPECIAL ACCOMMODATIONS DUE TO A DISABILITY OR AGE? ☐ YES ☒ NO
IF YES, PLEASE SPECIFY:

- ☐ Wheelchair accessible hearing room and other facilities
- ☐ Interpreter or other auxiliary aid for the hearing impaired
- ☐ Reader or other auxiliary aid for the visually impaired
- ☐ Spokesperson or other auxiliary aid for the speech impaired
- ☐ Other: Unknown

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Representing: Plaintiffs

Dated: January 29, 2018

Signature

Chelsea Creta

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

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CLERK OF COURT
KANAWHA COUNTY, W. VA.

LEWIS CLARK TIERNEY, III;)
CHRISTOPHER SCOTT TIERNEY;)
KENNA TIERNEY 2000 IRREVOCABLE)
TRUST, Carolyn Kenna Tierney, Co-Trustee;)
CAROLYN KENNA TIERNEY GRIESEMER;)
and CAROL K. TIERNEY 2000 GST TRUST,)
Carol K. Tierney, Trustee, Each Individually and)
Derivatively on behalf of The Tierney Corporation)
and The Leatherwood Company,)

Plaintiffs,

v.

Civil Action No.

Judge

13-C-90
J. J. J.

ANN TIERNEY SMITH, Individually and in)
her capacity as a director and officer of The)
Tierney Corporation and The Leatherwood Co.;)
C. MATTHEW S. TIERNEY, Individually and)
in his prior capacity as a director and officer of)
The Tierney Corporation and the Leatherwood Co.;)
DOUGLAS WOLOSHIN, Individually and in his)
capacity as a director and officer of The Tierney)
Corporation and the Leatherwood Co.; DUANE)
MORRIS, LLP, a Delaware limited liability)
partnership; and THE TIERNEY)
CORPORATION, a West Virginia corporation,)
a nominal defendant, THE LEATHERWOOD)
COMPANY, a West Virginia corporation,)
a nominal defendant,)

Defendants.

VERIFIED SHAREHOLDER DERIVATIVE COMPLAINT

Plaintiffs, Lewis Clark Tierney, III ("Lewis Tierney"), Christopher Scott Tierney ("Christopher Tierney"), the Kenna Tierney 2000 Irrevocable Trust, Carolyn Kenna Tierney Co-Trustee ("Kenna Tierney"), Carolyn Kenna Tierney (now Griesemer),¹ and Carol K. Tierney 2000 GST Trust, Carol K. Tierney, Trustee (together "Carolyn Kenna Tierney Griesemer" and collectively, "Plaintiffs"), individually and derivatively on behalf of nominal defendants, The

¹ In 2007, Mrs. Carolyn Kenna Tierney remarried and is now known as Carolyn Tierney Griesemer.

Tierney Corporation (“The Tierney Corporation”) and The Leatherwood Company (“The Leatherwood Company” together, “Companies”), by counsel, bring this Verified Shareholder Derivative Complaint and allege upon information and belief as follows:

NATURE AND SUMMARY OF THE ACTION

1. Arising from the operative facts as alleged in detail herein, this is a common-law, shareholder derivative action under *Felsenheld v. Bloch Bros. Tobacco Co.*, 192 S.E. 545, 119 W. Va. 167 (1937) and its progeny, brought on behalf of The Tierney Corporation, a closely-held family corporation, and The Leatherwood Company, its subsidiary, against certain members of the Companies’ Boards of Directors (the “Board”), certain of their executive officers (the “Officers”) and/or majority shareholders (collectively, the “Individual Defendants,” as defined below), and their legal counsel, Duane Morris LLP (“Duane Morris”), seeking to remedy breaches of fiduciary duties, conflict of interest, corporate waste and misuse of corporate assets, improper withholding of information, and other misconduct.

2. Beginning in 2001 and continuing to the present (the “Relevant Period”), the Individual Defendants, who are the shareholders in control of the Companies, have managed the parent company and its subsidiary for their own interest and personal profit to the exclusion of the shareholders. In addition, the Individual Defendants have disregarded their obligations and fiduciary duties to the shareholders by misapplying or wasting corporate assets, including permitting grossly excessive legal fees to be paid to the Executive Director of the Company, and have performed illegal, oppressive, or fraudulent acts without any legitimate business purpose, ultimately frustrating the reasonable expectations of the shareholders and jeopardizing the continued viability of both Companies.

3. The Tierney Corporation and The Leatherwood Company are nominal defendants only. They are named as defendants (i) because of the requirement in W. Va. Code § 31D-8-809(c) that a shareholder name the corporation in any proceeding where the plaintiff seeks the removal of (and bar from reelection) directors for fraud, dishonest conduct, or gross abuse of authority and discretion, and (ii) because this is a derivative action by shareholders, as authorized by West Virginia common law, the West Virginia Business Corporation Act, and Rule 23.1 of the West Virginia Rules of Civil Procedure. For the reasons set forth herein, Plaintiff seeks the removal of defendants Douglas Woloshin (“Woloshin”) and Ann Tierney Smith (“Smith”), and to bar each of them from reelection.

4. Furthermore, given the documented history of self-dealing and selfish management by the Individual Defendants and their hostility toward the shareholders, Plaintiffs request that this Court enter an order barring retaliation, in any form, by the Individual Defendants against Plaintiffs and other shareholders. Plaintiffs also request inspection of records pursuant to their statutory rights and seek an accounting of all transactions by the Individual Defendants, including itemized billing statements for the legal fees charged by defendants Woloshin and Duane Morris, and an award of compensatory and punitive damages, and other equitable and legal relief, including the costs and expenses of this litigation and reasonable attorneys’ fees, as justified by the evidence adduced in this matter.

5. Moreover, Plaintiffs bring this action after making a written demand on January 26, 2018 on the Companies’ Boards of Directors and shareholders pursuant to Rule 23.1 of the West Virginia Rules of Civil Procedure.

JURISDICTION AND VENUE

6. This Honorable Court has jurisdiction over the subject matter of this action pursuant to West Virginia Code § 51-2-2. As discussed in greater detail below, this shareholder derivative action involves negligence and breaches of fiduciary duty, which have proximately resulted in damages exceeding \$3,000,000 for the nominal defendants.

7. Defendants Tierney Corporation and The Leatherwood Company are West Virginia corporations that transact business in West Virginia, and thus, are subject to the jurisdiction of this Honorable Court and State, and are governed by West Virginia law.

8. Venue is proper in the Circuit Court of Kanawha County, West Virginia, pursuant to W. Va. Code § 56-1-1(2) because Defendants Tierney Corporation and The Leatherwood Company are corporations organized under the laws of this State with their principal office and executive officers located outside of this state, and thus, “the circuit court of the county in which the seat of state government is located shall have jurisdiction of all actions at law or suits in equity against the corporation, where the cause of action arose in this state or grew out of the rights of stockholders with respect to corporate management.” W. Va. Code § 56-1-1(2), in part.

THE OFFICERS AND DIRECTORS OF TIERNEY CORPORATION

9. Since its formation in the early 1900s, Tierney Corporation has been a closely-held family corporation. Today, Tierney Corporation is primarily owned by three families. Of the 21,931 total shares, Ann Tierney Smith and family own 27 percent; C. Matthew S. Tierney and family own 21 percent; and the heirs and family of L. Clark Tierney, Jr. own 21 percent. The three families together own 69.3 percent of the company. All remaining shares are held by 20 separate shareholders, with none owning more than 4.11 percent.

10. The Tierney Corporation Board is comprised of five members, three of whom are or were also Executive Committee officers. The current officers are President Barclay Smith DeWet (“Barclay DeWet”), the daughter of Defendant Smith, and Executive Director Woloshin. Secretary C. Matthew S. Tierney (“Matt Tierney”) retired from the Board in October 2016, and has since been replaced on the Boards of both Companies, as Secretary, and as an officer on the Executive Committee by his wife, Patricia Cinson Tierney (“Pat Tierney”). Two additional Board members, who are not on the Executive Committee, are former Executive Committee officer and 2000-2017 President Defendant Smith, and Plaintiff Lewis Tierney.

11. The Tierney Corporation is a non-complex holding company that receives passive revenue from a small number of assets and does not require day-to-day management from the Companies’ Officers. Instead, third-party specialists, like UBS, manage the Companies’ stock portfolios. These professional services are completely outsourced to third-party legal and financial advisors. Despite outsourcing the entire operation to Duane Morris and UBS, Officers Smith and Matt Tierney have each drawn an annual salary of \$295,000 as executive compensation, and in addition, they each received additional benefits totaling \$65,000, including healthcare and a pension. Neither Smith nor Matt Tierney regularly performed services or devoted substantial time to the Companies, nor do they have any particular qualifications or abilities with respect to the compensation received.

12. Executive Director Woloshin has never been a shareholder of Tierney Corporation. Although Tierney Corporation’s by-laws provide that board members must be company shareholders, as an exception to the by-laws approved annually by the Board Woloshin was nominated and has served as a non-family Board member and Executive Committee Officer since 2000, when defendant Smith took control of the Company. While acting in his capacity as

a Board member and Executive Director of the Company, Woloshin, an attorney with Duane Morris, has operated under severe conflicts of interest that have never been remedied during the entire period in which he has been serving as President Smith's longtime personal lawyer and as the Companies' outside legal advisor.

TIERNEY CORPORATION AND LEATHERWOOD'S HISTORY

13. Tierney Corporation has its origins in two companies owned and operated by Colonel Laurence E. Tierney, Sr. from the early 1900s until being sold during World War II. Col. Tierney owned the Tierney Land Company and Tierney Mining Company in Stone, Kentucky, and was involved in the management of many other coal and fuel entities in the region. Following his death and over time, the Company was involved in a variety of businesses including owning and operating radio and television entities in Charleston, West Virginia, under the leadership of Col. Tierney's younger son, Lewis Tierney.

14. For many years, from the mid-1970s until 1995, both entities were operated by Flat Top National Bank. In the 1990s, L. Clark Tierney Jr. ("Clark Tierney") served as President of Tierney Corporation and oversaw both entities with involvement from his cousin, Ann Tierney Smith, and his younger brother, Matt Tierney. Clark Tierney's death in 2000 created a leadership vacuum that was filled by Smith, who remained the President until December 2017. Matt Tierney served as Secretary on the Executive Committee until his retirement in October 2016.

15. Tierney Corporation also owns 62 percent of The Leatherwood Company, another Tierney family corporation, with the remaining 38 percent of The Leatherwood Company owned by Smith and her family. Historically, The Leatherwood Company, formerly known as The Leatherwood Land Company, generally operates in a manner similar to The Tierney

Corporation. At all times relevant, Smith, Woloshin, and until his recent retirement Matt Tierney, have also served as the sole directors and officers of The Leatherwood Company.

16. In 2001, following Clark Tierney's death, The Tierney Corporation added Carolyn Kenna Tierney as a member of the Board. Although a board member, Carolyn Kenna Tierney was not paid a salary and was not a member of the Executive Committee. She was also denied a seat on the board of The Leatherwood Company. Carolyn Kenna Tierney Griesemer served on the Board from 2001 until 2015 when she stepped down and her son, Plaintiff Lewis Tierney, replaced her. Lewis Tierney represents the shares originally owned by L. Clark Tierney Jr. on the Board today.

17. Over the past two decades, the focus of The Tierney Corporation and Leatherwood Company has been to diversify revenue away from coal with the hope that the next generation of shareholders would continue to benefit from the Companies. Efforts at diversification have involved investing in revenue-producing real estate, medical technology, opening two upscale restaurants, and creating a commercial and residential development.

18. However, these investments and opportunities, where made, have been compromised by the Individual Defendants' self-dealing, corporate mismanagement, and waste. The best revenue-producing assets have been and are being sold to cover company expenses, and a grossly and excessively disproportionate percentage of revenue has been allocated to legal fees for the personal benefit of Woloshin and his firm, Duane Morris, not for the benefit of the Companies as a whole or their shareholders. In addition, one of the revenue-producing opportunities—the commercial and residential development—was never initiated despite the exchange of The Leatherwood Company's best revenue-producing asset for Defendant Smith's

horse farm property that, as represented by Smith and Woloshin, was required to break ground on the project.

THE PARTIES

19. Plaintiff Lewis Tierney is and was at all times relevant a shareholder of The Tierney Corporation stock. Since February 2016, Lewis Tierney has been a member of the Board of Directors of The Tierney Corporation. Lewis Tierney currently resides in New York, New York.

20. Plaintiff Christopher Tierney is and was at all times relevant a shareholder of Tierney Corporation stock. Christopher Tierney currently resides in Denver, Colorado.

21. Plaintiff Kenna Tierney 2000 Irrevocable Trust, Carolyn Kenna Tierney (now Griesemer) Co-Trustee, is and was at all times relevant a shareholder of Tierney Corporation stock, with its address at 1600 Broadway, Denver, Colorado 80202.

22. Plaintiff Carolyn Kenna Tierney (now Griesemer) is and was at all times relevant a shareholder of Tierney Corporation stock, and resides in Denver, Colorado.

23. Plaintiff Carol K. Tierney 2000 GST Trust, Carol K. Tierney Trustee is and was at all times relevant a shareholder of Tierney Corporation stock, with its address at 2101 E. 7th Avenue Parkway, Denver, Colorado 80206.

24. Nominal defendant The Tierney Corporation is a corporation organized and existing under the laws of West Virginia since 1912 with its principal executive offices located at 505 9th Street, N.W., Suite 1000, Washington, D.C. 20004.

25. Nominal defendant The Leatherwood Company is a corporation organized and existing under the laws of West Virginia since 1945 with its principal office executive offices located at 505 9th Street, N.W., Suite 1000, Washington, D.C. 20004.

26. Defendant Smith served as President of The Tierney Corporation from 2000 to December 2017 and as a Board member since 1972. Smith has also served as a director and executive officer of Leatherwood since 1972. Smith is a resident and citizen of Paris, Kentucky.

27. Prior to his retirement in October 2016, Defendant Matt Tierney had served as Secretary of The Tierney Corporation since 2000 and as a member of the Board since 1972. Matt Tierney had also served as a director and executive officer of The Leatherwood Company from 2000 until his retirement. He is a resident and citizen of Lexington, Kentucky.

28. Defendant Woloshin has served as Executive Director of The Tierney Corporation and a member of the Board since 2000, although he has never been a shareholder of the Company. Woloshin, an attorney and member of the District of Columbia bar, has been the managing partner of the Washington, D.C. office of Defendant Duane Morris since 2004. At all times relevant, while acting as an Officer on behalf of the The Tierney Corporation, Woloshin has also served as President Smith's personal lawyer and as outside legal counsel to The Tierney Corporation and The Leatherwood Company. Upon information and belief, Woloshin is a resident and citizen of Arlington, Virginia.

29. Defendant Duane Morris is an international law firm headquartered in Philadelphia, Pennsylvania. Since 2006 to the present, Duane Morris, through its attorney Woloshin and, more recently, Reid Avett, has provided legal services to The Tierney Corporation and The Leatherwood Company. During this time, despite the Companies having no mergers, acquisitions, or other significant legal proceedings, legal expenses charged by Duane Morris have been, at a minimum, 24.3 percent of the Company's total revenue. In 2014, legal expenses reached to a staggering 51.3 percent of total revenue without any reasonable

justification for the expense. Most recently, actual legal expenses charged by Duane Morris have been in excess of 645 percent of the budgeted annual legal expenses (as estimated by Woloshin).

30. Collectively, Defendants Smith, Matt Tierney, and Woloshin are referred to herein as the “Officers” and/or the “Individual Defendants” with respect to both Companies.

DUTIES OF THE INDIVIDUAL DEFENDANTS

31. Pursuant to W. Va. Code § 31D-8-830, each of the Individual Defendants, when discharging the duties as a director of the Board, shall act: (i) in good faith, and (ii) in a manner the director reasonably believes to be in the best interests of the corporation.

32. By reason of their positions as directors and officers of the Companies and because of their ability to control the business and corporate affairs of The Tierney Corporation and The Leatherwood Company, the Individual Defendants owed The Tierney Corporation and The Leatherwood Company and their shareholders fiduciary obligations of good faith, loyalty, and due care, and were and are required to use their utmost ability to control and manage the Companies in a fair, just, honest, and equitable manner.

33. Pursuant to W. Va. Code § 31D-8-831 and § 31D-8-842, the Individual Defendants were and are required to act in furtherance of the best interests of The Tierney Corporation and The Leatherwood Company and their shareholders so as to benefit all shareholders equally and not in furtherance of their personal interest or benefit. Each director and officer owes to The Tierney Corporation, The Leatherwood Company, and their respective shareholders the highest obligations of fair dealing and the fiduciary duty to exercise good faith and diligence in the administration of the affairs of the Companies and in the use and preservation of their property and assets.

34. The Individual Defendants, because of their positions of control and authority as directors and/or officers of the Companies, were able to and did, directly and/or indirectly, exercise control over the wrongful acts complained of herein.

35. During the Relevant Period, each of the Individual Defendants was the agent of each of the other Individual Defendants and of the Companies, and was at all times acting within the course and scope of such agency.

36. To discharge their duties, the Individual Defendants were required to exercise reasonable and prudent supervision over the management, policies, practices and controls of the financial affairs of the Companies. By virtue of such duties, the Individual Defendants were required, among other things, to:

- a. Conduct the affairs of the Companies in an efficient, business-like manner'
- b. Ensure that the Companies were operated and managed in a diligent, honest, and prudent manner in compliance with all applicable laws;
- c. Refrain from wasting the Companies' assets or unduly benefiting themselves at the expense of the Companies or their minority shareholders;
- d. Maintain and implement an adequate system of internal controls over all aspects of The Tierney Corporation and The Leatherwood Company's business and administration;
- e. Act in furtherance of the best interests of The Tierney Corporation and The Leatherwood Company and all of their respective shareholders, and not in furtherance of their own personal interests; and
- f. Remain informed as to The Tierney Corporation and The Leatherwood Company's operations, and upon receipt of notice or information of imprudent or unsound conditions or practices, to make reasonable inquiry, to make disclosures, and to take steps to

correct such conditions or practices to comply with the charter and bylaws of The Tierney Corporation and The Leatherwood Company and all applicable laws.

37. In addition, as Officers, the Individual Defendants assumed heightened obligations through their participation on the Executive Committee.

38. Pursuant to W. Va. Code § 31D-8-842, each Officer, when performing in his or her official capacity, shall act: (i) in good faith, (ii) with the care that a person in a like position would reasonably exercise under similar circumstances; and (iii) in a manner the officer reasonably believes to be in the best interests of the corporation.

39. Upon information and belief and as alleged in detail herein, the Individual Defendant Officers completely abdicated their fiduciary duties and instead allowed Smith and Woloshin to engage in illegal and imprudent conduct for their personal benefit at the expense of the Company.

40. The conduct of the Individual Defendants, who exercise domination and control through the Executive Committee and the Board, involves a knowing and culpable violation of their obligations as directors and officers of The Tierney Corporation and The Leatherwood Company.

41. Pursuant to W. Va. Code § 31D-8-831, the decisions of directors of a corporation are voidable where the challenged conduct consisted of or was the result of:

(A) action not in good faith; or

(B) a decision

(i) which the director did not reasonably believe to be in the best interests of the corporation, or

(ii) as to which the director was not informed to an extent the director reasonably believed appropriate in the circumstances; or

(C) a lack of objectivity due to the director's familiar or financial relationship with, or lack of independence due to domination or control of the director by another person having a material interest in the challenged conduct; or

(D) a sustained failure of the director to devote attention to ongoing oversight of the business and affairs of the corporation, or a failure to devote timely attention, by making or causing to be made appropriate inquiry when particular facts and circumstances of significant concern materialize that would alert a reasonably attentive director to the need for inquiry; or

(E) receipt of a financial benefit to which the director was not entitled or any other breach of the director's duties to deal fairly with the corporation and its shareholders that is actionable under applicable law.

W. Va. Code § 31D-8-831

SUMMARY OF THE INDIVIDUAL DEFENDANTS' MISMANAGEMENT AND GROSS NEGLIGENCE

42. Unbeknownst to Plaintiffs until late 2016, from 2001 to the present, the Individual Defendants consciously refused to exercise their fiduciary duties to oversee the affairs of The Tierney Corporation and its affiliate, The Leatherwood Company. The Individual Defendants' continuing, willful, and knowing breaches of their fiduciary duties, as alleged below, threaten the Companies' present and continuing viability and profitability for future shareholders of the family corporations.

***Withholding Information from the Board Members Who Are Not Officers
and Refusing Access to Corporate Financial Information***

43. Following his election to the Board in February 2016, Plaintiff Lewis Tierney began requesting information and corporate records to learn about the Company and its finances.

44. Pursuant to W. Va. Code § 31D-16-1605(a), Plaintiff Lewis Tierney, as a director of The Tierney Corporation "is entitled to inspect and copy the books, records and documents of the corporation at any reasonable time to the extent reasonably related to the performance of the director's duties as a director, including duties as a member of a committee" W. Va. Code §

31D-16-1605(a) in part.

45. Pursuant to W. Va. Code § 31D-16-1602(a)-(b), Plaintiffs as shareholders of the Companies are “entitled to inspect, during regular business hours at the corporation’s principal office, any of the records of the corporation described in § 31D-16-1601(e)²” upon proper notice at least five business days in advance, and in addition, if the request is made in good faith and described with reasonable particularity, shareholders are entitled to inspect:

- (1) Excerpts from minutes of any meeting of the board of directors, records of any action of a committee of the board of directors while acting in place of the board of directors on behalf of the corporation, minutes of any meeting of the shareholders and records of action taken by the shareholders or board of directors without a meeting, to the extent not subject to inspection under [§ 31D-16-1602(a)] of this article;
- (2) Accounting records of the corporation; and
- (3) The record of shareholders.

W. Va. Code § 31D-16-1602 (a)-(b), in part.

46. In response to Plaintiff Lewis Tierney’s requests for inspection of records, Defendant Woloshin has provided prior annual reports, but virtually none of the current records that are required to be shared with all Board members to oversee management, including for instance, year-to-date financials, status of the Companies’ nearly tapped-out credit line,

² The corporate records described in W. Va. Code § 31D-16-1601(e) include the following:

- (1) Its articles or restated articles of incorporation and all amendments to them currently in effect;
- (2) Its bylaws or restated bylaws and all amendments to them currently in effect;
- (3) Resolutions adopted by its board of directors creating one or more classes or series of shares and fixing their relative rights, preferences and limitations if shares issued pursuant to those resolutions are outstanding;
- (4) The minutes of all shareholders’ meetings, and records of all action taken by shareholders without a meeting, for the past three years;
- (5) All written communications to shareholders general within the past three years, including the financial statements furnished for the past three years under section one thousand six hundred twenty [§ 31D-16-1620] of this article; and
- (6) A list of the names and business addresses of its current directors and officers.

information as to the growing liabilities which are believed to exceed \$24 million, and other relevant data.

47. Despite multiple attempts, Lewis Tierney's efforts to obtain reasonable access to all pertinent corporate records in his capacity as a Board member have been thwarted.

48. For instance, in correspondence dated March 12, 2016, Lewis Tierney sent a written request to President Smith requesting copies of the last five years of annual reports and annual budgets, a current list of shareholders, the Company's by-laws, an overview of current revenue streams and a summary of contract terms, a revenue breakdown by type (e.g., like-kind exchange, gas, coal, portfolio dividends, portfolio stock sale) over the last five years, and an end-of-year "amount due" for any stock-based loans issued to The Tierney Corporation or The Leatherwood Company. The information received in response, however, was incomplete and inadequate to provide a Board member with reasonable information and omitted, among other things, up-to-date figures on loans outstanding.

49. To date, despite subsequent attempts, Plaintiffs still have not been given appropriate access to pertinent corporate records and current, up-to-date financials.

***Duane Morris' Excessive Legal Billing, Woloshin's Conflict of Interest,
and Fiscal Mismanagement of the Individual Defendants***

50. Since 2006 to the present, Duane Morris, through its attorneys Woloshin and at a later date, Reid Avett, has provided legal services as outside counsel to The Tierney Corporation and The Leatherwood Company.

51. At all times relevant, Woloshin was acting on behalf of both Companies as Executive Director while at the same time serving as outside counsel to The Tierney Corporation

and The Leatherwood Company and as personal attorney to Smith. Since 2004, Woloshin has been the managing partner of defendant Duane Morris' Washington, D.C. office.

52. For the past ten years, despite the small size and non-complex nature of the business and despite the Companies having no mergers, acquisitions, or other significant legal proceedings, Woloshin and Duane Morris have billed and collected in excess of \$11,185,000 in legal fees. During this same time period, the Companies have compiled liabilities greater than \$22,000,000.

53. Upon information and belief, the nature of the legal work performed by Woloshin involved only basic corporate work and the difficulties involved and responsibilities assumed in the work were minimal.

54. Upon information and belief and subject to further discovery, it appears that during the Relevant Period, legal expenses charged by Woloshin and Duane Morris have been, at a minimum, 24.3 percent of The Tierney Corporation's total revenue, which excessive legal billing constitutes a waste or mismanagement of corporate assets.

55. Unbeknownst to Plaintiffs at the time, The Tierney Corporation and The Leatherwood Company jointly paid Duane Morris \$1.4 million for legal fees in 2014, which represented 43.9 percent of total revenue. Upon information and belief, these legal fees did not include an additional \$80,000 in 2014 to Duane Morris for associate or staff fees. The total legal line in 2014 was \$1.6 million, which fees reached to a staggering 51.3 percent of The Tierney Corporation's total annual revenue.

56. Upon information and belief, the legal costs in 2013 and 2014 averaged \$64 per share, while during the same time shareholders received only \$43 per share on average including the special dividend.

57. Recently it has been discovered that actual legal expenses charged by Woloshin and Duane Morris have been in excess of 645 percent of the annual budgeted legal expenses that Woloshin prepared.

Illegal Voting Agreement for Board Decisions

58. Upon information and belief, in or about August 2016, Lewis Tierney first discovered that defendants Smith, Matt Tierney, and Woloshin had entered into a written voting agreement as to all matters, including Board and Executive Committee votes, which agreement has been in effect since in or about 2008 or earlier.

59. Upon information and belief, by using a voting agreement to control votes on the Board or Executive Committee, the Individual Defendants abdicated their individual responsibilities to weigh all relevant factors and consider the best interests of the Companies and all shareholders to whom they owe fiduciary duties, and rendered the other Board members' votes meaningless and illusory.

Acts of Self-Dealing

60. The Individual Defendants also engaged in a self-serving transaction to the detriment of the shareholders of the Companies.

61. Through the acts of the Individual Defendants, The Leatherwood Company executed a questionable transaction for The Tierney Corporation shareholders by valuing the Leatherwood Horse Farm property improperly and selling the property to then-President Smith when there was no commitment to use the property for commercial development and before obtaining a commitment from the Virginia Department of Transportation to proceed with a highway interchange on the property.

62. Without obtaining an up-to-date or reasonable appraisal of the property and

without any legitimate business purpose, the Individual Defendants unnecessarily agreed that The Leatherwood Company would pay Smith \$600,000 up front for an option to purchase property in Tazewell County, Virginia, despite no bids or clear interest in the property from third parties. Further, there was no effort to market or sell the property to any third party, and thus paying \$600,000 for an option alone (which was separate and apart from the money eventually paid for the property) was unreasonable and constitutes a faithless act of self-dealing.

63. Subsequently, on April 2, 2010, the Individual Defendants caused The Leatherwood Company to exercise the option and purchase the Tazewell property from then-President Smith for a stated purchase price of \$4.6 million.

64. Defendant Woloshin never shared with The Tierney Corporation or its Board any proof of the valuation of former President Smith's property being worth \$4.6 million.

65. The transaction was completed by trading a like-kind exchange property (a Walgreens Pharmacy in West Palm Beach, Florida) using a valuation from 2006 (prior to the collapse of the U.S. real estate market) without vote or even notification of the sale to the The Tierney Corporation Board in 2009.

66. By relying upon a stale appraisal and engaging in self-dealing, the Company effectively gave away a valuable income-producing asset returning 8.33 percent annually (the Walgreens in West Palm Beach, Florida) in exchange for property as to which the Individual Defendants have never formulated a business plan or commenced commercial activity.

67. This unconscionable, self-serving transaction occurred at a record sales price in Tazewell County for a mere 169.8 acres.

68. Upon information and belief, the transaction at \$4.6 million is the third highest *overall* transaction value in Tazewell County in the six years analyzed. For example, based on

public records, there was a transaction in Tazewell County which involved a \$13.2 million transaction value, but that was for approximately 16,000 acres; in other words, that money was to obtain acreage that is approximately ten times the acreage obtained here. On a price per-acre comparison, the buyers there paid \$825 per acre; whereas here, President Smith's self-interested transaction occurred at the record price of \$30,624.26 per acre.

The Executives Are Actively Liquidating the Company

69. Upon information and belief, The Tierney Corporation has been liquidating and selling revenue-producing assets (e.g., including like-kind exchanges) to cover operating expenses, but Woloshin refuses to acknowledge this, costing The Tierney Corporation and The Leatherwood Company shareholders thousands of dollars in lost income and related potential tax benefits.

70. Plaintiffs have recently discovered that Colorado State Bank and Trust wrote a letter, dated February 14, 2011, to the Company's then-auditors, Goodman & Company, regarding the Company's classification of the "special dividend" as a liquidating dividend given that The Tierney Corporation and The Leatherwood Company sold assets (stock and like-kind exchanges) to make the payment to shareholders.

71. Unbeknownst to Plaintiffs at the time, on November 7, 2012, Woloshin admitted in an email regarding a Special Directors' meeting that proceeds from like-kind exchange properties owned by Leatherwood were used to pay a "special dividend" and mentioned that this is in keeping with the Company's objective of delivering asset value in "the most friendly tax environment."

72. Unbeknownst to Plaintiffs at the time, as of 2014, The Tierney Corporation used the stock portfolio to generate revenue and had nearly tapped its \$24 million credit line, but

Woloshin did not report the liabilities and amount due on the line of credit until months later in the 2014 annual report. At the time that Board decisions were being made in 2014, the Board members did not know how much money was being borrowed.

73. Upon information and belief, and unbeknownst to Plaintiffs at the time, negative cash flow in 2014 of \$2.5 million and heavy reliance on debt threaten the Companies' future viability.

Multiple Auditors and Director Woloshin's Attempt to Eliminate Annual Audits

74. As an additional red flag, Plaintiffs have discovered that, over the years, the Company has churned through several auditors, most recently under the guise of cost control:

Kamerow, Weintraub & Swain (1997 to 2003)
Gerson, Preston, Robinson & Co. (2004 to 2006)
Goodman & Company, Dixon Hughes Goodman (2007 to 2012)
The Nair Group (2014 to the Present)

75. Of the auditor groups listed above, the last two companies reported directly to Woloshin and not to the Board, in violation of GAAP standards. Upon information and belief, beginning in 2001, the annual audit was never presented to the entire Board despite repeated requests from directors Carol Tierney Griesemer and Clayton Rogers to do so. The audit results were only distributed to the entire Board in advance of the annual meeting of the shareholders, many months later.

76. Unbeknownst to Plaintiffs at the time, in or about June 2008, Woloshin attempted to eliminate entirely the annual audit and recommended a review rather than a full audit. Carolyn Kenna Tierney Griesemer convinced Matt Tierney to vote "no," and the recommendation was turned down.

77. This is yet another example of the Individual Defendants' attempts to manipulate the financials and other aspects of the Companies in order to hide their gross and faithless self-

dealing. Pursuant to Rule 23.1 of the West Virginia Rules of Civil Procedure, each of the Plaintiffs certifies that (i) he or she was a shareholder or member at the time of the transaction of which the Plaintiff complains, and (ii) that the action is not a collusive one to confer jurisdiction on a court of the United States which it would not otherwise have.

PLAINTIFFS MADE A WRITTEN DEMAND ON THE COMPANIES'
BOARD OF DIRECTORS AND SHAREHOLDERS

78. Since becoming a Board member of Tierney Corporation in February 2016, Lewis Tierney has become aware of the Individual Defendants' misuse of corporate assets and their disregard of mandatory procedures required by the Companies' by-laws, which findings Lewis Tierney expressed to the three Executive Committee Officers.

79. In late October 2016, Lewis Tierney attempted to schedule a meeting with the Individual Defendants to discuss his recent investigation and discoveries concerning these matters but never heard back from any of the Individual Defendants regarding his request. Despite Lewis Tierney's attempt to spur the Individual Defendants to provide redress, his efforts were ultimately unsuccessful.

80. On December 12, 2017, The Tierney Corporation sent out a notice on behalf of the Board for the 2017 Annual Meeting of the Corporation's Shareholders (the "Annual Meeting"), to be held on December 22, 2017. The letter was signed by then-President Defendant Smith.

81. The notice laid out the purposes of the meeting as follows:

- a. to elect Directors of the Corporation to act until the next Annual Meeting of Shareholders or until their successor(s) are elected and qualified;
- b. to amend the Corporation's By-Laws to conform the notice provisions thereof with West Virginia law; and
- c. to conduct such other business as may be necessary or advisable.

82. Contrary to what the letter said, the Board of Directors as a whole did *not* call the Annual Meeting as is required under the By-Laws, Article II, Section 2. Instead, the Executive Committee called the meeting under the guise of the Board of Directors, which is not permissible under the By-Laws.

83. When Plaintiff Lewis Tierney made note at the Annual Meeting that the shareholder meeting was improperly called, and that it was not in fact authorized and called by the Board as represented and instead by the Executive Committee, Reid Avett, Counsel for The Tierney Corporation, and Isaac Forman, Counsel for Duane Morris, commented that that's how The Tierney Corporation has always done things.

84. In addition, Lewis Tierney made a request at the meeting that the shareholders authorize this Complaint and initiate suit against the Individual Defendants for the reasons stated herein. Instead, Lewis was informed that the request would not be granted during the meeting and was directed that the request needed to be handled differently and in writing.

85. In response to the Annual Meeting on December 22, 2017, Plaintiffs made a written demand on the boards and shareholders of The Tierney Corporation and The Leatherwood Company to institute this action pursuant to Rule 23.1 of the West Virginia Rules of Civil Procedure. A copy of this Complaint was enclosed in the demands to ensure that the nature of the claims sought against the Individual Defendants was described with particularity. A copy of the demand letters are attached hereto and made a part hereof as **Exhibit A**.

86. Plaintiffs, who jointly represent the shares originally owned by L. Clark Tierney Jr. shares on the Board, fairly and adequately represent the interests of the shareholders similarly situated in enforcing the Companies' rights. Plaintiffs have the capacity to vigorously and conscientiously prosecute this derivative action and are free from economic interests that are

antagonistic to the interests of the shareholders. In bringing this action, Plaintiffs have retained legal counsel to pursue all viable claims on behalf of, and for the benefit of, the Companies to redress the Individual Defendants' breaches of fiduciary duties.

COUNT I
FOR REMOVAL OF DIRECTOR PURSUANT TO W. VA. CODE § 31D-8-809
AND TO BAR FROM REELECTION
(AGAINST DEFENDANTS SMITH AND WOLOSHIN)

87. Plaintiffs repeat and reallege each allegation contained in paragraphs 1 through 86 with the same force and effect as if fully set forth here.

88. Pursuant to W. Va. Code § 31D-8-809(c), a circuit court may remove a director of the corporation from office in a proceeding commenced either by the corporation or by its shareholders holding at least ten percent of the outstanding shares of any class if the court finds that: (1) the director engaged in fraudulent or dishonest conduct or gross abuse of authority or discretion with respect to the corporation; and (2) removal is in the best interest of the corporation. *See* W. Va. Code § 31D-8-809(c).

89. Collectively, Plaintiffs hold more than ten percent (10%) of the outstanding shares of The Tierney Corporation.

90. Upon information and belief and as alleged herein, defendants Smith and Woloshin are directors who have engaged in fraudulent or dishonest conduct or gross abuse of authority or discretion with respect to the Companies, and their removal is in the best interest of the Companies.

91. For the reasons set forth herein, Plaintiffs seek the removal of Defendants Smith and Woloshin and to bar each from reelection pursuant to W. Va. Code § 31D-8-809.

COUNT II
**DERIVATIVE CLAIM FOR BREACH OF FIDUCIARY DUTY, GROSS NEGLIGENCE,
MISMANAGEMENT, SELF-DEALING, AND CORPORATE WASTE**

92. Plaintiffs repeat and reallege each allegation contained in paragraphs 1 through 91 with the same force and effect as if fully set forth herein.

93. The Individual Defendants, in their roles as executive officers and directors of The Tierney Corporation and The Leatherwood Company, participated in the acts of mismanagement alleged herein, or acted in reckless disregard of the facts known to them, and failed to exercise due care to prevent the additional extraordinary and imprudent expenditures of money and the waste of corporate assets, with the resulting dilution of the shareholders' interest in the Companies.

94. The Individual Defendants became aware, or should have become aware, of the facts alleged herein including, among others, that corporate assets were being wasted or used for the personal benefit of the Individual Defendants, with respect to:

(a) Agreeing to pay Smith a \$600,000 option to purchase and subsequently causing Leatherwood Company to exercise the option and purchase the Smith property for a stated price of \$4,600,000, without vote or even notification of the sale to The Tierney Corporation Board in 2009;

(b) Permitting excessive over-billing for legal services, which fees (approximately \$11,185,000 for the past ten years) benefited Woloshin and Duane Morris to the detriment of the Companies and their shareholders;

(c) Actively liquidating the revenue-producing assets of the Companies to cover operating expenses;

(d) Violating the requirements of the Companies' by-laws with respect to the

governance of the Companies and the rights of all shareholders;

(e) Improperly withholding information and refusing access to the Companies' financials from Board members who are not Officers;

(f) Illegally using a voting agreement for Board decisions;

(g) Allowing conflicts of interest;

(h) Engaging in acts of self-dealing for the personal benefit of the Individual Defendants.

95. The Individual Defendants, however, did nothing to correct these acts and thereby breached their duty of care, loyalty, accountability and disclosure to the shareholders of Tierney Corporation and to the Companies themselves.

96. The Individual Defendants have been responsible for the gross mismanagement of the Companies, and self-dealing, as described in herein.

97. By virtue of the Individual Defendants' breach of their fiduciary duties, the Companies have suffered damages in an amount not less than \$3,000,000 in the form of (a) loss of present and future business opportunities; (b) reductions by Moody's and Standard & Poor's of their ratings on debt service, thereby requiring the Companies to pay more on its indebtedness than it otherwise would have to pay; (c) irreparable harm to their reputation and standing in the business and investment community; (d) restriction of their ability to obtain credit; and (e) the decline in the value of their shares.

98. As a result of the matters complained of herein, the Companies have been damaged in an amount in excess of \$3,000,000.

COUNT III
**AGAINST DEFENDANT WOLOSHIN FOR BREACH OF FIDUCIARY DUTY IN CONNECTION
WITH EXCESSIVE LEGAL FEES AND HIS PERSONAL CONFLICT OF INTEREST**

99. Plaintiffs repeat and reallege each allegation contained in paragraphs 1 through 98 with the same force and effect as if fully set forth here.

100. At all times relevant, Woloshin had a conflict of interest in that, at the same time that he was the Executive Director of both Companies, he was also personally profiting from the excessive legal fees he billed on behalf of himself and his firm, Duane Morris.

101. With respect to the legal fees, Woloshin had a duty to act for the Companies' benefit and best interests, while subordinating his own personal interests.

102. Upon information and belief, Woloshin willfully, knowingly, and maliciously breached his fiduciary duty as Executive Director by overbilling the Companies for legal services, for his own personal benefit and the profit of his firm, Duane Morris.

103. Upon information and belief, Woloshin willfully, knowingly, and maliciously breached his fiduciary duty as Executive Director of the Companies by allocating increasingly excessive percentages of total revenue to legal expenses, despite no significant legal needs.

104. Upon information and belief, Woloshin willfully, knowingly, and maliciously breached his fiduciary duty as Executive Director of the Companies by withholding information concerning the actual legal expenses.

105. Upon information and belief, Woloshin willfully, knowingly, and maliciously breached his fiduciary duty as Executive Director of the Companies through ongoing fiscal mismanagement, which included billing nearly 60 percent of annual legal expenses in the final months of each year, even after Woloshin's estimated budget for the Companies' annual legal

expenses had already been surpassed and even though the Companies did not require any extraordinary legal services at the end of each year.

106. Upon information and belief, Woloshin's conduct was in bad faith and departs from the standards of good faith and fair dealing which are inherent in the concept of a fiduciary relationship.

107. Upon information and belief, Woloshin intentionally misled the Companies and their shareholders by withholding material information concerning the legal services and the excessive legal billing.

108. Woloshin either knew or should have known at the time of his actions and representations, that the legal fees were unreasonable and excessively large, to the detriment of the Companies.

109. Woloshin's breach of fiduciary duty in connection with his excessive legal fees, his conflict of interest, and selfish management of the Companies for his personal benefit and for the benefit of Duane Morris have caused the Companies' damages.

COUNT IV
EXCESSIVE LEGAL FEES AS NEGLIGENCE
(AGAINST DEFENDANTS DUANE MORRIS AND WOLOSHIN)

110. Plaintiffs repeat and reallege each allegation contained in paragraphs 1 through 109 with the same force and effect as if fully set forth here.

111. From 2001 to the present, Woloshin and Duane Morris have acted as outside legal counsel to the Companies, establishing an attorney-client relationship.

112. Upon information and belief, Defendant Duane Morris and Woloshin breached their professional duty and obligation to the Companies by charging an exorbitant, excessive, and unreasonable fee for the legal services rendered.

113. Defendants' actions as described above constitute breach of professional duty.

114. As a result of these wrongful acts, as alleged herein, the Companies have been harmed and continue to be harmed, and are entitled to damages in an amount to be determined at trial.

COUNT V
EXCESSIVE LEGAL FEES AS A BREACH OF CONTRACT
(AGAINST DEFENDANTS DUANE MORRIS AND WOLOSHIN)

115. Plaintiffs repeat and reallege each allegation contained in paragraphs 1 through 114 with the same force and effect as if fully set forth here.

116. From 2001 to the present, Woloshin and Duane Morris have acted as outside legal counsel to the Companies, establishing a contractual attorney-client relationship, whether express or implied (the "Agreement").

117. The Agreement is a valid and enforceable contract supported by adequate consideration, and was offered by Woloshin and Duane Morris and voluntarily accepted by The Tierney Corporation and The Leatherwood Company.

118. All conditions precedent to the enforcement of the Agreement have been satisfied.

119. The Companies have performed their obligations under the Agreement, and have paid the legal fees billed pursuant to the Agreement.

120. Upon information and belief, contrary to the terms of the Agreement and professional standards of conduct, Woloshin and Duane Morris have padded and overbilled the Companies for the actual services rendered.

121. Woloshin and Duane Morris' acts, as described above, constitute a material breach of Agreement and the contractual duties owed to the Companies.

122. To date, however, Woloshin and Duane Morris have not cured their breach.

123. As a direct and proximate result of Woloshin and Duane Morris' material breach of the Agreement, and due to their professional negligence, gross negligence, or willful misconduct, the Companies have suffered an actual loss and are entitled to compensatory damages in an amount to be determined at trial.

COUNT VI
IN THE ALTERNATIVE, UNJUST ENRICHMENT
(AGAINST DEFENDANTS DUANE MORRIS AND WOLOSHIN)

124. Plaintiffs repeat and reallege each allegation contained in paragraphs 1 through 123 with the same force and effect as if fully set forth here.

125. Upon information and belief, the total fees Duane Morris collected from the Companies from 2001 to 2015 exceed \$15.4 million.

126. Should it be determined that an enforceable contract with respect to the matters asserted above did not exist, the Companies nonetheless paid Duane Morris an amount not less than \$15.4 million under circumstances that they reasonably expected to receive comparable value and/or to be charged only a fair and reasonable cost for the services actually received.

127. The actual fee that Duane Morris obtained (and which was paid for by the Companies) is unreasonably excessive in violation of, and invalid and unenforceable under Rule 1.5 of the West Virginia Rules of Professional Conduct.

128. Defendants received and benefited from the fees the Company paid for legal services as described in this complaint. Should the Court determine that the Duane Morris and Woloshin have not breached an express or implied contract, the Court should alternatively find that Duane Morris and Woloshin are liable to the Companies under the law of *quantum meruit* or unjust enrichment.

129. “[I]f benefits have been received and retained under such circumstance that it would be inequitable and unconscionable to permit the party receiving them to avoid payment therefor, the law requires the party receiving the benefits to pay their reasonable value.” *Realmark Devs., Inc. v. Ranson*, 542 S.E.2d 880, 885 (W. Va. 2000). Unjust enrichment is based upon equitable principals and is sometimes referred to as “restitution, a contract implied in law, quasi-contract, or an action in *assumpsit*,” but it is an action at law for which the remedy is money damages. *See Realmark Devs., Inc. v. Ranson*, 588 S.E.2d 150, 153 (W. Va. 2003).

130. Duane Morris and Woloshin have been unjustly enriched by taking possession of fees that exceed the fair and reasonable cost for the services rendered in connection with the representation of the Companies and the excessive fees have not been repaid.

131. Under the law of unjust enrichment, Duane Morris and Woloshin should be required to repay the money they have wrongfully billed the Companies, plus interest and costs representing the benefit of the use of such money.

COUNT VII

STATUTORY CLAIM FOR INSPECTION OF RECORDS BY SHAREHOLDERS AND DIRECTORS, OR IN THE ALTERNATIVE, CLAIM FOR COURT-ORDERED INSPECTION, PURSUANT TO W. VA. CODE §§ 31D-16-1602 THROUGH 16-1605

132. Plaintiffs repeat and reallege each allegation contained in paragraphs 1 through 131 with the same force and effect as if fully set forth here.

133. Plaintiff Lewis Tierney has in good faith made a proper demand for inspection of records by a director, pursuant to § 31D-16-1605, reasonably related to the performance of his duties as a director. Despite demand and after a reasonable time, however, Plaintiff Lewis Tierney has not been given access to inspect and copy the records and documents requested.

134. Plaintiffs, as shareholders of the Companies, have in good faith made a proper demand for inspection of records by a shareholder, pursuant to § 31D-16-1602, in good faith and

for a proper purpose, with reasonable particularity, and directly connected with his purpose as a shareholder. Despite demand and after a reasonable time, however, Plaintiffs have not been given access to inspect and copy the records and documents requested.

135. Pursuant to W. Va. Code § 31D-16-1604, “[i]f a corporation does not allow a shareholder who complies with [§ 31D-16-1602(a)] to inspect and copy any records required by that subsection to be available for inspection, the circuit court may summarily order inspection and copy of the records demanded at the corporation’s expense upon application of the shareholder.”

136. Pursuant to the statute, W. Va. Code § 31D-16-1604(b), “[i]f a corporation does not within a reasonable time allow a shareholder to inspect and copy any other record, the shareholder who complies with subsections (b) and (c), section one thousand six hundred two [§ 31D-16-1602] of this article may apply to the circuit court for an order to permit inspection and copying of the records demanded.” W. Va. Code § 31D-16-1604(b). Under these circumstances, “[t]he circuit court shall dispose of an application under this subsection on an expedited basis.” *Id.*

PRAYER FOR RELIEF

WHEREFORE, based on the foregoing, Plaintiffs demand judgment as follows:

A. Granting judgment against each defendant in favor of The Tierney Corporation and The Leatherwood Company for the amount of damages sustained by The Tierney Corporation and The Leatherwood Company as a result of the breaches of fiduciary duty and other misconduct by each defendant;

B. Granting, on an expedited basis, court-ordered inspection of records by shareholders, pursuant to W. Va. Code § 31D-16-1604, and requiring that a full accounting be made in granting judgment against each defendant for the amount of the total financial losses to The Tierney Corporation and The Leatherwood Company as a result of the acts complained of;

C. Granting judgment against each defendant in favor of The Tierney Corporation and The Leatherwood Company for all consequential damages suffered by the Companies;

D. Ordering that Defendants Smith and Woloshin be removed and barred from reelection as authorized by W. Va. Code § 31D-8-809(c) for his/her fraud, dishonest conduct, or gross abuse of authority and discretion and because removal is in the best interests of the Companies;

E. Awarding to Plaintiffs the costs and disbursements of this action, including reasonable attorneys', accountants' and experts' fees, and costs and expenses; and

F. Granting such other and further relief as the Court may deem just and proper.

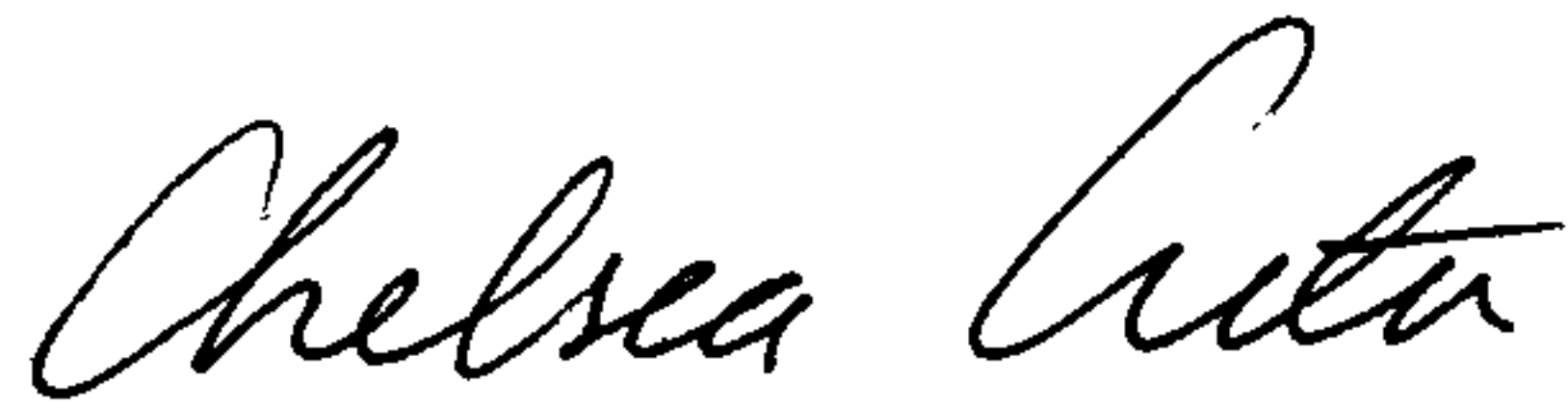
JURY DEMAND

Plaintiffs demand a trial by jury.

Respectfully submitted,

**LEWIS CLARK TIERNEY, III,
CHRISTOPHER SCOTT TIERNEY,
KENNA TIERNEY 2000
IRREVOCABLE TRUST, CAROLYN
KENNA TIERNEY GRIESEMER, and
CAROL K. TIERNEY 2000 GST
TRUST, Each individually and derivatively
on behalf of The Tierney Corporation and
The Leatherwood Company**

By Counsel

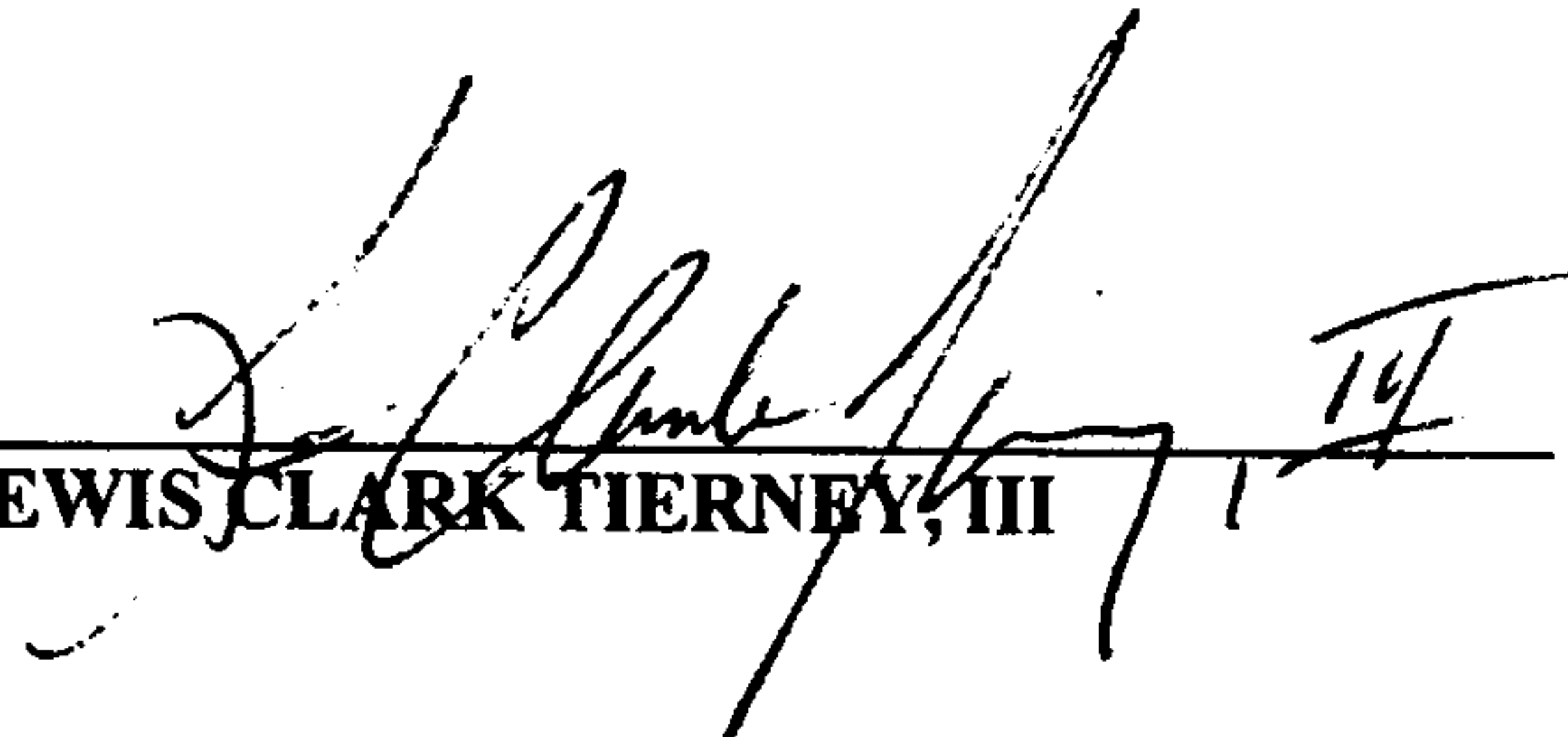


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Facsimile: (304) 340-1051
brswiger@jacksonkelly.com
vhbasdekis@jacksonkelly.com
Counsel for Plaintiffs

VERIFICATION

**STATE OF NEW YORK
COUNTY OF NEW YORK, TO WIT:**

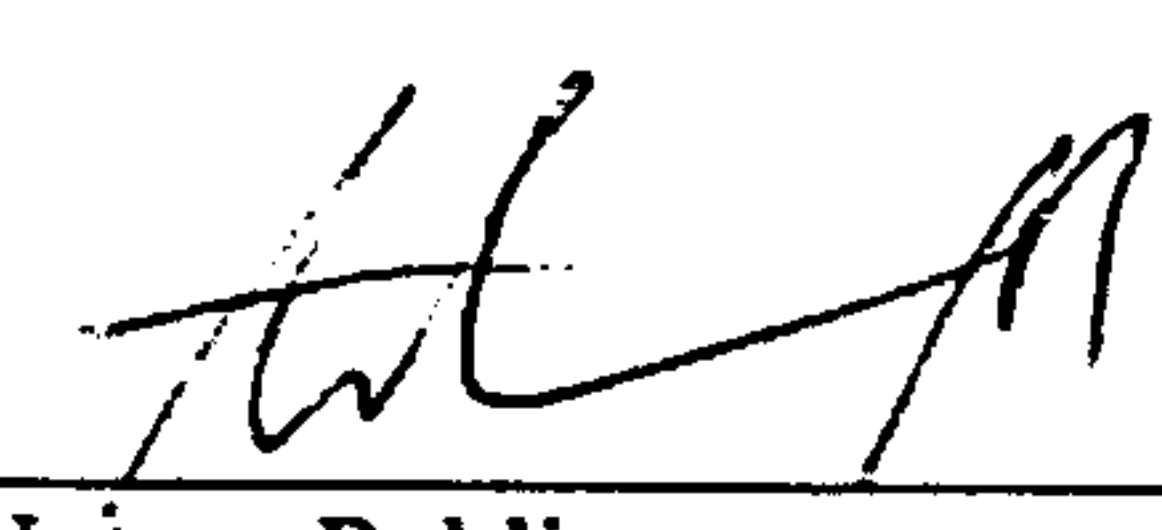
I, **Lewis Clark Tierney, III**, being first duly sworn, depose and say that I am a Plaintiff and shareholder in the within action; that I have read the foregoing **Verified Shareholder Derivative Complaint** and am familiar with the contents thereof; that the facts and allegations contained therein are true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters I believe them to be true.



LEWIS CLARK TIERNEY, III

Taken, subscribed and sworn to before me this 26 day of January, 2018.

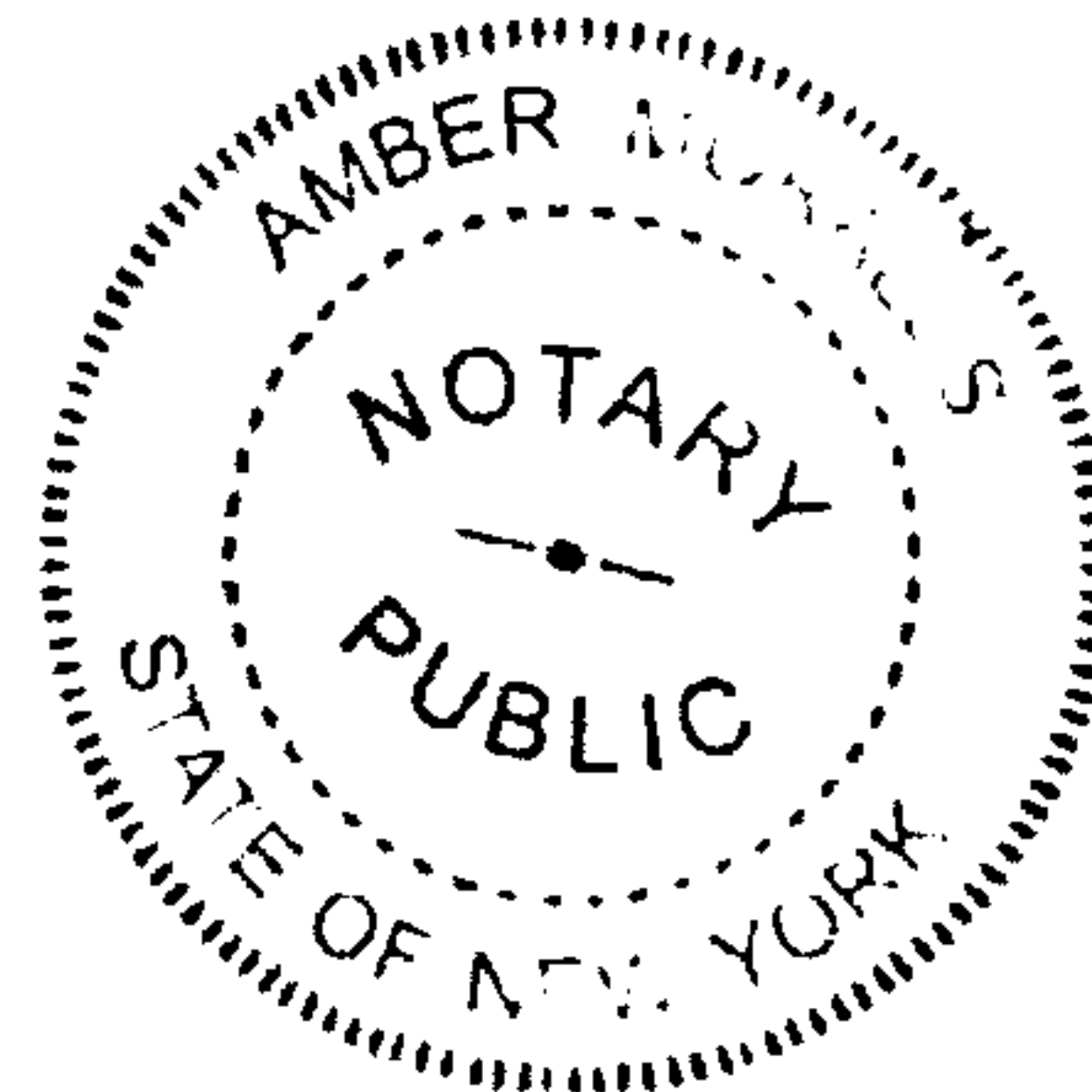
[SEAL]



Notary Public

My commission expires: 9/25/2021.

AMBER MORALES
NOTARY PUBLIC-STATE OF NEW YORK
No. 01MO6365062
Qualified in New York County
My Commission Expires 09-25-2021



VERIFICATION

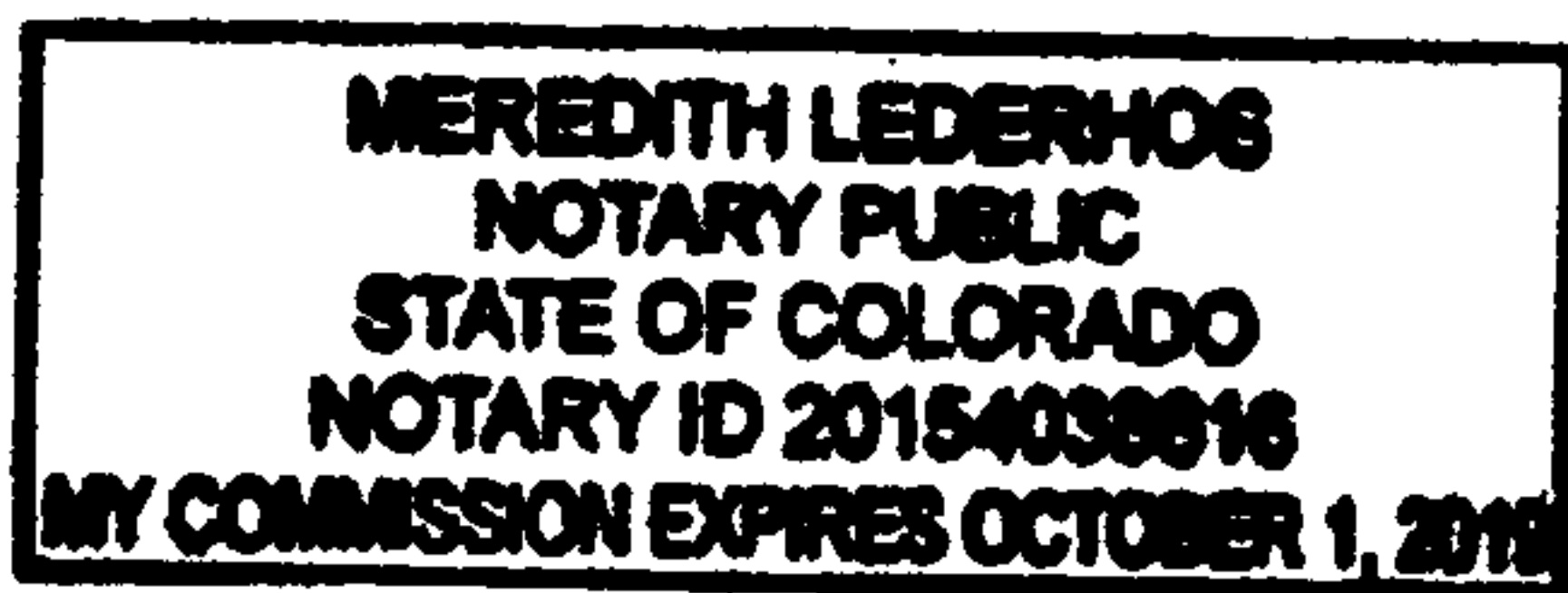
**STATE OF COLORADO;
COUNTY OF DENVER, TO WIT:**


I, **Christopher Scott Tierney**, being first duly sworn, depose and say that I am a Plaintiff and shareholder in the within action; that I have read the foregoing **Verified Shareholder Derivative Complaint** and am familiar with the contents thereof; that the facts and allegations contained therein are true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters I believe them to be true.


CHRISTOPHER SCOTT TIERNEY

Taken, subscribed and sworn to before me this 25th day of January, 2018.

[SEAL]




Notary Public

My commission expires: 10/1/19.

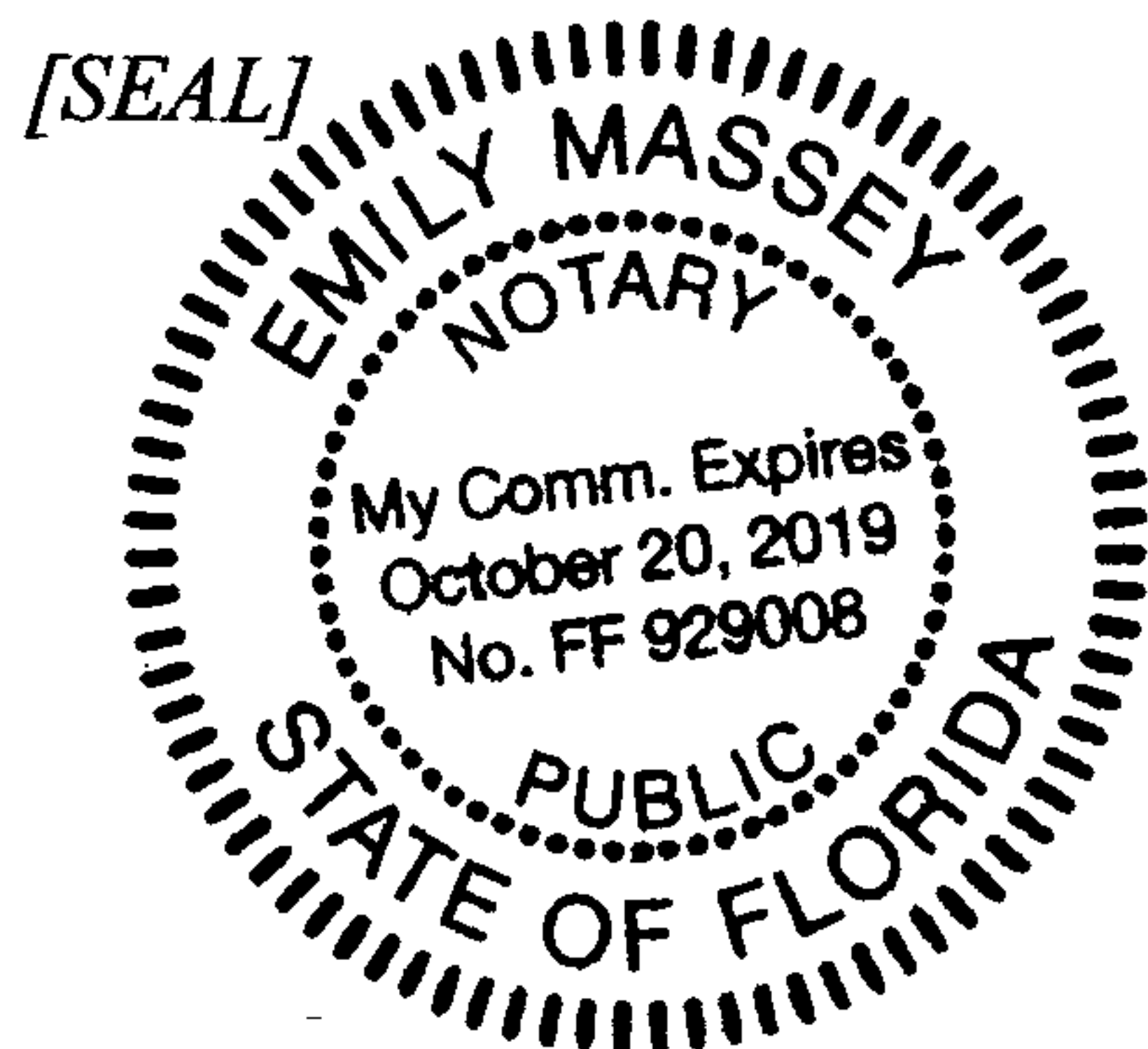
VERIFICATION

**STATE OF FLORIDA,
COUNTY OF Charlotte TO WIT:**

I, **Carolyn Tierney Griesemer**, who am one and the same with **Carolyn Kenna Tierney**, being first duly sworn, depose and say that I am Co-Trustee and an authorized representative of the Kenna Tierney 2000 Irrevocable Trust, a Plaintiff and shareholder in the within action; that I have read the foregoing **Verified Shareholder Derivative Complaint** and am familiar with the contents thereof; that the facts and allegations contained therein are true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters I believe them to be true.

Carolyn Tierney Griesemer, Trustee
CAROLYN TIERNEY GRIESEMER,
who is one and the same with Carolyn Kenna
Tierney, Co-Trustee of the Kenna Tierney 2000
Irrevocable Trust

Taken, subscribed and sworn to before me this 20 day of January, 2018.



[Signature]

Notary Public


My commission expires: 10/20/19.

VERIFICATION

STATE OF FLORIDA

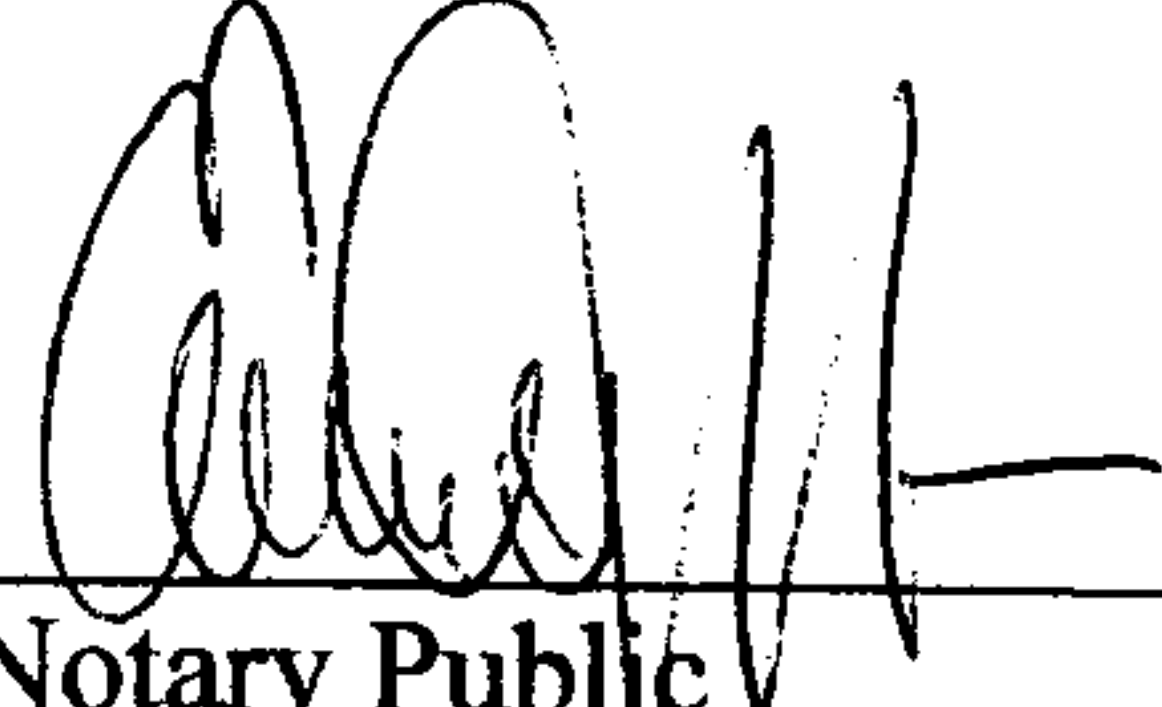
COUNTY OF Charlotte, TO WIT:

I, **Carolyn Tierney Griesemer**, being first duly sworn, depose and say that I am a Plaintiff and shareholder in the within action; and further, that I am an authorized representative of the *Carol K. Tierney 2000 GST Trust*, Carol K. Tierney, Trustee, a Plaintiff and shareholder in the within action; that I have read the foregoing **Verified Shareholder Derivative Complaint** and am familiar with the contents thereof; that the facts and allegations contained therein are true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters I believe them to be true.


CAROLYN TIERNEY GRIESEMER,
Individually and as Trustee of the Carol K. Tierney
2000 GST Trust

Taken, subscribed and sworn to before me this 26 day of January, 2018.

[SEAL]



Notary Public

My commission expires: 10/20/19.

