

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

FILED

2018 MAY 15 A 10:38

CATHY S. GATSON, CLERK
KANAWHA COUNTY CIRCUIT COURT

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. 18-C-90
Judge Tabit

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.

AMENDED 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.

Issued Summons
\$ 14 CP45

Tierney Corporation ("The Tierney Corporation") and The Leatherwood Company ("The Leatherwood Company") together, "Companies"), by counsel, bring this Amended 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.*, 119 W. Va. 167, 192 S.E. 545 (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 controlling shareholders of the Companies, have managed the parent company and its subsidiary for their own interest and personal profit to the exclusion of the shareholders as a whole. In addition, the Individual Defendants have disregarded their obligations and fiduciary duties to the shareholders as a whole 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 and administrative service 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. The current Board consists of President Barclay de Wet ("Barclay de Wet"), who is the daughter of Defendant Smith, Defendant Smith, who is former Executive Committee officer and 2000-2017 President, Defendant Woloshin, Patricia Cinson Tierney ("Pat Tierney"), and Lewis Tierney.

11. While The Tierney Corporation Board is comprised of five members, three members are or were also Executive Committee officers. Upon information and belief, President Barclay de Wet, Executive Director Woloshin, and Pat Tierney currently serve on the Executive Committee. When C. Matthew S. Tierney ("Matt Tierney") retired from the Board in October 2016, he was replaced on the Boards of both Companies, as Secretary, and as an officer on the Executive Committee by his wife, Pat Tierney. Upon information and belief, former President Defendant Smith was replaced as President and as an officer on the Executive Committee by her daughter, Barclay de Wet, in or about December 2017.

12. 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.

13. 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

14. 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.

15. 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.

16. Tierney Corporation also owns approximately 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.

17. In 2001, following Clark Tierney's death, The Tierney Corporation added Carolyn Kenna Tierney, his widow, 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.

18. 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.

19. 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 and administrative service 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

20. 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.

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

22. 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.

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

24. 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.

25. 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.

26. 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.

27. 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.

28. 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.

29. 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 Tierney Corporation, Woloshin has also served as a member of the Executive Committee, 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.

30. Defendant Duane Morris is an international law firm headquartered in Philadelphia, Pennsylvania. Since 2001 to the present, Duane Morris, through its attorney

Woloshin and, more recently, Reid Avett, has provided legal and/or administrative 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 and/or administrative service expenses charged by Duane Morris have been, at a minimum, 24.3 percent of the Company's total revenue. In 2014, legal and/or administrative service expenses reached to a staggering 51.3 percent of total revenue without any reasonable justification for the expense. Most recently, actual legal and/or administrative service expenses charged by Duane Morris have been in excess of 645 percent of the budgeted annual legal expenses (as estimated by Woloshin).

31. 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

32. 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.

33. 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.

34. 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.

35. 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.

36. 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.

37. 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 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.

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

39. 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.

40. 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.

41. 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.

42. 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

43. 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***

44. 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.

45. 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.

46. 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 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.

- (2) Accounting records of the corporation; and
- (3) The record of shareholders.

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

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

48. 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.

49. 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.

50. 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***

51. Since 2001 to the present, Duane Morris, through its attorneys Woloshin and at a later date, Reid Avett, has provided legal and/or administrative services as outside counsel to The Tierney Corporation and The Leatherwood Company.

52. 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.

53. Upon information and belief, and from 2001-2016 specifically, Woloshin and Duane Morris have billed and collected in excess of \$15,058,525 in legal and/or administrative service fees despite the small size and non-complex nature of the business and despite the Companies having no mergers, acquisitions, or other significant legal proceedings. During this same time period, the Companies have compiled liabilities greater than \$22,000,000.

54. Upon information and belief, the nature of the legal and/or administrative service work performed by Woloshin involved predominantly basic corporate work and the difficulties involved and responsibilities assumed in the work were minimal.

55. Upon information and belief and subject to further discovery, it appears that from 2004 to 2016, legal and/or administrative service expenses charged by Duane Morris have been, at a minimum, 32.9 percent of The Tierney Corporation's total revenue, which excessive legal billing constitutes a waste or mismanagement of corporate assets.

56. Unbeknownst to Plaintiffs at the time, The Tierney Corporation and The Leatherwood Company jointly paid Duane Morris approximately \$1.37 million for legal and/or administrative service fees in 2014, which represented approximately 43.9 percent of total

revenue. Upon information and belief, these 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.

57. Upon information and belief, the legal and/or administrative service 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.

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

59. Upon information and belief, Duane Morris was notified of Lewis Tierney's findings on the excessive billing in or about 2016 and then Duane Morris agreed to a fixed-fee arrangement.

Illegal Voting Agreement for Board Decisions

60. 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.

61. 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

62. The Individual Defendants engaged in a self-serving transaction to the detriment of the shareholders of the Companies. Through the acts of the Individual Defendants, The Leatherwood Company executed a questionable transaction for the Companies' shareholders by valuing the Leatherwood Horse Farm property improperly and buying an option and then the property from 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. Additionally, all of this was done without the knowledge of or a vote from The Tierney Corporation Board or shareholders.

63. 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.

64. The Tierney Corporation Board did not vote on the transaction to purchase the option.

65. 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.

66. 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 despite requests for this information and Woloshin's stated intent to follow-up and provide such information.

67. 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 Tierney Corporation Board in 2009.

68. 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.

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

70. Upon information and belief, the transaction at \$4.6 million is the fourth highest *overall* transaction value in Tazewell County in the years analyzed between January 2010 and December 2015. 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 one hundred 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 price of \$30,624.26 per acre.

The Executives Are Actively Liquidating the Company

71. 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.

72. Upon information and belief, Defendant Woloshin is eroding tangible corporate assets. For example, the stock portfolio, based on 2009 stock assets, is worth approximately \$4 million less than it should be at this time and has not participated in the bull market run over the last three years.

73. Plaintiffs have 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.

74. 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."

75. 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.

76. Upon information and belief, and unbeknownst to Plaintiffs at the time, the realtive decline in value of the stock portfolio and heavy reliance on debt threaten the Companies' future viability.

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

77. 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)

78. Upon information and belief, the auditor groups listed above reported directly to Woloshin and not to the Board since 2001, 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, a Board member until his passing, 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.

79. 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.

80. 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

81. 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.

82. 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.

83. On March 10, 2017, Plaintiffs filed a shareholder derivative action on behalf of The Tierney Corporation and The Leatherwood Company against the same Defendants for *inter alia*, self-dealing, conflict of interest, mismanagement and waste of corporate assets, breaches of fiduciary duties, and wrongful withholding of information. (Civil Action No. 17-C-346.)

84. Defendants filed motions to dismiss and a hearing was conducted on October 20, 2017 in front of Judge Paul T. Farrell of the Kanawha County Circuit Court Business Court Division. Although Plaintiffs argued that the futility exception to the demand requirement was satisfied, Judge Farrell indicated during the hearing that he wanted to avoid the possibility of any potential procedural impediment going forward in the case. Judge Farrell referenced the savings statute and indicated that Plaintiffs' claims could be reasserted upon demand.

85. On December 7, 2017, Judge Farrell entered an Order granting the Defendants' motions to dismiss as to the demand requirement only. The decision expressly provided that it did not reach the merits of the claims, and the Court expressly stated that Plaintiffs could re-file their claims after making a demand.

86. 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.

87. 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.

88. 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.

89. 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 is how The Tierney Corporation has always done things.

90. In addition, Lewis Tierney made a request at the meeting that the shareholders authorize a shareholder derivative action 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.

91. 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 on or about January 26, 2018 to institute this action pursuant to Rule 23.1 of the West Virginia Rules of Civil Procedure. A copy of the original Verified Shareholder Derivative Complaint (“Complaint”), which was filed on or about January 29, 2018, but not served, 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**.

92. On February 9, 2018, newly-elected President de Wet sent Plaintiff Lewis Tierney a letter stating she received the January 26 demand letter and will “take seriously my responsibility to guide The Tierney Corporation in a responsible and independent investigation of your complaints.” A copy of the letter is attached hereto and made a part hereof as **Exhibit B**.

93. However, on March 1, 2018, President de Wet sent a letter related to this lawsuit to the shareholders, alleging Plaintiffs’ demand letters and Complaint contain “misstatements” and falsehoods, emphasizing twice that \$350,000 in legal fees had already been incurred by the Companies in this lawsuit, and stating “continued litigation threatens to engulf the Company in a legal morass with little end in sight.” A copy of this letter is attached hereto and made a part hereof as **Exhibit C**.

94. President de Wet's statements to the shareholders demonstrated her negative opinions on Plaintiffs' demand despite not becoming President until December 2017, not having conducted any investigation into the allegations, and promising in the same letter to "investigate these allegations thoroughly" in a "responsible and independent investigation."

95. In order to address the multiple inaccuracies presented in President de Wet's March 1, 2018 letter, Lewis Tierney sent a letter to the shareholders on or about May 3, 2018 to May 5, 2018. This letter included information about the allegations of the Complaint to help shareholders further understand the nature of the Individual Defendants' wrongdoing.

96. Furthermore, on April 20, 2018, President de Wet sent a letter to the shareholders providing a brief update on the status of her investigation into the allegations raised by Plaintiffs' demand letters. Despite communicating to shareholders that she intends to guide the Company in a "responsible and independent investigation," it was not communicated how such an independent investigation is to be conducted. All President de Wet communicated in this letter to shareholders was that initial requests to the relevant parties seeking more information related to the allegations had been sent out to be "followed up with more specific requests in the future." A copy of this letter is attached hereto and made a part hereof as **Exhibit D**.

97. Moreover, on April 20, 2018, President de Wet sent a letter to Wanda Z. Rogers, wife to Clayton Rogers and executor of his estate, copying Tierney Corporation shareholders. In the letter, President de Wet again reiterated her negative opinions on Plaintiffs' demand despite not becoming President until December 2017, not having conducted any investigation into the allegations, and promising in the same letter to investigate these allegations thoroughly in a "responsible and independent investigation." In addition, President de Wet stated she "intends to review all available evidence before reaching any conclusions or making any recommendations

to the Board or the shareholders.” President de Wet’s statements related to how she intends to conduct her own personal investigation are made despite the fact Plaintiffs also sent a demand letter to the shareholders, a demand separate from that made on the Board. A copy of this letter is attached hereto and made a part hereof as **Exhibit E**.

98. Additionally, President de Wet, daughter of Defendant Smith, sent a four-page letter of questions and requests for clarification to Plaintiffs’ counsel on April 20, 2018 asking for information regarding the allegations in the Complaint to begin conducting an investigation.

99. Despite the allegations becoming known to the Defendants when the original shareholder derivative action was filed in or about March 2017, and despite the demands being sent at the end of January 2018, President de Wet delayed asking Plaintiffs’ counsel for information on the allegations until April 20, 2018.

100. To date, no clear plan has been communicated to Plaintiffs on how the issues are to be thoroughly and independently investigated or when such investigation is expected to be completed and no dates have been set for either a Board or shareholder meeting to address or vote on the January 2018 demands.

101. The Defendants and Board have had a reasonable amount of time to investigate the allegations known to them since March 2017, when the original shareholder derivative action was filed, and the Defendants, Board and shareholders have had reasonable opportunity to respond to Plaintiffs’ demand.

102. Plaintiffs, who jointly represent the shares originally owned by L. Clark Tierney Jr. 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)

103. Plaintiffs repeat and reallege each allegation contained in paragraphs 1 through 102 with the same force and effect as if fully set forth here.

104. Pursuant to W. Va. Code § 31D-8-809(a), 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(a).

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

106. 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.

107. 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**

108. Plaintiffs repeat and reallege each allegation contained in paragraphs 1 through 107 with the same force and effect as if fully set forth herein.

109. 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 waste of corporate assets, with the resulting dilution of the shareholders' interest in the Companies.

110. 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 and/or administrative services, which fees (approximately \$11,185,000 for the past fourteen 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.

111. 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.

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

113. 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.

114. 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**

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. 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 and/or administrative service fees he billed on behalf of himself and his firm, Duane Morris.

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

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

119. 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 and/or administrative service expenses, despite no significant legal needs.

120. 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 and/or administrative service expenses.

121. 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 and/or administrative services at the end of each year.

122. 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.

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

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

125. Woloshin's breach of fiduciary duty in connection with his excessive legal and/or administrative service 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)

126. Plaintiffs repeat and reallege each allegation contained in paragraphs 1 through 125 with the same force and effect as if fully set forth here.

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

128. 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 and/or administrative services rendered.

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

130. 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)

131. Plaintiffs repeat and reallege each allegation contained in paragraphs 1 through 130 with the same force and effect as if fully set forth here.

132. 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").

133. 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.

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

135. The Companies have performed their obligations under the Agreement, and have paid the legal and/or administrative service fees billed pursuant to the Agreement.

136. 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.

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

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

139. 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)

140. Plaintiffs repeat and reallege each allegation contained in paragraphs 1 through 139 with the same force and effect as if fully set forth here.

141. Upon information and belief, the total fees Duane Morris collected from the Companies from 2001 to 2016 exceed \$15.4 million.

142. 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.

143. 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.

144. Defendants received and benefited from the fees the Company paid for legal and/or administrative 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.

145. “[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*, 208 W.Va. 717, 722, 542 S.E.2d 880, 885 (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*, 214 W.Va. 161, 164, 588 S.E.2d 150, 153 (2003).

146. 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.

147. 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

148. Plaintiffs repeat and reallege each allegation contained in paragraphs 1 through 147 with the same force and effect as if fully set forth here.

149. 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.

150. 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.

151. 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.”

152. 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 to the Boards of The Tierney Corporation and Leatherwood Company and any respective committees as authorized by W. Va. Code § 31D-8-809(a) 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 for all claims so triable.

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

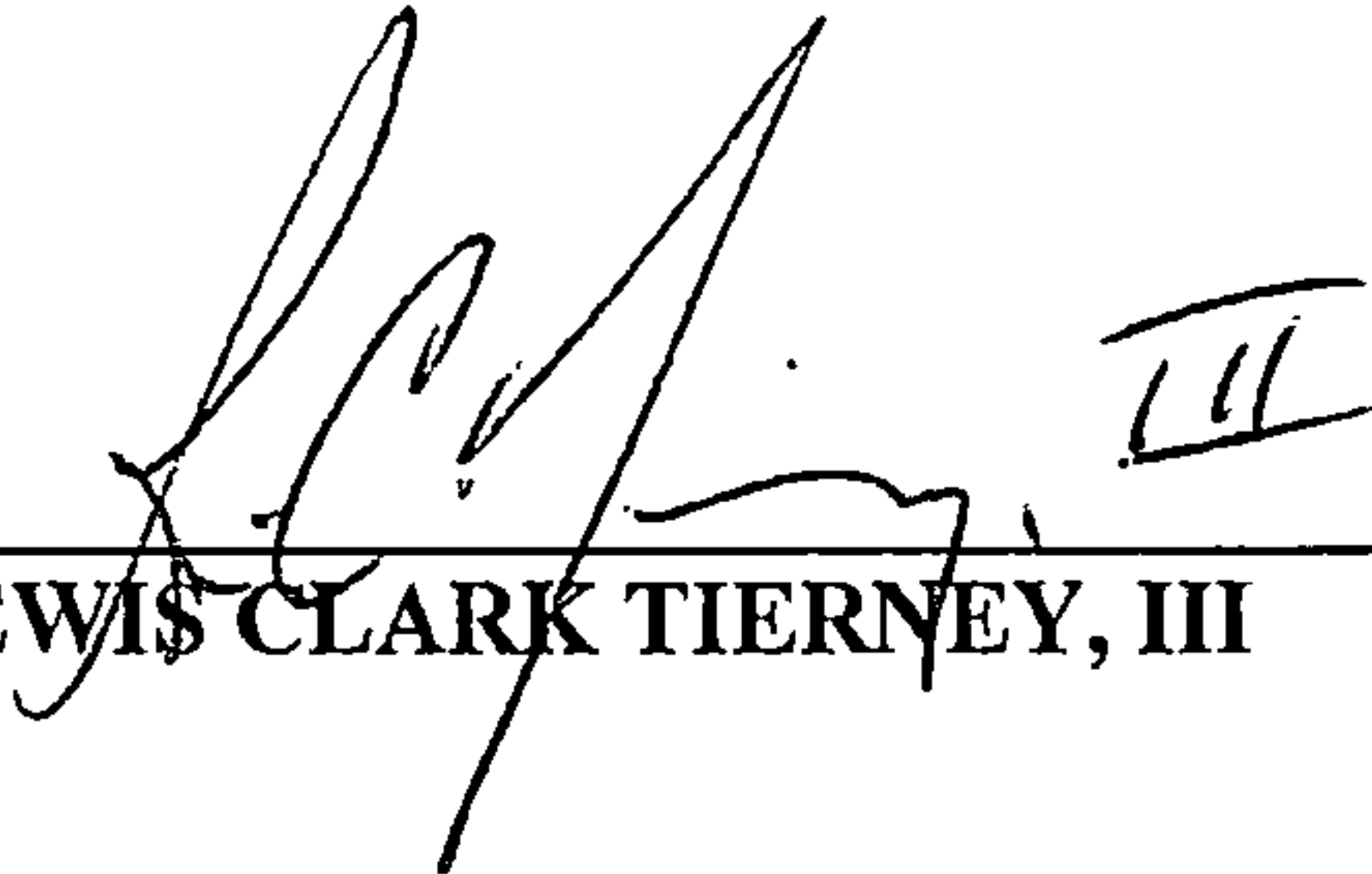


Brian R. Swiger (WV Bar No. 5872)
Vivian H. Basdekis (WV Bar No. 10587)
Chelsea A. Creta (WV Bar No. 13187)
JACKSON KELLY PLLC
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Email: brswiger@jacksonkelly.com
vhbasdekis@jacksonkelly.com
chelsea.creta@jacksonkelly.com
Counsel for Plaintiffs

VERIFICATION

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

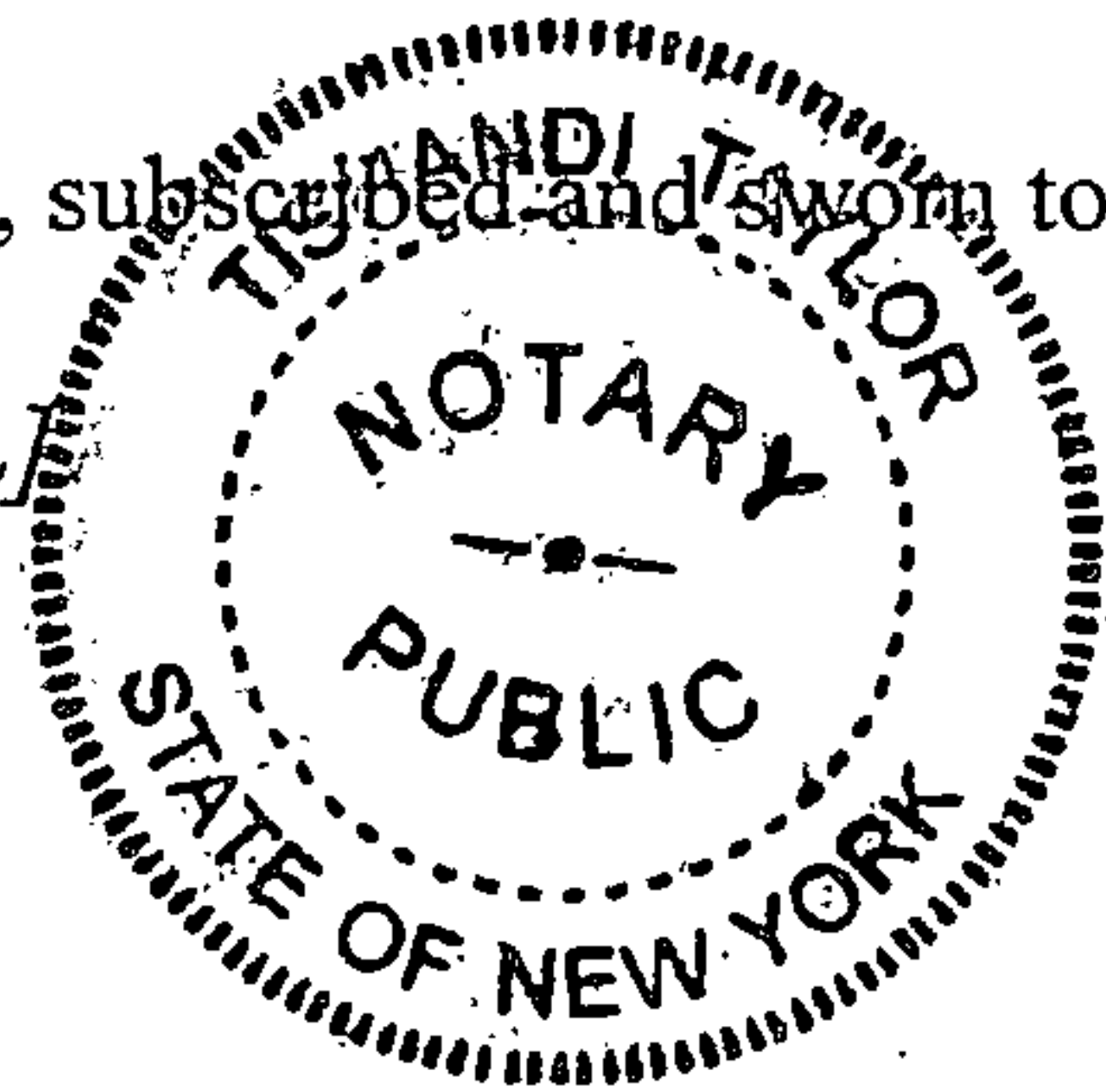
I, **Lewis Clark Tierney, III**, being first duly sworn, depose and say that I am a Plaintiff and shareholder in the within action; that I have read the foregoing **Amended Verified Shareholder Derivative Complaint** and am familiar with the contents thereof; that the facts and allegations contained 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.

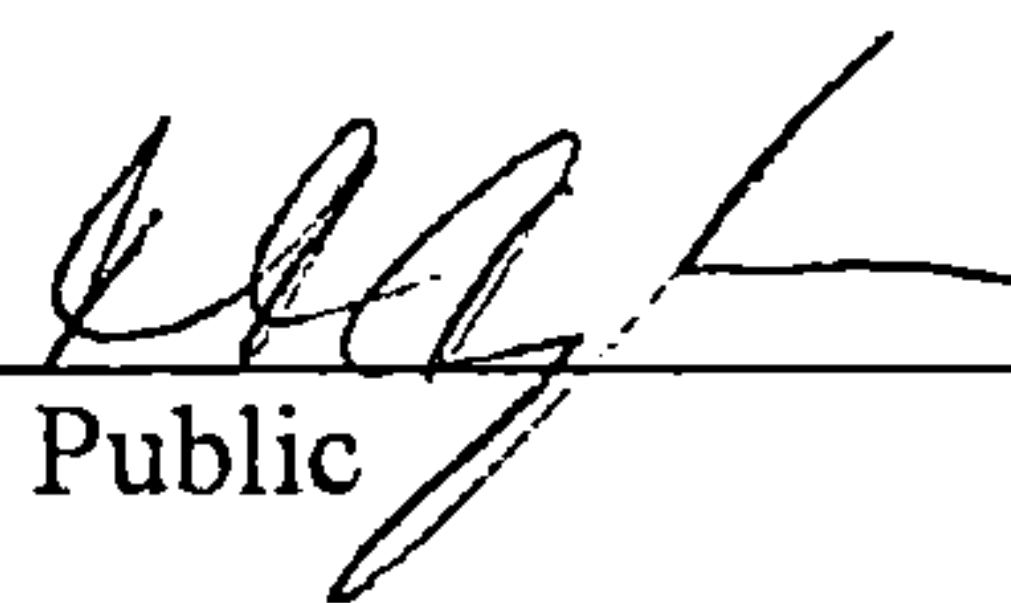


LEWIS CLARK TIERNEY, III

Taken, subscribed and sworn to before me this 10th day of May, 2018.

[SEAL]





Notary Public

My commission expires: 08-14-2021.

TISHANDI T TAYLOR
NOTARY PUBLIC-STATE OF NEW YORK
No. 01TA6363109
Qualified in Kings County
My Commission Expires 08-14-2021

VERIFICATION

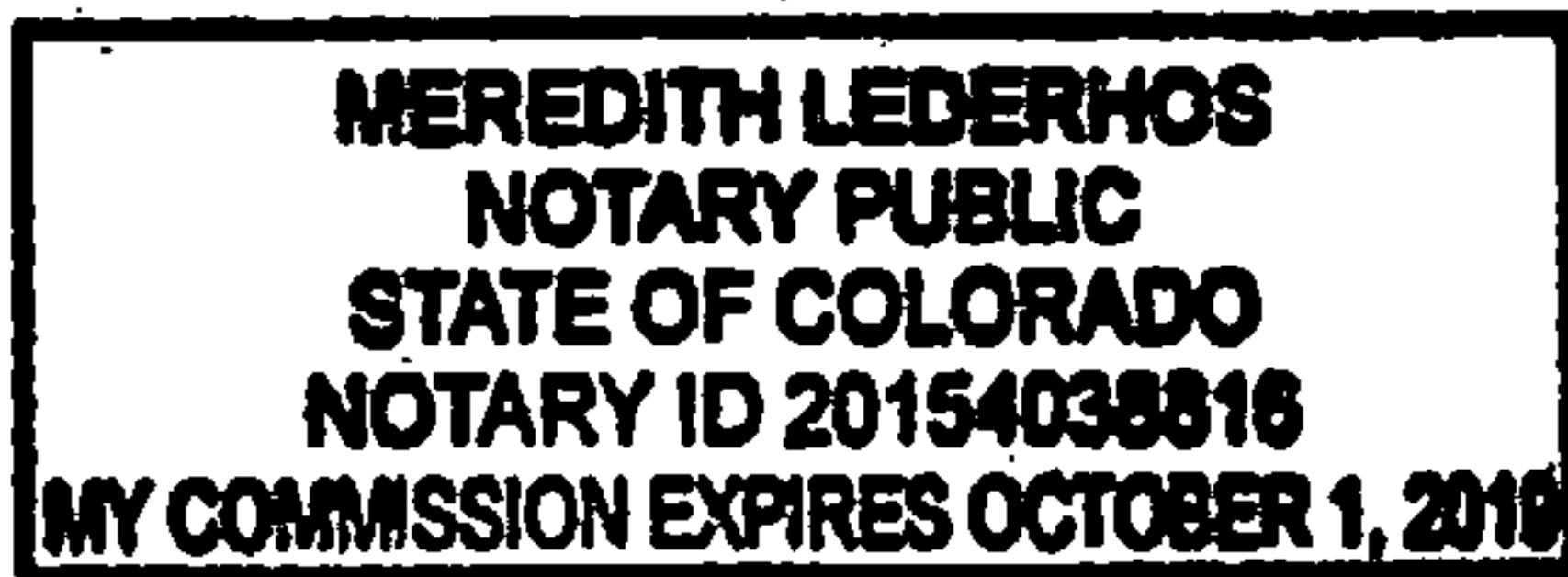
**STATE OF COLORADO;
COUNTY OF DENVER, TO WIT:**


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 **Amended 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 10 day of May, 2018.

[SEAL]



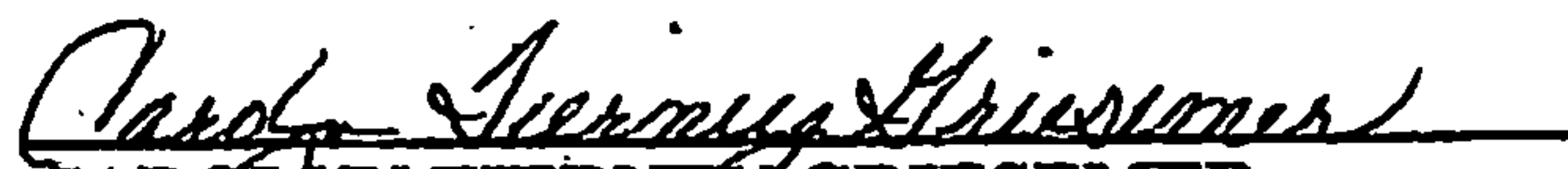

Notary Public

My commission expires: 10/1/19.

VERIFICATION

STATE OF FLORIDA
COUNTY OF Charlotte, TO WIT:

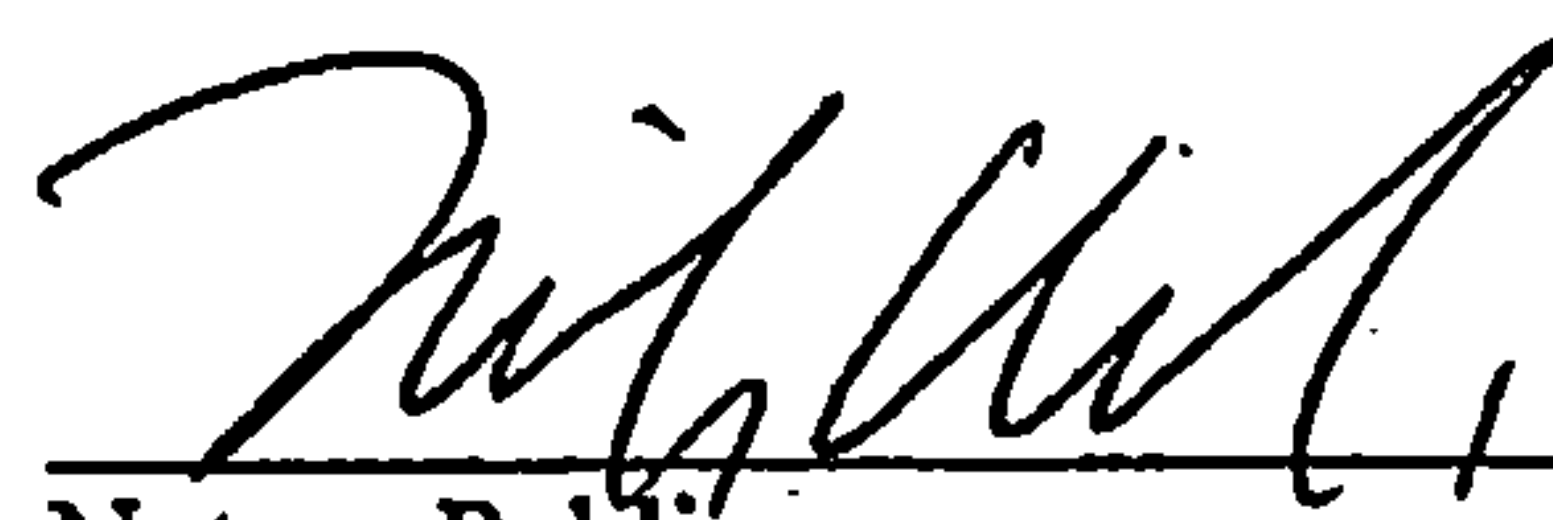
I, **Carolyn Tierney Griesemer**, being first duly sworn, depose and say that I am a Plaintiff and shareholder in the within action; and further, that I am an authorized representative of the *Carol K. Tierney 2000 GST Trust*, Carol K. Tierney, Trustee, a Plaintiff and shareholder in the within action; that I have read the foregoing **Amended 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 10th day of May, 2018.

[SEAL]

Nick Obirek
Notary Public
State of Florida
My Commission Expires 10/24/2021
Commission No. GG 142511



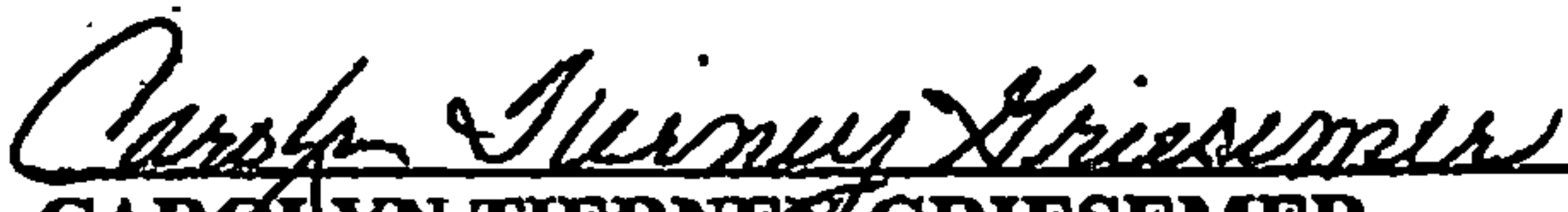
Notary Public

My commission expires: 10-24-21.

VERIFICATION

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

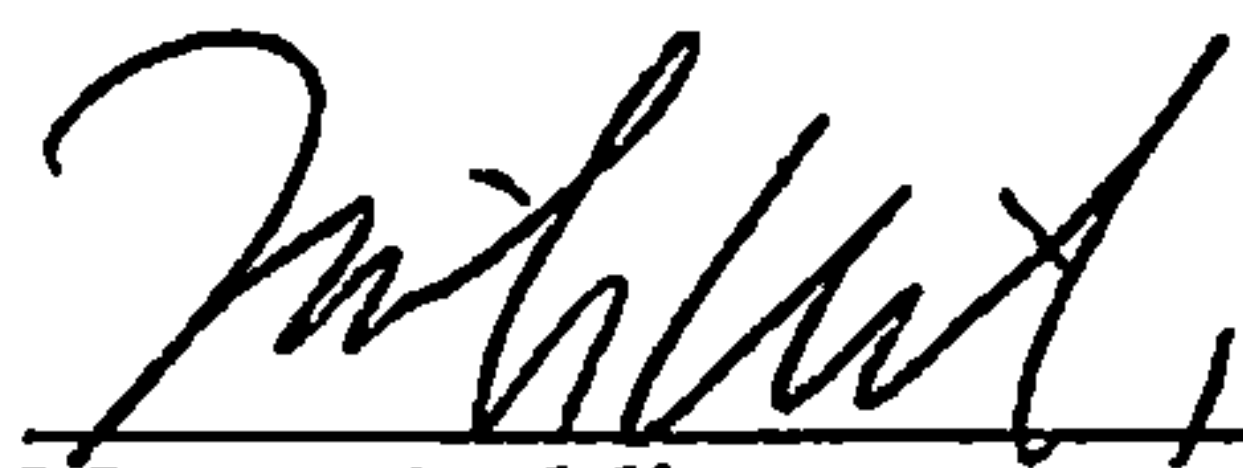
I, **Carolyn Tierney Griesemer**, who am one and the same with **Carolyn Kenna Tierney**, being first duly sworn, depose and say that I am Co-Trustee and an authorized representative of the Kenna Tierney 2000 Irrevocable Trust, a Plaintiff and shareholder in the within action; that I have read the foregoing **Amended 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,
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 10th day of May, 2018.

[SEAL]

**Nick Obrek
Notary Public
State of Florida
My Commission Expires 10/24/2021
Commission No. GG 142511**



Notary Public

My commission expires: 10-24-21.



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E-mail Address: brswiger@jacksonkelly.com
Writer's Fax No.: 304-340-1130
Direct Dial No.: 304-340-1317

January 26, 2018

Barclay DeWet
President of the Board of Directors
The Tierney Corporation

Dear Ms. DeWet:

The undersigned has been retained by Lewis Clark Tierney, III, a current shareholder of The Tierney Corporation. Lewis has held his shares continuously since they were acquired. A copy of the Official Shareholder List, dated April 29, 2016, demonstrating such ownership is enclosed.

I am writing to demand on behalf of Lewis that The Tierney Corporation and Leatherwood Company commence a claim against its executive officers, including former President Ann Tierney Smith, former Secretary Charles Matthew Tierney, and Executive Director Douglas Woloshin, for *inter alia*, self-dealing, conflict of interest, mismanagement and waste of corporate assets, breaches of fiduciary duties, and wrongful withholding of information. While Lewis is unaware of all the facts which give rise to the Companies' claim because evidence supporting such claim is currently in the hands of the corporation and those against whom the claim must be brought, Lewis is aware of the facts summarized below and more fully set forth in the enclosed Complaint, which establishes The Tierney Corporation and Leatherwood Company's claim against those defendants and that the claim should be pursued in the best interest of the shareholders.

Following counsel's investigation of the available record and the records provided to Lewis by the company, the factual record developed to date reveals that defendants did not comply with their legal duties in several respects. A detailed summary of the defendants' mismanagement is set forth in the Complaint and includes fiscal mismanagement and fraudulent legal fees, use of an illegal voting agreement for Board decisions, acts of self-dealing, and wrongful withholding of information from Board members who are not officers, among other misconduct.

These acts, taken as a whole, demonstrate that defendants, in breach of their legal duties, have wasted corporate assets and breached their fiduciary duties, which acts give rise to a viable legal claim on behalf of The Tierney Corporation and Leatherwood Company, and which require

redress. Consequently, Lewis hereby demands that The Tierney Corporation and Leatherwood Company initiate suit against the above-named persons for the causes of action stated herein and seek to recover losses to the corporation in the approximate amount of not less than \$3,000,000.

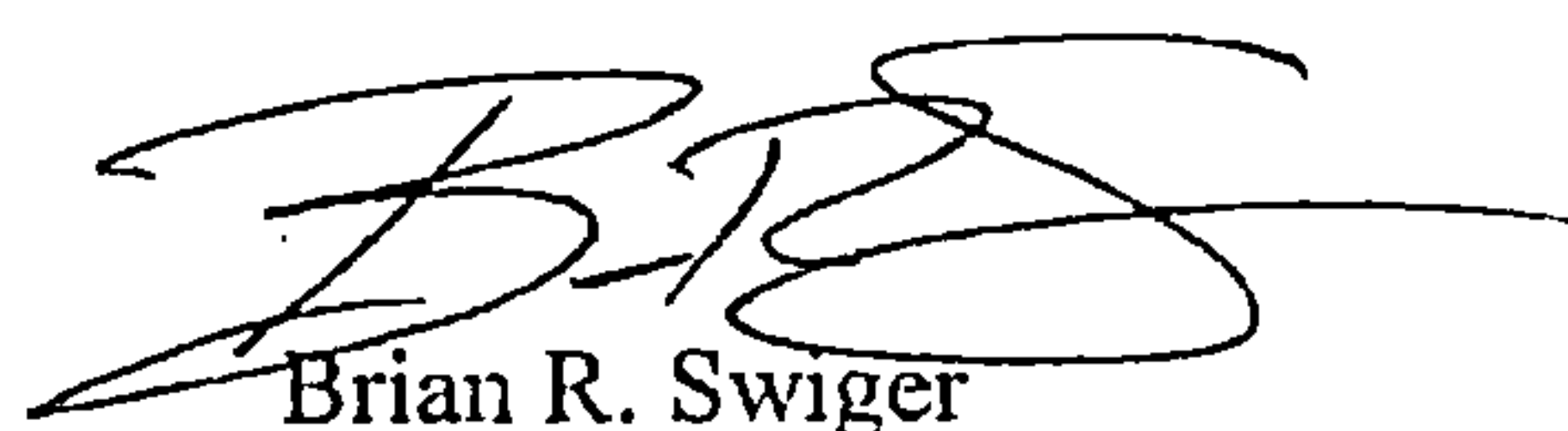
As established above, the magnitude of loss to the Companies and the significant likelihood of its recovery in light of applicable insurance maintained by The Tierney Corporation far outweighs any cost to the Companies of proceeding with this claim.

Please note that Lewis and the Plaintiffs listed in the Complaint brought this shareholder derivative action on behalf of The Tierney Corporation and The Leatherwood Company on March 10, 2017 against the named executive officers. On December 7, 2017, Judge Paul Farrell issued an Order dismissing Plaintiffs' Complaint due to the absence of a pre-suit demand upon the board of directors and the shareholders—thus dismissing the case on a procedural issue. It is important to note that Judge Farrell did not address any of the merits of the case in his Order, instead expressly permitting Plaintiffs to re-file after the demand requirement had been fulfilled. A similar demand letter has been contemporaneously delivered to The Tierney Corporation and Leatherwood Company shareholders requesting that the shareholders instruct the board to initiate suit.

Please also note that on January 17, 2018, Lewis sent an email to Reid Avett, Douglas Woloshin, and Patricia Tierney requesting information pursuant to his rights as a shareholder for the purposes of sending this letter. The requested information included the most recent shareholder lists for both Companies, including names and addresses, as well as a list of the current composition of The Leatherwood Company Board of Directors. Because we have not yet received a response, this letter has been sent to the Board members we are aware of at this time. We will forward this letter to any additional Board members once we receive updated information.

Please inform me when the demand will be presented to the Board and when I will be informed of whether The Tierney Corporation and The Leatherwood Company will proceed with the claim detailed in this letter. I am available at the convenience of you or your counsel should you have any questions regarding this demand.

Very truly yours,



Brian R. Swiger

BRS
Enclosure

cc: The Tierney Corporation Board of Directors
The Leatherwood Company Board of Directors
Bob Allen, Counsel for The Companies



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Direct Dial No.: 304-340-1317

January 26, 2018

To the Shareholders of The Tierney Corporation
and The Leatherwood Company

The undersigned has been retained by Lewis Clark Tierney, III, a current shareholder of The Tierney Corporation. Lewis has held his shares continuously since they were acquired. A copy of the Official Shareholder List, dated April 29, 2016, demonstrating such ownership is enclosed.

I am writing to demand on behalf of Lewis that the shareholders instruct The Tierney Corporation's Board of Directors and The Leatherwood Company's Board of Directors to commence a claim against its executive officers, including former President Ann Tierney Smith, former Secretary Charles Matthew Tierney, and Executive Director Douglas Woloshin, for *inter alia*, self-dealing, conflict of interest, mismanagement and waste of corporate assets, breaches of fiduciary duties, and wrongful withholding of information. While Lewis is unaware of all the facts which give rise to the Companies' claim because evidence supporting such claim is currently in the hands of the corporation and those against whom the claim must be brought, Lewis is aware of the facts summarized below and more fully set forth in the enclosed Complaint, which establishes The Tierney Corporation and Leatherwood Company's claim against those defendants and that the claim should be pursued in the best interests of the shareholders.

Following counsel's investigation of the available record and the records provided to Lewis by the company, the factual record developed to date reveals that defendants did not comply with their legal duties in several respects. A detailed summary of the defendants' mismanagement is set forth in the Complaint and includes fiscal mismanagement, fraudulent legal fees, use of an illegal voting agreement for Board decisions, acts of self-dealing, and wrongful withholding of information from Board members who are not officers, among other misconduct.

These acts, taken as a whole, demonstrate that defendants, in breach of their legal duties, have wasted corporate assets and breached their fiduciary duties, which acts give rise to a viable legal claim on behalf of The Tierney Corporation and Leatherwood Company, and which require redress. Consequently, Lewis hereby demands that the shareholders instruct the Board of Directors to commence and the Companies to initiate suit against the above-named persons for

To the Shareholders of The Tierney Corporation
and The Leatherwood Company
January 26, 2018
Page 2

the causes of action stated herein and seek to recover losses to the Companies in the approximate amount of not less than \$3,000,000. Additionally, Lewis demands that the shareholders vote to remove former President Ann Tierney Smith and Executive Director Douglas Woloshin and elect successors to fill any resulting vacancies pursuant to Article III, Section 4 of the By-laws.

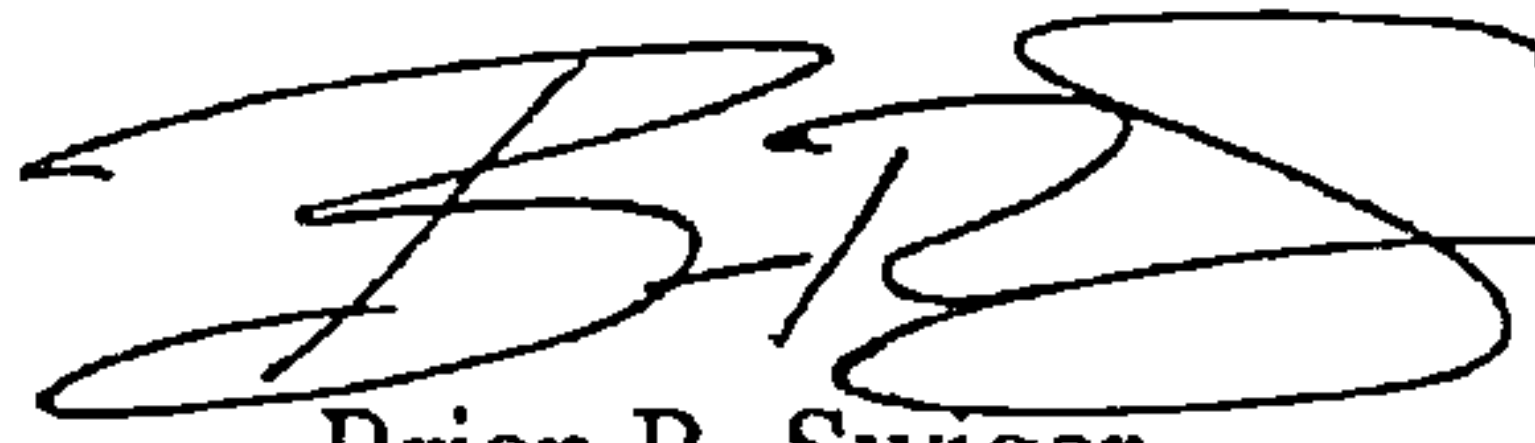
As established above, the magnitude of loss to the Companies and the significant likelihood of its recovery in light of applicable insurance maintained by The Tierney Corporation far outweigh any costs to the Companies of proceeding with this claim.

Please note that Lewis and the Plaintiffs listed in the Complaint brought this shareholder derivative action on behalf of The Tierney Corporation and The Leatherwood Company on March 10, 2017 against the named executive officers. On December 7, 2017, Judge Paul Farrell issued an Order dismissing Plaintiffs' Complaint due to the absence of a pre-suit demand upon the board of directors and the shareholders—thus dismissing the case on a procedural issue. It is important to note that Judge Farrell did not address any of the merits of the case in his Order, instead expressly permitting Plaintiffs to re-file after the demand requirement had been fulfilled. A similar demand letter has been contemporaneously delivered to The Tierney Corporation and Leatherwood Company Board of Directors requesting that the board vote to initiate suit.

Please also note that on January 17, 2018, Lewis sent an email to Reid Avett, Douglas Woloshin, and Patricia Tierney requesting information pursuant to his rights as a shareholder for the purposes of sending this letter. The requested information included the most recent shareholder lists for both Companies, including names and addresses, as well as a list of the current composition of The Leatherwood Company Board of Directors. Because we have not yet received a response, this letter has been sent to the shareholders we are aware of at this time. We will forward this letter to any additional shareholders once we receive updated information.

Please inform me when a special meeting will be called to vote upon the demand and when I will be informed of whether The Tierney Corporation and The Leatherwood Company will proceed with the claim detailed in this letter. I am available at the convenience of you or your counsel should you have any questions regarding this demand.

Very truly yours,



Brian R. Swiger

BRS
Enclosure

cc: The Tierney Corporation Board of Directors
The Leatherwood Company Board of Directors
Bob Allen, Counsel for The Companies

THE TIERNEY CORPORATION

c/o Douglas Woloshin

505 9th Street, N.W., Suite 1000, Washington, D.C. 20004

(202) 776-7831

February 9, 2018

Mr. Lewis Tierney
244 East 86th Street, #24
New York, NY 10028

Lewis –

I was forwarded your January 17, 2018 email to Reid Avett, Doug Woloshin, and Patricia Tierney, and asked to respond on behalf of the group. I apologize for this delayed response; Matthew Tierney suffered a severe heart attack last month which has required his wife's near constant attention and has limited my ability to confer with the executive committee in responding to your request. In any event, attached are the current shareholder lists, dated January 22, 2018. The executive committee is taking your other requests under advisement and will be in touch as appropriate.

I have also received your lawyer's demand letter from January 26, and can assure you that I take seriously my responsibility to guide The Tierney Corporation in a responsible and independent investigation of your complaints. It is my intention to alert the shareholders to this development, to conduct an initial investigation of your lawyers' allegations, and to follow up with you and the shareholders with a more comprehensive assessment of my view on the companies' most appropriate response.

I intend to respond to your demand in short order, but because I am new to this job, and because your wide-ranging allegations are fairly different from your earlier complaint, I hope that you will allow me some time to get my bearings and will contact me before taking any further action. Ultimately, I hope that we can work together to ensure that an appropriate investigation takes place which enables the board and the shareholders to make an informed decision with respect to your complaints.

Sincerely,



Barclay de Wet

EXHIBIT

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THE TIERNEY CORPORATION

505 9th Street, N.W., Suite 1000, Washington, D.C. 20004

March 1, 2018

Dear Shareholder,

It is my pleasure and honor to introduce myself as the new President of The Tierney Corporation (the "Company"). For over 23 years, this company prospered under the steady hand of my mother, Ann Tierney Smith. During her tenure, the company distributed over \$21 million to the shareholders in the form of dividends, always working to do so in the most tax efficient manner. Since 2010, my mother's tenure saw an annualized return in our stock portfolio of over eleven percent, the receipt of over \$4 million in proceeds from our coal, gas, and timber reserves, the maintenance of our 1031 exchange portfolio, and substantial initial steps in the development of a large piece of commercial and residential real estate held by The Leatherwood Company which, if successful, promises to exponentially increase the amount of value that we will return to the shareholders in the coming years. Mom has left big shoes to fill, but I am honored to serve as President and assure you that I am up to the challenge.

Regretfully, the transition to ownership and management by the fourth generation of Colonel Tierney's heirs has not been without obstacles. As you will see in the enclosed reports, director Lewis Tierney filed a lawsuit last year in which he made a number of serious allegations regarding the management of our companies. That lawsuit was dismissed by the Court, but forced the Company to incur over \$350,000 in legal fees. What's more, Lewis recently brought a second lawsuit raising many of the same allegations. You may already have received a separate letter from attorney Brian Swiger, enclosing a copy of this second lawsuit; I want to take this opportunity to correct some misstatements in Mr. Swiger's letter and to assure you that I take seriously my responsibility to guide The Tierney Corporation in a responsible and independent investigation of Lewis' complaints.

First, Mr. Swiger alleges that his first lawsuit was dismissed on a purely procedural basis. This is simply not true. The first lawsuit was dismissed because Lewis and his lawyers illegally filed their lawsuit without first bringing it to the attention of the management and the shareholders. Far from a procedural technicality, the law requires that you and I be given an opportunity to exercise our own business judgment before being dragged into potentially expensive and risky lawsuits. Indeed, Lewis and his lawyers appear to have repeated that process, by filing their second lawsuit again without allowing us an opportunity to weigh in on these important matters. This second lawsuit is similar to the first but it appears Lewis has acknowledged that their minority shareholder oppression claim was not only factually incorrect but was legally deficient; that claim appears to be dropped from the second lawsuit.

Second, Mr. Swiger alleges that the Company refused requests for information regarding its operations. This, too, is false. Both before and during their first lawsuit, Lewis and his lawyers ignored repeated overtures and offers to provide access to our business records. The majority of Lewis' requests could be fulfilled by Lewis reviewing the Company's past annual reports to shareholders – documents which the Company sends to each of us every year.

Third, Mr. Swiger insinuates that there are insurance policies which will protect the companies from the risks of litigation. This is false. Although we maintain directors and officers insurance, our policy does not cover claims for lawsuits – like these – which are filed by directors against other directors. Our By-laws require that the Company indemnify directors and officers against claims such as those raised in this lawsuit, so every dollar that the Company, its directors or its officers incur in litigation is a dollar that cannot be used in the Company's operations or distributed to you.

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Finally, and most importantly, Mr. Swiger contends that his investigation revealed violations of the law. As your President, I will investigate these allegations thoroughly, hopefully in cooperation with Lewis, in order to put the Company and its shareholders in a position to make an informed decision on how to respond to Lewis' demand. If necessary, I will look to outside investigators to help with the process. And I will do so with an eye toward maximizing value for the shareholders, sensitive to the fact that Lewis Tierney's lawsuits have already cost The Tierney Corporation hundreds of hours of directors' and officers' time and more than \$350,000 in legal fees, and that continued litigation threatens to engulf the Company in a legal morass with little end in sight.

As I stated above, I intend to guide the Company in a responsible and independent investigation of Lewis' complaints. Should you have any questions about any of the above, please do not hesitate to contact me either at 859-340-2285 or barclay.tierneycorp@gmail.com.

The Tierney Corporation was founded over 100 years ago in 1912 when William Howard Taft was president. After 18 other U.S. presidents, the Company has an established legacy of maximizing value for its shareholders - a legacy which I am committed to preserve. I look forward to helping ensure that the Company will continue that legacy for the next 100 years.



Ann Barclay de Wet
President

THE TIERNEY CORPORATION

505 9th Street, N.W., Suite 1000, Washington, D.C. 20004

April 20, 2018

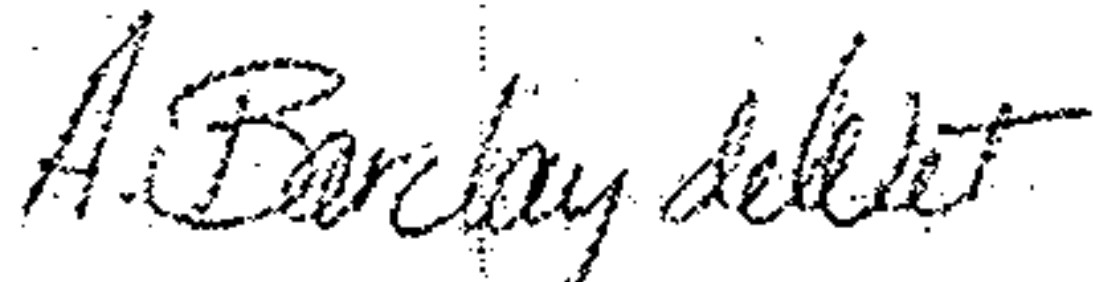
Dear Shareholder,

I am writing to provide you a brief update on the status of my investigation into the allegations raised in the second lawsuit filed earlier this year by Lewis Tierney and Carolyn Kenna Tierney Greisemer.

As you will recall from my correspondence of March 1, 2018, I promised you that as the President of The Tierney Corporation, I would guide the Company in a responsible and independent investigation of allegations in the Complaint. To that end, I have sent out initial requests to relevant parties seeking information related to those allegations. I have enclosed copies of all of those requests for your review. As you will see, this includes a request to Lewis and Carol's attorney seeking clarification and greater detail about their allegations. As these are preliminary requests, they will be followed up with more specific requests in the future.

Please do not hesitate to contact me if you have any questions regarding these requests or if you have any information that you think I should know about the allegations in the Complaint and that you think would benefit my inquiry. You can contact me at (859) 340-2285 or barclay.tierneycorp@gmail.com.

Sincerely,



Barclay de Wet
President
The Tierney Corporation

Enclosures

EXHIBIT

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THE TIERNEY CORPORATION

505 9th Street, N.W., Suite 1000, Washington, D.C. 20004

April 20, 2018

Wanda Z. Rogers
8003 Old Trail Drive
Durham, NC 27712

Re: The Tierney Corporation and The Leatherwood Company

Dear Wanda:

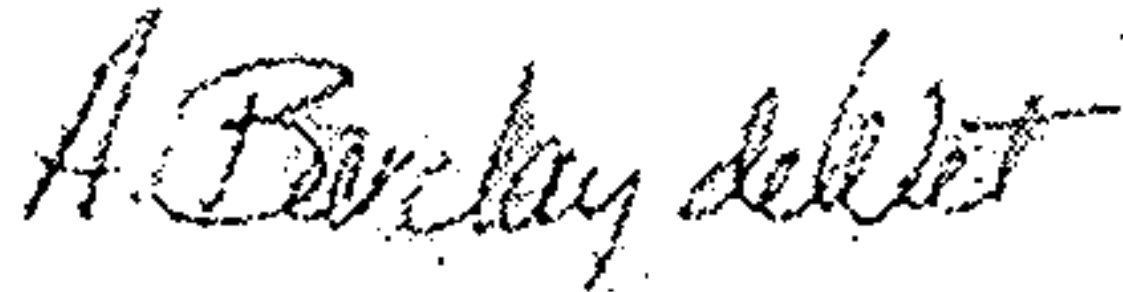
I hope all is well with you. I wish I could be writing you regarding more pleasant matters, but as you are no doubt aware by now, Lewis Tierney and Carol Tierney Griesemer have filed another lawsuit and made a demand on The Tierney Corporation and its shareholders, after their last lawsuit was dismissed. I have enclosed a copy of the demand, dated January 26, 2018, and the new Verified Shareholder Derivative Complaint ("Complaint") for your reference. As the newly-elected President of The Tierney Corporation, it is my intention and duty to guide the company in a responsible and independent investigation of the allegations outlined in their Complaint. To that end, and as Clayton's wife and executor of his estate, I ask that you please provide me with any information you may have that relate to the allegations in their Complaint.

If there is someone that has been assisting you with Clayton's affairs and that you think may be better suited to handle this request, please let me know who that may be and whether I can reach out to them directly. Please note that I have made a similar request to the other parties involved in this matter, including a request to Lewis and Carol's attorney seeking clarification and greater detail regarding their allegations. Accordingly, this is simply a preliminary request and may be followed up with more specific requests in the future.

I take seriously my obligations to the Company and its shareholders and want to ensure that I have a thorough understanding of the facts before taking or recommending any action with respect to the new Complaint. I look forward to your response and hope that we can find a time to discuss the matter in person at the appropriate juncture once I've had an opportunity to review the facts and evidence produced in connection with this inquiry. As I noted, I intend to review all available evidence before reaching any conclusions or making any recommendations to the Board or the shareholders. Thus, I may have follow up questions as information comes in from you and other sources.

If you should have any questions regarding my request, please feel free to write me at the above address or send me an email at barclay.tierneycorp@gmail.com. In advance, thank you for your attention to this matter.

Sincerely,



Barclay de Wet
President
The Tierney Corporation

cc: Shareholders, The Tierney Corporation

EXHIBIT

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