

IN THE CIRCUIT COURT OF MONONGALIA COUNTY, WEST VIRGINIA

HOWARD LISTON,

Plaintiff,  
v.

Civil Action No. 16-C-279  
(Judge Susan B. Tucker)

FRONTIER WEST VIRGINIA, INC.,  
a Connecticut Corporation, and  
T.A. CHAPMAN, INC., a West  
Virginia Corporation,

Defendants.

**T.A. CHAPMAN, INC.'S ANSWER TO PLAINTIFF'S  
SECOND AMENDED COMPLAINT**

Now comes Defendant, T.A. Chapman, Inc., by the undersigned counsel, and for its answer to the Plaintiff's Second Amended Complaint, states as follows:

**FIRST DEFENSE**

This Defendant states that the Plaintiff's Second Amended Complaint fails to state a claim against this Defendant upon which relief can be granted.

**SECOND DEFENSE**

This Defendant denies all facts and allegations contained in the Plaintiff's Second Amended Complaint not hereinafter specifically and affirmatively admitted, and further states as follows:

**PARTIES AND JURISDICTION**

1. Answering Paragraph 1 of Plaintiff's Second Amended Complaint, upon information and belief, this Defendant admits the allegations contained therein.

2. Answering Paragraph 2 of Plaintiff's Second Amended Complaint, this Defendant states that this paragraph contains allegations against parties other than this Defendant and, therefore, does not necessitate a response herein by this Defendant by

way of admission or denial. Nevertheless, to the extent said paragraph may be construed as alleging a claim, cause of action, or any unlawful conduct by or against this Defendant, the same expressly is denied.

3. Answering Paragraph 3 of Plaintiff's Second Amended Complaint, this Defendant admits the allegations contained therein with clarification that this Defendant ceased all business operations in or around 2008.

4. Answering Paragraph 4 of Plaintiff's Second Amended Complaint, this Defendant admits the allegations contained therein.

### **FACTS**

5. Answering Paragraph 5 of Plaintiff's Second Amended Complaint this Defendant re-alleges and incorporates herein all its responses to the allegations contained in paragraphs 1 through 4 as restated verbatim herein.

6. Answering Paragraph 6 of Plaintiff's Second Amended Complaint, this Defendant states that this paragraph contains allegations against parties other than this Defendant and, therefore, does not necessitate a response herein by this Defendant by way of admission or denial. Nevertheless, to the extent said paragraph may be construed as alleging a claim, cause of action, or any unlawful conduct by or against this Defendant, the same expressly is denied.

7. Answering Paragraph 7 of Plaintiff's Second Amended Complaint, this Defendant is without sufficient information upon which to form a belief as to the truth of the allegations asserted and therefore, denies the allegations contained therein and demands strict proof thereof.

8. Answering Paragraph 8 of Plaintiff's Second Amended Complaint, this Defendant is without sufficient information upon which to form a belief as to the truth of the allegations asserted and therefore, denies the allegations contained therein and demands strict proof thereof.

9. Answering Paragraph 9 of Plaintiff's Second Amended Complaint, this Defendant denies the allegations contained therein as to it and demands strict proof thereof.

10. Answering Paragraph 10 of Plaintiff's Second Amended Complaint, this Defendant denies the allegations contained therein and demands strict proof thereof.

11. Answering Paragraph 11 of Plaintiff's Second Amended Complaint, this Defendant denies the allegations contained therein and demands strict proof thereof.

12. Answering Paragraph 12 of Plaintiff's Second Amended Complaint, this Defendant denies the allegations contained therein and demands strict proof thereof.

13. Answering Paragraph 13 of Second Amended Plaintiff's Complaint, this Defendant denies the allegations contained therein as to it and demands strict proof thereof.

14. Answering Paragraph 14 of Plaintiff's Complaint, this Defendant denies the allegations contained therein as to it and demands strict proof thereof.

15. Answering Plaintiff's "Wherefore" clause, this Defendant denies that it owes Plaintiff any sum of money for any reason.

### **THIRD DEFENSE**

To the extent that any of the following affirmative defenses are applicable to Plaintiff's Second Amended Complaint for Damages, this Defendant invokes the

affirmative defenses of contributory negligence, assumption of the risk, acquiescence, unclean hands, laches, accord and satisfaction, statute of limitations, waiver, license, unavoidable accident, Act of God and any other matter constituting an avoidance or affirmative defense under any statute, constitution, common law or rule, including but not limited to those defenses available under Rule 8(c) of the West Virginia Rules of Civil Procedure, which prove applicable.

#### **FOURTH DEFENSE**

Defendant maintains that Plaintiff's Second Amended Complaint is barred by the applicable statute of limitations, the statute of repose or the equitable doctrine of laches.

#### **FIFTH DEFENSE**

Plaintiff's claims fail based upon an appropriate consideration of the rights, duties and interest of the parties and the equity of the relief requested.

#### **SIXTH DEFENSE**

This Defendant states that the injuries and damages about which Plaintiff complains were proximately caused or contributed to by supervening or intervening causes other than an act or omission on the part of this Defendant.

#### **SEVENTH DEFENSE**

This Defendant states that if Plaintiff sustained the injuries and damages about which he complains, all of which are specifically denied, said injuries and damages were proximately caused or substantially contributed to by reason of negligence on the part of Plaintiff herein, or by reason of negligence by other persons, firms, or corporations, and not this Defendant.

### **EIGHTH DEFENSE**

In response to Plaintiff's claims for punitive or exemplary damages, this Defendant invokes its rights under the Due Process Clause and Equal Protection Clause of the Fourteenth Amendment of the United States Constitution and Article III § 5 of the West Virginia Constitution to the extent any award of punitive or exemplary damages violates any of the conditions or protections afforded to it by the federal or state constitutions.

### **NINTH DEFENSE**

This Defendant asserts that the assessment and award of punitive or exemplary damages violates the Fifth Amendment and Eighth Amendment of the United States Constitution as applied to the States through the Fourteenth Amendment of the United States Constitution and West Virginia Constitution because the award potentially constitutes an excessive fine and deprivation of property without the protection of fundamental due process.

### **TENTH DEFENSE**

To the extent that any punitive or exemplary damages are awarded at trial, the imposition of such damages against this Defendant is unconstitutional pursuant to the Excessive Fines Clause of the United States Constitution and the West Virginia Constitution because: a) the punitive or exemplary damages do not bear a reasonable relationship to the harm allegedly caused by its conduct; b) the punitive or exemplary damages are excessive when compared to the reprehensibility of its conduct; and/or c) the punitive or exemplary damages are based on the overall wealth of the Defendant and not on the basis of the financial gain realized from the specific misconduct alleged. Garnes v. Fleming Landfill, Inc., 186 W. Va. 656, 413 S.E.2d 897 (1991); TXO

Production Corp. v. Alliance Resources Corp., 187 W. Va. 457, 419 S.E.2d 870 (1992)  
*aff'd* 509 U.S. 443 (1993).

#### **ELEVENTH DEFENSE**

This Defendant adopts and incorporates the requirements and procedures established by West Virginia Code §55-7-29 as if set forth fully herein.

#### **TWELFTH DEFENSE**

This Defendant states that there is no causal connection between the actions or omissions complained of against this Defendant, and the injuries allegedly sustained by Plaintiff.

#### **THIRTEENTH DEFENSE**

This Defendant, not being fully advised of all the circumstances surrounding the allegations set forth in the Second Amended Complaint, reserve unto itself the affirmative defense that any injuries and damages that incurred to any party, if any, were the result of a superseding and/or intervening negligence or other acts or omissions of other individuals, corporations, or entities, for whose actions this Defendant bears no legal responsibility.

#### **FOURTEENTH DEFENSE**

The action described in the Second Amended Complaint was a result of a cause or causes over which this Defendant had no control.

#### **FIFTEENTH DEFENSE**

This Defendant, not being fully advised of all the circumstances surrounding the allegations set forth in the Second Amended Complaint, reserve unto itself the affirmative defense that the injuries, if any, resulting from the occurrence upon which this Second Amended Complaint is based are the result of a pure accident and none of

the parties were negligent or otherwise liable; therefore, none of the parties can recover from this Defendant.

#### **SIXTEENTH DEFENSE**

This Defendant reserves the right to assert that defense that Plaintiff failed to mitigate his damages, if any.

#### **SEVENTEENTH DEFENSE**

This Defendant, not being fully advised of all the circumstances surrounding the allegations set forth in the Second Amended Complaint, reserve unto itself the affirmative defense that the Plaintiff's negligence and/or the negligence, fault, or liability of some person or persons, firm or firms, other than this Defendant was primary in the happening of the incident described in Plaintiff's Second Amended Complaint.

#### **EIGHTEENTH DEFENSE**

Inasmuch as this Defendant is not advised of all the facts and circumstances surrounding the events referred to in the Second Amended Complaint, this Defendant incorporates herein by reference thereto, any and all defenses asserted by any other defendant in this matter.

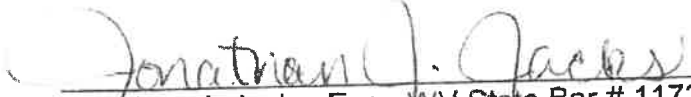
#### **NINETEENTH DEFENSE**

This action and the relief sought by the Plaintiff is or may be barred, in whole or in part, by additional defenses of which this Defendant is not yet aware; accordingly, it reserves the right to supplement this Answer and to raise additional defenses as may appear after discovery of additional information.

WHEREFORE, T.A. Chapman, Inc., respectfully requests that Plaintiff's Second Amended Complaint filed herein against it be dismissed, with prejudice; that the relief prayed for therein be denied; and that it recover of and from the Plaintiff its reasonable costs, including necessary attorney fees expended on its behalf, in the defense of this action.

THIS DEFENDANT DEMANDS A TRIAL BY JURY.

T.A. CHAPMAN, INC.,  
By Counsel,

  
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w/permission  
by Heather  
12/14

  
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**CERTIFICATE OF SERVICE**

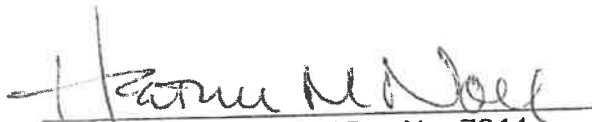
I, Heather M. Noel, co-counsel for Defendant, T.A. Chapman, Inc., a West Virginia Corporation, does hereby certify that, on January 24, 2020, a true copy of the foregoing **T.A. CHAPMAN, INC.'S ANSWER TO PLAINTIFF'S SECOND AMENDED COMPLAINT** was served upon all counsel/parties of record, by U.S. Mail and addressed as follows:

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