

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
FRONTIER WEST VIRGINIA, INC.'S CROSS-CLAIM**

Now comes Defendant, T.A. Chapman, Inc., by the undersigned counsel, and for its answer to the Cross-Claim filed by Frontier West Virginia Inc., states as follows:

FIRST DEFENSE

This Defendant states that the Cross-Claim of Frontier West Virginia Inc., fails to state a claim against it upon which relief can be granted.

SECOND DEFENSE

This Defendant denies all facts and allegations contained in the Cross-Claim of Frontier West Virginia Inc., not hereinafter specifically and affirmatively admitted, and further states as follows:

1. Answering Paragraph 1 of Frontier West Virginia Inc.'s Cross-Claim, this Defendant states that Plaintiff's Second Amended Complaint speaks for itself and this Defendant re-states and re-alleges all affirmative defenses, responses, and allegations set forth in its Answer to Plaintiff's Second Amended Complaint.

2. Answering Paragraph 2 of Frontier West Virginia Inc.'s Cross-Claim, this Defendant states that Plaintiff's Second Amended Complaint speaks for itself and this

Defendant re-states and re-alleges all affirmative defenses, responses, and allegations set forth in its Answer to Plaintiff's Second Amended Complaint.

3. Answering paragraph 3 of Frontier West Virginia Inc.'s Cross-Claim, this Defendant states that said paragraph contains no allegations against this Defendant and therefore, does not necessitate a response 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.

4. Answering paragraph 4 of Frontier West Virginia Inc.'s Cross-Claim, this Defendant denies the allegations contained therein and demands strict proof thereof.

Count I
(Common Law Indemnification)

5. Answering paragraph 5 of Frontier West Virginia Inc.'s Cross-Claim, this Defendant hereby adopts and incorporates by reference its answers and responses to paragraphs 1 through 4 as if fully set forth herein.

6. Answering paragraph 6 of Frontier West Virginia Inc.'s Cross-Claim, this Defendant denies the allegations contained therein and demands strict proof thereof.

7. Answering paragraph 7 of Frontier West Virginia Inc.'s Cross-Claim, this Defendant denies the allegations contained therein and demands strict proof thereof.

Count II
(Common Law Contribution)

8. Answering paragraph 8 of Frontier West Virginia Inc.'s Cross-Claim, this Defendant hereby adopts and incorporates by reference its answers and responses to paragraphs 1 through 7 as if fully set forth herein.

9. Answering paragraph 9 of Frontier West Virginia Inc.'s Cross-Claim, this Defendant denies the allegations contained therein and demands strict proof thereof.

10. Answering paragraph 10 of Frontier West Virginia Inc.'s Cross-Claim, this Defendant denies the allegations contained therein and demands strict proof thereof.

Count III

(Contractual Indemnification/Contribution against T.A. Chapman)

11. Answering paragraph 11 of Frontier West Virginia Inc.'s Cross-Claim, this Defendant hereby adopts and incorporates by reference its answers and responses to paragraphs 1 through 10 as if fully set forth herein.

12. Answering paragraph 12 of Frontier West Virginia Inc.'s Cross-Claim, this Defendant denies the allegations contained therein and demands strict proof thereof.

13. Answering paragraph 13 of Frontier West Virginia Inc.'s Cross-Claim, this Defendant admits the allegations contained therein.

14. Answering paragraph 14 of Frontier West Virginia Inc.'s Cross-Claim, this Defendant states that the July 1, 1988, Agreement speaks for itself.

15. Answering paragraph 15 of Frontier West Virginia Inc.'s Cross-Claim, this Defendant admits the allegations contained therein.

16. Answering paragraph 16 of Frontier West Virginia Inc.'s Cross-Claim, this Defendant states that the 1990 Agreement speaks for itself. This Defendant states further that it denies the remaining allegations contained therein and demands strict proof thereof.

17. Answering paragraph 17 of Frontier West Virginia Inc.'s Cross-Claim, this Defendant denies the allegations contained therein and demands strict proof thereof.

18. Answering Frontier West Virginia Inc.'s Cross-Claim's prayer for relief, this Defendant denies that it owes Frontier West Virginia Inc., any sums of money for any reason.

19. To the extent that Frontier West Virginia Inc.'s Cross-Claim utilizes headings to separate its claims, and, to the extent said headings may be construed as alleging a claim, cause of action, or any unlawful conduct by or against this Defendant, the same expressly is denied.

THIRD DEFENSE

This Defendant states that Co-Defendant Frontier West Virginia Inc., Plaintiff and/or other persons or parties were at fault or negligent, which fault or negligence caused or contributed to cause Plaintiff claimed damages, thereby barring recovery in whole or in part against T.A. Chapman, Inc. as provided by the applicable law of West Virginia.

FOURTH DEFENSE

This Defendant states that it is entitled to a set-off or credit in the amount of any settlement or compromise reached by Plaintiff with any other person for any of Plaintiff's alleged damages, if any.

FIFTH DEFENSE

This Defendant invokes all affirmative defenses applicable herein including, but not limited to, improper venue, lack of personal jurisdiction, lack of subject matter jurisdiction, insufficiency of service of process, accord and satisfaction, estoppel, laches, statute of limitations, statute of repose, waiver, and reserves the right to assert

any other affirmative defenses which are established by the evidence to be applicable in this matter.

WHEREFORE, this Defendant, T.A. Chapman, Inc. prays that Frontier West Virginia Inc.'s Cross-claims filed herein against it be dismissed, with prejudice; that the relief prayed for therein be denied; and that it recover of and from Frontier West Virginia Inc. its reasonable costs, including necessary attorney fees expended in its behalf, in the defense of this action.

T.A. CHAPMAN, INC. DEMANDS A TRIAL BY JURY ON THIS CROSS-CLAIM.

**T.A. CHAPMAN, INC.'S CROSS-CLAIM
AGAINST FRONTIER WEST VIRGINIA INC.**

COMES NOW the Defendant, T.A. Chapman, Inc., by counsel, and so as to preserve this Defendant's right to contribution and/or implied indemnification, asserts the following cross-claim against Frontier West Virginia Inc., and further states as follows:

1. Plaintiff has filed a Second Amended Complaint making various allegations against Defendants, including T.A. Chapman, Inc., in connection with this matter, all of which this Defendant denies.

2. In the event that T.A. Chapman, Inc. is found liable to the Plaintiff, which liability is specifically denied, then in such event the liability of T.A. Chapman, Inc. is passive and secondary to the liability of Frontier West Virginia Inc., and/or other parties, whose liability was active and/or primary and, as a result thereof, T.A. Chapman, Inc. is entitled to indemnification by Frontier West Virginia Inc., for all sums, if any, which may

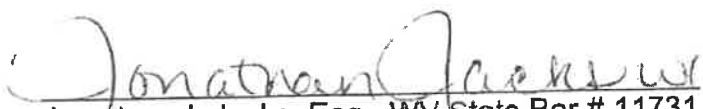
be adjudged against T.A. Chapman, Inc. in favor of the Plaintiff, including, without limitation, costs, expenses and attorney's fees.

3. In the alternative, if it is determined that T.A. Chapman, Inc. participated in any conduct which would render it liable to the Plaintiff, which participation and conduct T.A. Chapman, Inc. specifically denies, then in such event the liability of T.A. Chapman, Inc. would be such as to entitle T.A. Chapman, Inc. to contribution from Frontier West Virginia Inc., and/or other parties towards any sums that may be adjudged against T.A. Chapman, Inc. in favor of the Plaintiff, including, without limitation, costs, expenses and attorney's fees.

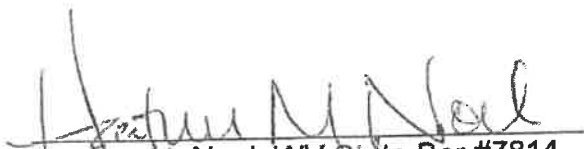
WHEREFORE, T.A. Chapman, Inc., respectfully prays and demands judgment in its favor against Frontier West Virginia Inc., for any and all such sums which may be adjudged against T.A. Chapman, Inc., including without limitation, costs, expenses and attorney's fees.

T.A. CHAPMAN, INC. DEMANDS A TRIAL BY JURY UPON ITS CROSS-CLAIM.

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


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Defendants.

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 FRONTIER WEST VIRGINIA, INC.'S CROSS-CLAIM** was served upon all counsel/parties of record, by U.S. Mail and addressed as follows:

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CERTIFICATE OF SERVICE

I, Heather M. Noel, counsel for Defendant, T.A. Chapman, Inc., do hereby certify that on January 28, 2020, I served a true and correct copy of the foregoing “*Defendants’ Joint Motion to Refer Case to the Business Court Division*,” with attachments, upon all counsel/parties of record, by either hand-delivery or depositing the same in the regular United States mail, postage prepaid, sealed in an envelope, and addressed as follows:

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