

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

JEANETTE WHITE, Administratrix of
the Estate of William Gregory White,

Plaintiff,

v.

Civil Action No.: 20-C-626
(Circuit Court of Kanawha County, West Virginia)

WHITE BROTHERS CONSULTING, LLC,
a West Virginia limited liability company,
and TIMOTHY T. WHITE, individually,

Defendants.

TO: THE HONORABLE CHIEF JUSTICE EVAN H. JENKINS

DEFENDANTS' MOTION TO REFER CASE TO BUSINESS COURT DIVISION

Pursuant to Rule 29.06 of the West Virginia Trial Court Rules, Defendants White Brothers Consulting, LLC (hereinafter sometimes referred to as "WBC"), and Timothy T. White (hereinafter collectively referred to as "the White Defendants"), by counsel, respectfully request that the above-styled civil action be referred to the Business Court Division. In support of their Motion to Refer, the White Defendants state as follows:

NATURE OF CASE

1. On July 28, 2020, Plaintiff files a complaint (the "Complaint") in the Circuit Court of Kanawha County, West Virginia, seeking both the fair market value of Greg White's distributional interest in WBC and all of the life insurance proceeds from the key-man life insurance policy on the life of Greg White.

2. Plaintiff, Jeanette White, is the surviving spouse and Administratrix of the Estate of her late husband William Gregory White ("Greg White"). Complaint at ¶ 1. Greg White died on December 16, 2018. Complaint at ¶ 8. At the time of his death, Greg White was a member

of Defendant White Brothers Consulting, LLC, along with his brother and Defendant Timothy T. White and Jeffery Lee Snyder. WBC was formed effective December 1, 2011 and has operated continuously thereafter. Complaint at ¶ 11. In 2019, WBC bought out the membership interest of Jeffrey Lee Snyder. Complaint at ¶ 9. At present, Tim White is the only member of WBC. Additionally, in 2015 and 2016, WBC purchased “key-man” life insurance policies in the amount of \$1,300,000.00 on the lives of Greg White and Tim White. The purpose of the coverage was to fund a buyout of the distributional interest of the members of WBC upon the death of a member. Complaint at ¶ 19.

3. After Greg White’s death, the parties could not agree on the fair value of Greg White’s distributional interest in WBC and Plaintiff filed the instant lawsuit.

4. On August 31, 2020, the White Defendants filed an answer to the Complaint and denied the assertion throughout that WBC was really a partnership and not a limited liability company. The White Defendants do not dispute that Plaintiff has a right to have Greg White’s distributional interest in WBC purchased for its fair value pursuant to the West Virginia’s Uniform Limited Liability Company Act. The White Defendants believe they have made Plaintiff an offer to purchase Greg White’s distributional interest in WBC for its fair value. However, the White Defendants do dispute and deny that Plaintiff is entitled to all the life insurance proceeds from the key-man life insurance policy on the life of Greg White.

5. The parties’ filings illustrate the need for referral to the Business Court Division. The above-styled civil action requires specialized treatment due to the inherent specialized issues associated with complex business valuations pursuant to West Virginia Code §§31B-7-701 and 702. Because the principal claims in this matter fall within the jurisdiction of the Business Court Division, referral is proper.

LEGAL STANDARD

6. West Virginia Code §51-2-15 and Rule 29 of the West Virginia Trial Court Rules provide that civil actions which constitute “Business Litigation” are eligible for transfer to the West Virginia Business Court Division.

7. “Business Litigation” is defined by West Virginia Trial Court Rule 29 as a civil action in which:

(1) the principal claim or claims involve matters of significance to the transactions, operations, or governance between business entities; and

(2) the dispute presents commercial and/or technology issues in which specialized treatment is likely to improve the expectation of a fair and reasonable resolution of the controversy because of the need for specialized knowledge or expertise in the subject matter or familiarity with some specific law or legal principles that may be applicable; and

(3) the principal claim or claims do not involve [consumer litigation].

W.Va. Tr. Ct. R. 29.04(a).

8. Under West Virginia Trial Court Rule 29, any party or judge may seek a referral of “Business Litigation” to the Business Court Division by filing a Motion to Refer with the Clerk of this Court, after the time to answer the complaint has expired. *See* W.Va. Tr. Ct. R. 29.06(a)(1). “A copy of the complaint, answer, docket sheet and any other documents that support referral under Trial Court Rule 29.04(a) shall be attached to the motion.” *Id.*

9. As required by West Virginia Trial Court Rule 29.06(a), a true and accurate copy of the Complaint is attached hereto as **Exhibit A**. Second, a true and accurate copy of the White Defendants’ Answer is attached hereto as **Exhibit B**. Third, a true and accurate copy of the docket sheet is attached hereto as **Exhibit C**. Additionally, a true and accurate copy of Plaintiff’s

Emergency Motion for Judicial Supervision of Partnership Winding Up and Assets and Appointment of Receiver, Defendants' Response in Opposition to Plaintiff's Emergency Motion for Judicial Supervision of Partnership Winding Up and Assets and Appointment of Receiver, and the Circuit Court's Order on the same are attached hereto as **Exhibit D**, which illustrate some of the complex issues in this litigation and further support referral.

ANALYSIS

10. Civil actions that satisfy the definition of "Business Litigation" may be properly transferred to the Business Court Division. "Business Litigation," as defined by West Virginia Trial Court Rule 29.04, encompasses case where the principal claims involve matters of significance to the transactions, operations, or governance between business entities.

11. Here, this civil action involves the determination of rights, duties, and obligations of the parties pursuant to the West Virginia's Uniform Limited Liability Company Act. Additionally, there is a dispute between the parties as to whether WBC existed as a limited liability company and governed by the provisions of West Virginia's Uniform Limited Liability Company Act or a partnership. The relief sought quite clearly involves matters which require specialized knowledge in determination and valuation of distributional business interest.

12. Furthermore, "Business Litigation" is defined as a dispute that "presents commercial and/or technology issues in which specialized treatment is likely to improve the expectation of a fair and reasonable resolution of the controversy because of the need for specialized knowledge or expertise in the subject matter or familiarity with some specific law or legal principals that may be applicable." W.Va. Tr. Ct. R. 29.04(a)(2). In the present litigation will require specialized knowledge and/or expertise related to application of the West Virginia's Uniform Limited Liability Company Act and complex business valuation expertise. As a result,

this case falls within the subject matter defined as “Business Litigation” contemplated by W.Va. Tr. Ct. R. 29.

13. Moreover, the principal claims asserted in this litigation do not involved any of the categories of claims expressly excluded from the definition of “Business Litigation” provided by West Virginia Trial Court Rule 29.04(a)(3). The Business Court Division’s jurisdiction does not include case where

the principal claim or claims do not involve: consumer litigation, such as products liability, personal injury, wrongful death, consumer class actions, actions arising under the West Virginia Consumer Credit Act and consumer insurance coverage disputes; non-commercial insurance disputes relating to bad faith, or disputes in which an individual may be covered under a commercial policy, but is involved in the dispute in an individual capacity; employee suits; consumer environmental actions; consumer malpractice actions; consumer and residential real estate, such as landlord-tenant disputes; domestic relations; criminal cases; eminent domain or condemnation; and administrative disputes with governmental organizations and regulatory agencies, provided, however, that complex tax appeals are eligible to be referred to the Business Court Division.

W.Va. Tr. Ct. R. 29.04(a)(3). The claims at issue in this litigation do not related to those matters specifically excluded from the Business Court Division’s jurisdiction by West Virginia Trial Court Rule 29.04(a)(3).

14. Therefore, in light of the need for specialized treatment due to complex legal issues, the principal claims in this case fall within the jurisdiction of the Business Court Division.

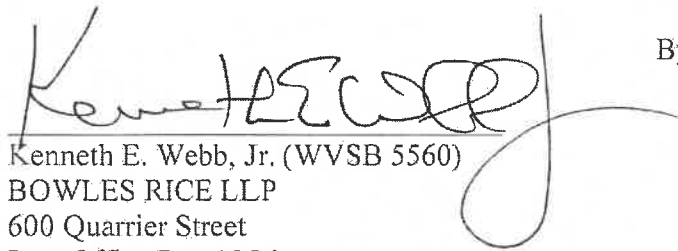
15. As required by West Virginia Trial Court Rule 29.06(a)(1), the White Defendants state that they are unaware of any pending or future actions related to the parties’ controversy.

CONCLUSION

For the reasons set forth herein, Defendants White Brothers Consulting, LLC, and Timothy T. White, pursuant to West Virginia Trial Court Rule 29.06 respectfully request that the Chief Justice of the West Virginia Supreme Court of Appeals this Court grant their Motion and refer this case to the Business Court Division.

WHITE BROTHERS CONSULTING, LLC,
and TIMOTHY T. WHITE,

By Counsel,

A handwritten signature in black ink, appearing to read "Kenneth E. Webb, Jr.", with a large, stylized flourish extending from the end of the signature.

Kenneth E. Webb, Jr. (WVSB 5560)
BOWLES RICE LLP
600 Quarrier Street
Post Office Box 1386
Charleston, West Virginia 25325
(304) 347-1100

Office of the Secretary of State
Building 1 Suite 157-K
1900 Kanawha Blvd E.
Charleston, WV 25305

USPS CERTIFIED MAIL™



9214 8901 1251 3410 0002 7483 61

WHITE BROTHERS CONSULTING LLC
TIMOTHY THOMAS WHITE
447 CALL ROAD, SUITE 216
CHARLESTON, WV 25312



Mac Warner
Secretary of State
State of West Virginia
Phone: 304-558-6000
888-767-8883
Visit us online:
www.wvsos.com

Control Number: 261475

Defendant: WHITE BROTHERS CONSULTING
LLC
447 CALL ROAD, SUITE 216
CHARLESTON, WV 25312 US

Agent: TIMOTHY THOMAS WHITE

County: Kanawha

Civil Action: 20-C-626

Certified Number: 92148901125134100002748361

Service Date: 8/3/2020

I am enclosing:

1 summons and complaint

which was served on the Secretary at the State Capitol as your statutory attorney-in-fact. According to law, I have accepted service of process in your name and on your behalf.

Please note that this office has no connection whatsoever with the enclosed documents other than to accept service of process in your name and on your behalf as your attorney-in-fact. Please address any questions about this document directly to the court or the plaintiff's attorney, shown in the enclosed paper, not to the Secretary of State's office.

Sincerely,

Mac Warner

Mac Warner
Secretary of State



IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

JEANETTE WHITE, Administratrix of
the Estate of William Gregory White,

Plaintiff,

v.

Civil Action No. 20-C-626

Judge Salango

WHITE BROTHERS CONSULTING, LLC,
a West Virginia limited liability company,
and TIMOTHY T. WHITE, individually,

Defendants.

SUMMONS

Service: West Virginia Secretary of State

To the above-named Defendant: **WHITE BROTHERS CONSULTING, LLC**
447 Call Road, Suite 216
Charleston, WV 25312-6026

IN THE NAME OF THE STATE OF WEST VIRGINIA, you are hereby summoned and required to serve upon Edward P. Tiffey, Plaintiff's attorney, whose address is P. O. Box 3785, Charleston, WV 25337-3785, an answer, including any related counterclaim you may have, to the **Complaint** filed against you in the above styled action, a true copy of which is herewith delivered to you. You are required to serve your answer within **30 days** after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the **Complaint** and you will be thereafter barred from asserting in another action any claim you may have which must be asserted by counterclaim in the above styled civil action.

DATED: 7/28/20

Cathy S. Gatson, Clerk

Clerk of Court

By Cheryl

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

JEANETTE WHITE, Administratrix of
the Estate of William Gregory White,

Plaintiff,

v.

WHITE BROTHERS CONSULTING, LLC,
a West Virginia limited liability company,
and TIMOTHY T. WHITE, individually,

Defendants.

Civil Action No. 20-C-626
Judge Salango

FILED

2020 JUL 28 AM 11:46

KANAWHA COUNTY CIRCUIT COURT

COMPLAINT

NOW COMES Plaintiff Jeanette White, Administratrix of the Estate of William Gregory White, and for her Complaint against the Defendants, avers as follows:

1. Plaintiff Jeanette White is the surviving spouse of William Gregory White ("Decedent") and serves as the Administratrix of his Estate, per her Appointment by the Jackson County Commission attached hereto.
2. Defendant White Brothers Consulting, LLC ("WBC") is a registered West Virginia limited liability company with its principal office located in Sissonville, Kanawha County, West Virginia.
3. Defendant Timothy T. White ("Tim White") is a citizen and resident of Belle, Kanawha County, West Virginia.
4. WBC operated as a partnership as a matter of fact and law for several years through calendar year 2018. It was a limited liability company in name only.

5. The Decedent and Tim White were natural brothers and business partners in WBC, along with a third partner, during calendar year 2018. Each of the partners held a one-third (1/3) ownership interest in WBC.

6. This Court enjoys personal jurisdiction and subject matter jurisdiction over this matter.

7. Venue is proper in this Court as the defendants are residents of Kanawha County. In addition, WBC operated as a partnership in Kanawha County and derived substantial revenues in Kanawha County at all relevant times.

8. The Decedent died on or about December 16, 2018. At the time of death, he held a one-third (1/3) partnership interest in WBC. Further, his family stood to benefit from a life insurance policy taken out on his life in which the life insurance proceeds of \$1.3 million were intended to buy out his partnership interest following his death and take care of his family.

9. Sometime during the first half of calendar year 2019, the Defendants bought out the partnership interest of the third partner.

10. Plaintiff files this civil action to recover the fair value of the Decedent's partnership interest in WBC, as well as the pertinent life insurance proceeds.

11. WBC has operated successfully and without interruption since the Decedent's passing. Indeed, it is an on-going for profit business with established customers and revenues. Tim White manages the day-to-day operations along with the finances and bookkeeping. WBC has not dissolved.

COUNT I

DETERMINATION OF BUYOUT PRICE OF DECEDENT'S PARTNERSHIP INTEREST

12. Plaintiff hereby incorporates Paragraphs 1 through 11 as if fully set forth herein.

13. Defendants' March 31, 2020 offer to the Plaintiff to buy out the Decedent's partnership interest ("Offer") is grossly deficient.

14. Defendants' Offer does not provide fair value to Plaintiff for Decedent's partnership interest.

15. Plaintiff, as Administratrix of Decedent's estate, invokes West Virginia Code §47B-4-5 and §47B-7-1 for a determination of the fair value buyout price of the Decedent's partnership interest.

16. Plaintiff seeks recovery of the fair value of the Decedent's partnership interest, plus interest at the lawful rate since the Decedent's date of death, plus reasonable attorney's fees and fees and expenses of professionals and expert witnesses.

COUNT II

CONVERSION OF LIFE INSURANCE PROCEEDS

17. Plaintiff hereby incorporates Paragraphs 1 through 16 as if fully set forth herein.

18. Defendants purchased \$1.3 million in life insurance on the life of the Decedent prior to his death.

19. Defendants purchased the life insurance for the purpose of buying out the Decedent's partnership interest after his death.

20. Defendants' buyout of the Decedent's partnership interest after his death with \$1.3 million in life insurance proceeds was intended to provide for and benefit the Plaintiff and the rest of the Decedent's family.

21. Defendants also purchased life insurance on the life of Tim White for the same purposes.

22. Defendants received \$1.3 million in life insurance proceeds following the death of the Decedent.

23. Defendants did not remit the \$1.3 million in life insurance proceeds to the Plaintiff as intended and expected to buy out the Decedent's partnership interest.

24. Defendants held back the \$1.3 million in life insurance proceeds from the Plaintiff, even after assuring the Plaintiff that all of the life insurance proceeds were for her and the rest of the Decedent's family.

25. Defendants converted the \$1.3 million in life insurance proceeds for their own purposes, contrary to their intended use.

26. Defendants converted and used the \$1.3 million in life insurance proceeds to enhance the cash position of WBC, pursue and achieve a buyout of the third partner, allow the proceeds to be used by Tim White, and other willful conversions and uses to be discovered.

27. Plaintiff is entitled to the return of the \$1.3 million in life insurance proceeds plus interest, as the Administratrix of the Decedent's estate.

28. Plaintiff seeks recovery of the \$1.3 million in life insurance proceeds with interest, plus attorney's fees, costs, and professional expenses incurred in pursuit of the converted life insurance proceeds.

29. Plaintiff demands a jury trial on all allegations and claims averred herein.

WHEREFORE, Plaintiff Jeanette White, Administratrix of the Estate of William Gregory White, respectfully requests entry of judgment against the Defendants, jointly and severally, for the fair value of the Decedent's partnership interest and the aforementioned life insurance proceeds, plus pre-judgment interest, attorney fees, costs and professional expenses, and all other relief this Court deems just and proper.

JEANETTE WHITE, Administratrix of the
Estate of William Gregory White

By Counsel



Edward P. Tiffey (WVSB #6042)
TIFFEY LAW PRACTICE, PLLC
205 Capitol Street, 4th Floor
P.O. Box 3785
Charleston, WV 25337-3785
(304) 344-3200
(304) 344-9919 (fax)

United States of America

State of West Virginia



County of Jackson, ss:

Letter of Administration

Estate of WILLIAM GREGORY WHITE

I, Angela Casto, Jackson County Fiduciary Supervisor, in the State of West Virginia, do hereby certify that JEANETTE WHITE was on the 12th day of February, 2019, appointed by the Fiduciary Supervisor of the Jackson County Commission as administratrix(s) of the Estate of WILLIAM GREGORY WHITE, duly qualified as such by taking oath prescribed by law, and by giving approved bond in the sum of \$0.00, as required by law.

NOW THEREFORE, be it known that said appointment is now in full force and effect and that full faith and credit are due and should be given to all the acts of the said JEANETTE WHITE as such administratrix(s) of the Estate of WILLIAM GREGORY WHITE, as well in all jurisdictions, as elsewhere.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Jackson County Commission at my office in said County on the 12th day of February, 2019.

Angela Casto
Angela Casto
Jackson County Fiduciary Supervisor

By Angie Casto
Angie Casto
Fiduciary Supervisor

Bowles Rice

Attorneys at Law

600 Quarrier Street, Charleston, WV 25301
P.O. Box 1365, Charleston, WV 25325-1365
204.347.1100

Kenneth E. Webb, Jr.
kwebb@bowlesrice.com
T 304.347.1737
F 304.347.1756

101 South Queen Street
Martinsburg, WV 25401

125 Granville Square, Suite 400
Morgantown, WV 26501

501 Avery Street
Parkersburg, WV 26101

1217 Chapline Street
Wheeling, WV 26003

Southpointe Town Center
1200 Main Street, Suite 200
Canonsburg, PA 15317

460 West Joubert Early Drive, Suite 150
Winchester, VA 22601

bowlesrice.com

August 31, 2020

Cathy S. Gatson, Circuit Clerk
Circuit Court of Kanawha County
Kanawha County Judicial Annex
111 Court Street
Charleston, West Virginia 25301

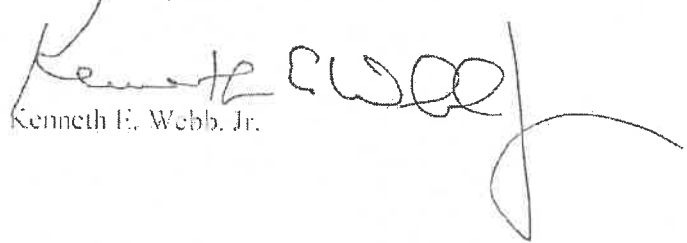
Re: Jeanette White v. White Brothers Consulting, LLC, et al.
Civil Action No. 20-C-626

Dear Ms. Gatson:

Please find enclosed for filing in the above-referenced matter a *Civil Cover Sheet* and *Defendants' Answer to Complaint*.

Thank you for your assistance in this matter.

Respectfully yours,


Kenneth E. Webb, Jr.

/s/

Enclosures

cc: (w/enclosures)

Edward P. Tiffey, Esquire



CIVIL CASE INFORMATION STATEMENT
In the Circuit Court of Kanawha County, West Virginia

PLAINTIFF: JEANETTE WHITE

v.

CIVIL ACTION NO.: 20-C-626

DEFENDANTS: WHITE BROTHERS CONSULTING, LLC, and TIMOTHY T. WHITE

II. TYPE OF CASE:

TORTS	OTHER	CIVIL
Asbestos	Adoption	Appeal from Magistrate
Professional Malpractice	Contract/Collection	Petition for Modification of Magistrate Sentence
Personal Injury	Real Property	Miscellaneous
Product Liability	Mental Health	Other:
Other Tort	Appeal of Administrative Agency	

III. JURY DEMAND: YES

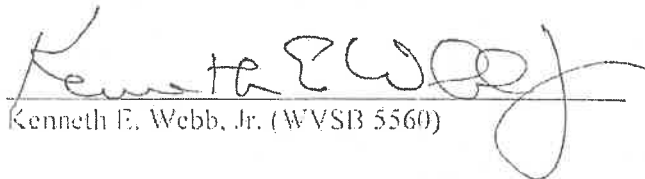
CASE WILL BE READY FOR TRIAL BY (Month/Year): 10 - 21

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

Wheelchair accessible hearing room and other facilities
Interpreter of another auxiliary aid for the hearing impaired
Reader or other auxiliary aid for the visually impaired
Spokesperson or other auxiliary aid for the speech impaired
Other: _____

Attorney Name: Kenneth E. Webb, Jr. (WVSB 5560)
Representing: Defendants
Firm: Bowles Rice LLP
Address: 600 Quarrier Street, Charleston, West Virginia 25301

Date: August 31, 2020


Kenneth E. Webb, Jr. (WVSB 5560)

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

JEANETTE WHITE, Administratrix of
the Estate of William Gregory White,

Plaintiff,

v.

Civil Action No. 20-C-626
Judge: Salango

WHITE BROTHERS CONSULTING, LLC,
a West Virginia limited liability company,
and TIMOTHY T. WHITE, individually,

Defendants.

Defendants' Answer to Complaint

Defendants, White Brothers Consulting, LLC and Timothy T. White, by counsel,
respectfully respond to Plaintiff's Complaint filed in the above-referenced action as follows:

First Defense

Plaintiff's Complaint fails to state a claim upon which relief can be granted pursuant
to Rule 12(b)(6) of the West Virginia Rules of Civil Procedure.

Second Defense

In response to the specific averments and allegations in Plaintiff's Complaint, the
Defendants states as follows:

1. The Defendants admit the allegations contained in paragraph 1 of Plaintiff's
Complaint.
2. The Defendants admit the allegations contained in paragraph 2 of Plaintiff's
Complaint.
3. The Defendants admit the allegations contained in paragraph 3 of Plaintiff's
Complaint.

4. The Defendants deny the allegations contained in paragraph 4 of Plaintiff's Complaint and demand strict proof thereof.

5. The Defendants deny the allegations contained in paragraph 5 of Plaintiff's Complaint and demand strict proof thereof.

6. Paragraph 6 of Plaintiff's Complaint contains legal conclusions to which no responsive pleading is required. To the extent a response is required, the Defendants deny the allegations contained in paragraph 6 of Plaintiff's Complaint and demand strict proof thereof.

7. Paragraph 7 of Plaintiff's Complaint contains legal conclusions to which no responsive pleading is required. To the extent a response is required, the Defendants deny the allegations contained in paragraph 7 of Plaintiff's Complaint and demand strict proof thereof.

8. The Defendants admit that the Decedent died on or about December 16, 2018. The Defendants deny the remaining allegations contained in paragraph 8 of Plaintiff's Complaint and demand strict proof thereof.

9. The Defendants deny the allegations contained in paragraph 9 of Plaintiff's Complaint and demand strict proof thereof.

10. The Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 10 of Plaintiff's Complaint and demand strict proof thereof.

11. The Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegation contained in paragraph 11 of Plaintiff's Complaint that WBC has operated "successfully" and demand strict proof thereof. The Defendants admit the remaining allegations contained in paragraph 11 of Plaintiff's Complaint.

12. In response to paragraph 12 of Plaintiff's Complaint, the Defendants incorporate by reference their responses to paragraphs 1 through 11 of Plaintiff Complaint as if fully set forth herein.

13. The Defendants deny the allegations contained in paragraph 13 of Plaintiff's Complaint and demand strict proof thereof.

14. The Defendants deny the allegations contained in paragraph 14 of Plaintiff's Complaint and demand strict proof thereof.

15. Paragraph 15 of Plaintiff's Complaint contains legal conclusions to which no responsive pleading is required. To the extent a response is required, the Defendants deny the allegations contained in paragraph 15 of Plaintiff's Complaint and demand strict proof thereof.

16. The Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 16 of Plaintiff's Complaint and demand strict proof thereof.

17. In response to paragraph 17 of Plaintiff's Complaint, the Defendants incorporate by reference their responses to paragraphs 1 through 16 of Plaintiff Complaint as if fully set forth herein.

18. In response to paragraph 18 of Plaintiff's Complaint, the Defendants state that the life insurance policy referenced in paragraph 18 speaks for itself.

19. The Defendants deny the allegations contained in paragraph 19 of Plaintiff's Complaint and demand strict proof thereof.

20. The Defendants deny the allegations contained in paragraph 20 of Plaintiff's Complaint and demand strict proof thereof.

21. The Defendants deny the allegations contained in paragraph 21 of Plaintiff's Complaint and demand strict proof thereof.

22. The Defendants deny the allegations contained in paragraph 22 of Plaintiff's Complaint and demand strict proof thereof.

23. The Defendants deny the allegations contained in paragraph 23 of Plaintiff's Complaint and demand strict proof thereof.

24. The Defendants deny the allegations contained in paragraph 24 of Plaintiff's Complaint and demand strict proof thereof.

25. The Defendants deny the allegations contained in paragraph 25 of Plaintiff's Complaint and demand strict proof thereof.

26. The Defendants deny the allegations contained in paragraph 26 of Plaintiff's Complaint and demand strict proof thereof.

27. The Defendants deny the allegations contained in paragraph 27 of Plaintiff's Complaint and demand strict proof thereof.

28. The Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 28 of Plaintiff's Complaint and demand strict proof thereof.

29. The Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 29 of Plaintiff's Complaint and demand strict proof thereof.

Third Defense

White Brothers LLC is the owner and beneficiary of the life insurance policy on the life of the Decedent such that no life insurance proceeds were converted by the Defendants as a matter of law.

Fourth Defense

White Brothers LLC offered to purchase the distributional interest of the Decedent for its fair value determined as of the date of the Decedent's dissociation.

Fifth Defense

White Brothers LLC's offer to purchase the distributional interest of the Decedent for its fair value determined as of the date of the Decedent's dissociation was made in good faith and was not made arbitrarily or vexatiously.

Sixth Defense

Plaintiff's claims against the Defendants are barred by the applicable statute of limitations.

Seventh Defense

Plaintiff's claims against the Defendants are barred by the doctrines of waiver, laches and unclean hands.

Eighth Defense

The Defendants reserve those affirmative defenses set forth in the West Virginia Rules of Civil Procedure.

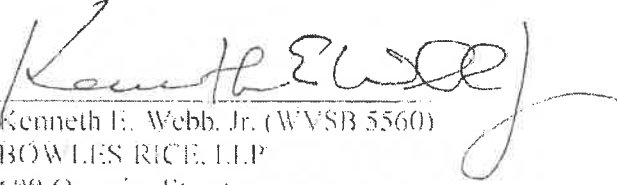
Ninth Defense

The Defendants reserve the right to assert such additional affirmative defenses and matters constituting an avoidance based upon facts that become known in discovery.

WHEREFORE, Defendants, White Brothers Consulting, LLC and Timothy T. White, hereby demand that the claims filed against them be dismissed, with prejudice, and that they be awarded any such other and further relief as the Court deems appropriate including their reasonable costs and attorneys' fees.

WHITE BROTHERS CONSULTING, LLC,
and TIMOTHY T. WHITE,

By Counsel,



Kenneth E. Webb, Jr. (WVSB 5560)
BOWLES RICE, LLP
600 Quarrier Street
Post Office Box 1386
Charleston, West Virginia 25325-1386
(304) 347-1100

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

JEANETTE WHITE, Administratrix of
the Estate of William Gregory White,

Plaintiff,

v.

Civil Action No. 20-C-626

Judge: Salango

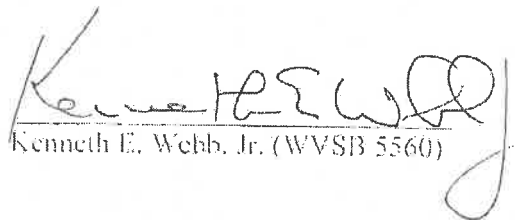
WHITE BROTHERS CONSULTING, LLC,
a West Virginia limited liability company,
and TIMOTHY T. WHITE, individually,

Defendants.

Certificate of Service

I, Kenneth E. Webb, Jr., counsel for Defendants, White Brothers Consulting, LLC,
and Timothy T. White, hereby certify that on the 31st day of August, 2020, I served a true and
exact copy of the foregoing *Defendants' Answer to Complaint* via U.S. Mail upon counsel of
record as indicated:

Edward P. Tiffey, Esquire
Tiffey Law Practice, PLLC
205 Capitol Street, 4th Floor
Post Office Box 3785
Charleston, West Virginia 25337-3785
Counsel for Plaintiff


Kenneth E. Webb, Jr. (WVSB 5560)



(/DEFAULT.ASPX)

Civil
Case Information
Thirteenth Judicial Circuit of Kanawha County

20-C-626
Judge: TERA SALANGO
JEANETTE WHITE, ADMINISTRATRIX OF THE ES VS. WHITE BROTHERS CONSULTING, LLC

Plaintiff(s).

Plaintiff Attorney(s).

ESTATE OF WILLIAM GREGORY WHIT
WHITE, JEANETTE

EDWARD P. TIFFEY

Defendant(s).

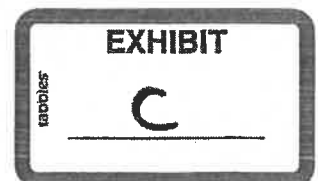
Defendant Attorney(s).

LLC, WHITE BROTHERS
WHITE BROTHERS CONSULTING, LLC
WHITE, TIMOTHY T.

N/A

Date Filed: 07/28/2020
Case Type: OTHER CIVIL
Appealed: 0
Final Order Date: N/A
Statistical Close Date: N/A

<u>Line</u>	<u>Date</u>	<u>Action / Result</u>
0001	07/28/2020	# CASE INFO SHEET; COMPLAINT W/ATTACH; ISSUED SUM & 3 CPYS;
0002		F FEE; RCPT 581324; \$200.00
0003	07/31/2020	# SUM W/RET (7/30/20 FM) AS TO TIMOTHY WHITE
0004	08/10/2020	# LET FR SS DTD 8/3/20; SUM W/RET (8/3/20 SS) AS TO WHITE
0005		BROTHERS CONSULTING LLC
0006	08/11/2020	# E-CERT FR SS AS TO WHITE BROTHERS CONSULTING LLC DTD 8/7/20
0007	09/02/2020	# CASE INFO SHEET; ANS OF D'S W/COS
0008	09/18/2020	# P'S EMERGENCY MOT FOR JUDICIAL SUPERVISION OF PARTNERSHIP
0009		WINDING UP & ASSETS & APPT OF RECEIVER W/COS
0010	09/24/2020	# NOT OF VIDEO STATUS CONF W/COS (9/24/20 @ 9 AM)
0011	09/28/2020	O DELIVERED TO ALL PARTIES 5/09/25/20 TL



0012	09/25/2020	LK O: D'S SHALL FILE THEIR RESPONSE TO THE SUPERVISION &
0013		RECEIVER MOT ON OR BEFORE 10/12/20; P SHALL FILE HER REPLY IN
0014		SUPPORT OF HER SUPERVISION & RECEIVER MOT ON OR BEFORE 10/19/20;
0015		COUNSEL SHALL TENDER PROPOSED O'S TO COURT ON OR BEFORE 10/26/20
0016		S/SAL
0017	10/13/2020	# D'S RESP IN OPPOS TO P'S EMERGENCY MOT FOR JUDICIAL
0018		SUPERVISION OF PARTNERSHIP WINDING UP & ASSETS & APPT OF
0019		RECEIVER W/EXH & COS
0020	10/20/2020	# P'S REPLY IN SUPP OF EMERGENCY MOT FOR JUDICIAL SUPERVISION
0021		OF PARTNERSHIP WINDING UP & ASSETS & APPT OF RECEIVER W/EXH'S
0022		& W/CO S
0023	11/09/2020	O DELIVERED TO ALL PARTIES S/11/09/20 TL
0024	11/09/2020	LK O: APTT G. NICHOLAS CASEY, JR AS RECEIVER S/SAL
0025	11/24/2020	O DELIVERED TO ALL PARTIES S/11/23/20 TL
0026	11/24/2020	LK O: RECEIVER MAY PROCEED W/O THE PLACEMENT OF A
0027		BOND S/11/23/SAL
0028	12/17/2020	@ COS AS TO P'S 1ST SET OF REQ FOR PROD TO WHITE BROTHERS
0029		CONSULTING & TIMOTHY WHITE
0030	12/18/2020	@ COS AS TO P'S 2ND SET OF REQ FOR PROD OF DOCS TO WHITE
0031		BROTHERS CONSULTING LLC & TIMOTHY WHITE
0032	01/21/2021	# COS AS TO D'S RESP TO P'S 1ST REQ FOR PROD
0033	01/21/2021	# COS AS TO D'S RESP TO P'S 2ND REQ FOR PROD
0034	04/01/2021	# P'S MOT TO COMPEL COMPLETE RESP'S TO 1ST REQ FOR PROD W/COS
0035	04/01/2021	# P'S MOT TO COMPEL COMPLETE RESP'S & RESPONSIVE DOCUMENTS
0036		TO 2ND REQ FOR PROD OF DOCS W/EXH'S & COS
0037	04/06/2021	O DELIVERED TO ALL PARTIES S/04/02/21 TL
0038	04/05/2021	LK O: REFERRED TO BRUCE FREEMAN AS SPECIAL COMMISSIONER
0039		S/4/2/SAL
0040	04/26/2021	# D'S RESP TO P'S MOT'S TO COMPEL COMPLETE RESP'S TO 1ST &
0041		2ND REQ FOR PROD W/EXH & COS
0042	04/30/2021	# NOT OF HRG W/COS (5/18/21 @ 11:30 AM)
0043	05/14/2021	# AMD NOT OF HRG W/COS (5/18/21 @ 1 PM)
0044	05/17/2021	# P'S REPLY IN SUPP OF MOT TO COMPEL COMPLETE RESP'S TO 1ST
0045		REQ FOR PROD & MOT TO COMPEL COMPLETE RESP'S & RESPONSIVE
0046		DOCS TO 2ND REQ FOR PROD W/EXH & COS
0047	05/24/2021	# D'S EXCEPTIONS TO RECOMMENDED DECISION OF SPECIAL COMMISSIONER
0048		W/COS
0049	06/02/2021	MH/O COPIES DEL TO PARTIES/SAL (S-05/28/21)
0050	06/02/2021	*O: D TO F SUPP RESP BY 6/4/21; D TO PAY SPEC COMM FEE/SAL
0051		(S/5/28)
0052	07/26/2021	# P'S MOT TO ENFORCE O ADOPTING SPECIAL COMMISSIONER
0053		RECOMMENDATION W/COS

These materials have been prepared by the Office of the Clerk of the various Circuit Courts from original sources and data believed to be reliable. The information contained herein, however, has not been independently verified by the Office of the Clerk or Software Computer Group, Incorporated. The Office of the Clerk of the Circuit Courts and Software Computer Group, Inc. assume no liability for the accuracy, completeness, or timeliness of the information contained herein.

Software Computer Group | PO Box 27 | Fraziers Bottom WV 25082

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

JEANETTE WHITE, Administratrix of
the Estate of William Gregory White,

Plaintiff,

v.

Civil Action No. 20-C-626
Hon. Tera L. Salango

WHITE BROTHERS CONSULTING, LLC,
a West Virginia limited liability company,
and TIMOTHY T. WHITE, individually,

Defendants.

PLAINTIFF'S EMERGENCY MOTION FOR JUDICIAL SUPERVISION
OF PARTNERSHIP WINDING UP AND ASSETS
AND APPOINTMENT OF RECEIVER

NOW COMES Plaintiff Jeanette White, Administratrix of the Estate of William Gregory White ("Ms. White"), by counsel Edward P. Tiffey and Tiffey Law Practice, PLLC, and moves the Court for entry of an Order exercising judicial supervision over the wind up of the White Brothers Consulting, LLC ("WBC") partnership, all related assets, and appointment of a Receiver.

The partnership has continued to operate since the passing of the decedent partner, William G. White, nearly two (2) years ago. This week, the Defendants took steps to wind up the partnership without timely notice to the Plaintiff, and decline to provide information to the Plaintiff. Critically, the Defendants hold assets, including capital accounts, and at least \$866,666.66 in life insurance proceeds attendant to the decedent.



Plaintiff seeks judicial protection of all assets and interests, so that they are not at risk of misappropriation, transfer, waste, or squander. Accordingly, there is ample good cause for this Court to order judicial supervision as requested and appoint a Receiver.

In support of the instant motion, Ms. White avers as follows:

1. Defendant WBC was formed as a partnership in 2011 and has been a partnership ever since.¹

2. Partner William G. White, the decedent, died on December 16, 2018. Subsequently, Ms. White as widow was appointed to serve as the Administratrix of the decedent's estate.

3. WBC continued to conduct business and operate as a partnership after the decedent's death with Defendant Timothy T. White ("Tim White") and Lee Snyder ("Snyder") as the partners.

4. Tim White is the natural brother of the decedent.

5. In May or June of 2019, Defendants bought out the one-third partnership interest of Snyder for a sum certain without the consent or participation of the Plaintiff.

6. The Defendants know that the Plaintiff is entitled to be paid a sum certain for the decedent's partnership interest. Such a payment is predicated upon the preservation and valuation of partnership assets, capital accounts, and all other property belonging to the decedent's estate.

7. The parties have been represented by counsel for over a year.

¹ There is no dispute that WBC is a partnership and not a limited liability company, as there is no requisite operating agreement.

8. On October 2, 2019, Plaintiff requested financial records from the Defendants for 2018 and confirmation that all partnership financial and business records were preserved for the period January 1, 2012 to date.

9. On January 30, 2020, Plaintiff advised the Defendants of her reasonable expectation for the sequester of funds necessary to resolve the dispute over the decedent's partnership interest and claim for life insurance proceeds. Plaintiff also sought confirmation of the absence of any fraudulent transfers or waste of cash and assets since December 31, 2018.

10. On February 24, 2020, Plaintiff informed the Defendants of her trust in their sequester of funds to resolve the dispute and that there are no fraudulent transfers for waste of cash or other assets since December 31, 2018, with the request to be advised if such activity occurred.

11. On March 23, 2020, Plaintiff reiterated the sequestration of funds and absence of asset waste.

12. On May 7, 2020, Plaintiff reiterated her trust in the Defendants to sequester necessary funds to resolve this matter, and that there were no fraudulent transfers, waste of cash, or waste of other assets since December 31, 2018, with the request to be advised if such activity occurred.

13. On July 28, 2020, Ms. White filed the within Complaint. Thereafter, the Defendants filed their Answer on August 31, 2020.

14. On September 10, 2020, the Defendants advised the Plaintiff of their intention to file a federal partnership tax return on September 15, 2020 for tax year 2019 ("2019 Tax Return") as a final tax return, in which all capital accounts and balance sheet

items would be zeroed out, Tim White would receive all partnership income from January 1, 2019 to date, and the \$1.3 million in life insurance proceeds would be allocated in equal thirds to the partners.

15. This development came as a surprise and without advance notice, as WBC has operated continuously.

16. Naturally, this development generated a host of questions and concerns by the Plaintiff, which were expressed to the Defendants. Unfortunately, the Defendants refused to provide complete information and documents concerning WBC business and affairs, assets, and the life insurance proceeds attendant to the decedent.

17. On September 15, 2020, the Defendants' accountant, Jonathan P. Rahal of Beckley, filed the 2019 Tax Return. While received by the Plaintiff the same day, it is the only document provided thus far in the wake of recent developments.

18. Defendants' recent actions only heighten Plaintiff's questions and concerns over the immediate protection of valuable interests.

19. The 2019 Tax Return shows a series of assets held in 2019 that have been zeroed out, including capital accounts for each partner in the amount of \$79,450.00 (plus or minus \$1.00).²

20. The 2019 Tax Return also shows the \$1.3 million in non-taxable life insurance proceeds allocated to each partner in equal thirds in the amount of \$433,333.33. Plaintiff does not consent to the accounting treatment of the life insurance proceeds in view of Count II of the Complaint for conversion of the same.

21. The whereabouts of assets and life insurance proceeds are unknown. Plaintiff believes reasonably that they are at a substantial risk of misappropriation,

² The 2018 Tax Return reflects the same capital account balances as seen in the 2019 Tax Return.

fraudulent transfer, waste, and conversion, to where judicial supervision through a Receiver is warranted.

22. Moreover, protection and preservation of the assets and life insurance proceeds are essential for the adjudication of this civil action, namely (a) the valuation and payment of the decedent's partnership interest and (b) Plaintiff's claim for conversion of life insurance proceeds.

23. Plaintiff's concerns herein are palpable and grave. Necessarily, she requests this Court to supervise the Defendants in their winding up of partnership business, and to locate, take hold, and look after the assets and life insurance proceeds, as well as financial and business records.

24. The Defendants and their accountant possess the financial and business records of the partnership for 2019 and 2020 to date. Such records identify, and provide details for, assets and the life insurance proceeds in question. Such records are relevant to Plaintiff's claims herein.

25. West Virginia Code § 47B-8-3(a) provides statutory authority for this Court to exercise judicial supervision as requested.

26. Judicial supervision through a Receiver is best for this civil action to proceed.

27. West Virginia Code § 53-6-1 provides statutory authority for this Court to appoint a Receiver to assist in its judicial supervision.


28. Appointment of a Receiver is a proper exercise of judicial discretion and supervision herein. Plaintiff requests such an appointment forthwith.

WHEREFORE, for the reasons heretofore stated, Plaintiff Jeanette White respectfully requests entry of an Order granting the motion, pursuant to West Virginia Code § 47B-8-3(a) and § 53-6-1, to:

- a. Institute judicial supervision immediately;
- b. Appoint a Receiver to receive and protect all partnership assets held or controlled by each Defendant, all life insurance proceeds held and controlled by the Defendants, and all financial and business records;
- c. Require full and accurate disclosure by each Defendant of all partnership assets and life insurance proceeds in their possession or control, which appear in financial and business records for years 2018, 2019, and 2020;
- d. Require full and accurate disclosure by each Defendant of any partnership asset transferred, conveyed, sold, divested, forfeited, or otherwise relinquished since December 16, 2018; and
- e. All such other relief this Court deems just and proper.

**JEANETTE WHITE, Administratrix of
the Estate of William Gregory White**

By Counsel



Edward P. Tiffey (WVSB #6042)
TIFFEY LAW PRACTICE, PLLC
205 Capitol Street, 4th Floor
P.O. Box 3785
Charleston, WV 25337-3785
(304) 344-3200
(304) 344-9919 (fax)

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

JEANETTE WHITE, Administratrix of
the Estate of William Gregory White,

Plaintiff,

v.

Civil Action No. 20-C-626
Hon. Tera L. Salango

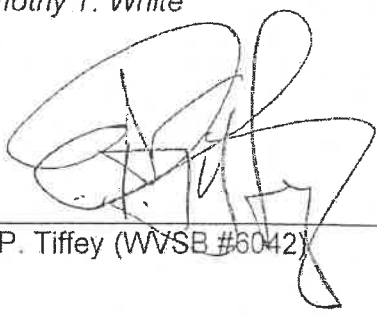
WHITE BROTHERS CONSULTING, LLC,
a West Virginia limited liability company,
and TIMOTHY T. WHITE, individually,

Defendants.

CERTIFICATE OF SERVICE

I, Edward P. Tiffey, counsel for Plaintiff Jeanette White, Administratrix of the Estate of William Gregory White, do certify that on September 18, 2020 I served the forgoing **PLAINTIFF'S EMERGENCY MOTION FOR JUDICIAL SUPERVISION OF PARTNERSHIP WINDING UP AND ASSETS AND APPOINTMENT OF RECEIVER** by hand delivering the same to the following counsel of record:

Kenneth E. Webb, Jr., Esq.
BOWLES RICE LLP
600 Quarrier Street
Charleston, WV 25301
*Counsel for Defendants White Brothers
Consulting, LLC and Timothy T. White*



Edward P. Tiffey (WVSB #6042)

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

JEANETTE WHITE, Administratrix of
the Estate of William Gregory White,

Plaintiff,

v.

WHITE BROTHERS CONSULTING, LLC,
a West Virginia limited liability company,
and TIMOTHY T. WHITE, individually,

Defendants.

Civil Action No. 20-C-626
Hon. Tera L. Salango

ORDER

On September 24, 2020, this Court conducted a video status conference in this matter following the September 18, 2020 filing of Plaintiff's Emergency Motion for Judicial Supervision of Partnership Winding Up and Assets and Appointment of Receiver ("Supervision and Receiver Motion").

The Court heard remarks by counsel for the parties, and **ORDERED** the following schedule for written submissions:

1. Defendants shall file their response to the Supervision and Receiver Motion on or before October 12, 2020.
2. Plaintiff shall file her reply in support of her Supervision and Receiver Motion on or before October 19, 2020.
3. Counsel shall tender proposed Orders to the Court on or before October 26, 2020 for its consideration.

Lastly, the Court **ORDERED** the Defendants to produce any written Operating Agreement for White Brothers Consulting, LLC to the Plaintiff immediately, if one exists.

FILED

2020 SEP 25 PM 12:47

CLERK OF COURT
KANAWHA COUNTY CIRCUIT COURT

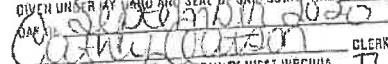
The Clerk is directed to send a certified copy of this Order to all counsel of record.

ENTERED this 25th day of September, 2020.


Honorable Tera L. Salango

Prepared By:

/s/ Edward P. Tiffey
Edward P. Tiffey (WVSB #6042)
TIFFEY LAW PRACTICE, PLLC
205 Capitol Street, 4th Floor
P. O. Box 3785
Charleston, WV 25327-3785
(304) 344-3200
(304) 344-9919 (fax)
Counsel for Plaintiff

STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, SS
I, CATHY S. GATSON, CLERK OF CIRCUIT COURT OF SAID COUNTY
AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING
IS A TRUE COPY FROM THE RECORDS OF SAID COURT.
GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS 28th
DAY OF SEPTEMBER 2020

CATHY S. GATSON CLERK
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA TL

Inspected By:

/s/ Kenneth E. Webb, Jr.
Kenneth E. Webb, Jr. (WVSB #5560)
BOWLES RICE LLP
600 Quarrier Street
P.O. Box 1386
Charleston, WV 25325-1386
(304) 347-1737
(304) 347-1746 (fax)

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

JEANETTE WHITE, Administratrix of
the Estate of William Gregory White,

Plaintiff,

v.

Civil Action No.: 20-C-626
(Circuit Court of Kanawha County, West Virginia)

WHITE BROTHERS CONSULTING, LLC,
a West Virginia limited liability company,
and TIMOTHY T. WHITE, individually,

Defendants.

CERTIFICATE OF SERVICE

I, Kenneth E. Webb, Jr., counsel for Defendants, White Brothers Consulting, LLC,
and Timothy T. White, hereby certify that on the 5th day of August, 2021, I served a true and exact
copy of the foregoing *Defendants' Motion to Refer Case to the Business Court Division* via U.S.

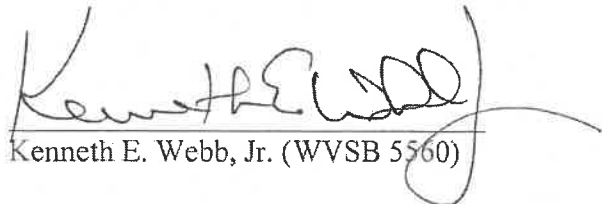
Mail upon the below as indicated:

Edward P. Tiffey, Esquire
Tiffey Law Practice, PLLC
205 Capitol Street, 4th Floor
Post Office Box 3785
Charleston, West Virginia 25337
Counsel for Plaintiff

Cathy S. Gatson, Circuit Clerk
Circuit Court of Kanawha County
Kanawha County Judicial Annex
111 Court Street
Charleston, West Virginia 25301

Tera L. Salango, Judge
Circuit Court of Kanawha County
Kanawha County Judicial Annex
111 Court Street
Charleston, West Virginia 25301

Lorri Stotler, Administrative Assistant
Business Court Division Central Office
Berkeley County Judicial Center
380 West South Street, Suite 2100
Martinsburg, West Virginia 25401


Kenneth E. Webb, Jr. (WVSB 5560)