

IN THE CIRCUIT COURT OF MONONGALIA COUNTY, WEST VIRGINIA

GREER INDUSTRIES, INC.

CIVIL ACTION NO. 15-C-74

Plaintiff,

v.

WEST VIRGINIA UNIVERSITY FOUNDATION, INC.,

Defendant.

COMPLAINT

NOW COMES Plaintiff Greer Industries, Inc., by and through its counsel, and files this Complaint and, in support thereof, avers as follows:

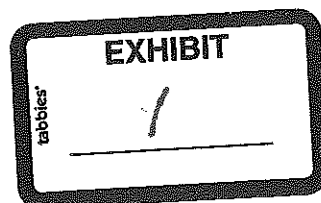
PARTIES

1. Plaintiff Greer Industries, Inc. ("Greer") is a West Virginia corporation that has its principal place of business located in Morgantown, Monongalia County, West Virginia. Greer is a taxpayer in the State of West Virginia and a donor to the West Virginia University Foundation, Inc.

2. Defendant West Virginia University Foundation, Inc. (the "Foundation"), with its principal place of business in Monongalia County, West Virginia, is a West Virginia non-profit corporation that has been afforded tax exempt status under section 501(c)(3) of the Internal Revenue Code. The Foundation describes its goals and structure as follows:

The West Virginia University Foundation is an independent 501(c)(3) corporation chartered in 1954 to generate, administer, invest and disburse contributed funds and properties given by individuals, corporations and philanthropic foundations in support of West Virginia University and its non-profit affiliates.

The Foundation's mission is to enrich the lives of those touched by West Virginia University by maximizing private charitable support and providing services to the University and its affiliated organizations.



The Foundation is governed by the Board of Directors, elected by the members. All serve without compensation. The Foundation's operating budget is financed entirely with private resources; no University or state funds are used. Each donor's gift is applied directly to the purpose for which it is given. No unrestricted gifts are used to fund operations.

WVU Foundation Annual Report July 1, 2013 to June 30, 2014.

JURISDICTION AND VENUE

3. General and specific personal jurisdiction exists over the parties because they have had systematic and continuous contacts in this jurisdiction and a substantial part of the acts and omissions giving rise to the causes of action arose in this jurisdiction.

4. The Circuit Court of Monongalia County, West Virginia has jurisdiction over this action pursuant to W. Va. Code § 51-2-2 because the amount in controversy, excluding interest, exceeds \$2,500, because this action requests mandamus, and because this action seeks equitable relief.

5. Venue is also proper in this Court pursuant to W. Va. Code § 31E-1-140 because it is an action brought pursuant to the Nonprofit Corporation Act and pursuant to W. Va. Code § 56-1-1(a) because the causes of action arose in Monongalia County.

FACTS

A. Introduction

6. The Foundation works in tandem with the West Virginia University (the "University" or "WVU") to advance the University's educational and research purposes by raising money for scholarships, faculty development, and other priorities of West Virginia University.

7. Although WVU and its Foundation exist for those salutatory purposes, they have been corrupted by a cadre of self-interested, self-dealing individuals who view WVU and its Foundation not as a vehicle for higher education and the betterment of West Virginia and its citizens, but instead as an opportunity for personal profit.

8. These individuals have used their insider positions and connections at the University and Foundation to sidestep, circumvent, or simply ignore West Virginia's procurement rules and code to cause the University and its Foundation to enter into purchasing contracts for the private benefit of individuals at the expense of the University, the Foundation, and the citizens of West Virginia.

9. Defendant Foundation's officers, including the President and Chief Executive Officer and Senior Advisor to the President and Senior Vice President for Development, have allowed this to happen by failing to discharge their fiduciary obligations and by failing to exercise reasonable diligence and control over a cadre of self-interested, self-dealing individuals personally, and exposing WVU and the Foundation to unnecessary expense, embarrassment, and ridicule.

10. As a West Virginia taxpayer and a donor to the Foundation, Plaintiff Greer brings this action to recover the damages it has suffered and enjoin the Defendant and the cadre of self-interested, self-dealing individuals from further using their influence to the detriment of WVU, the Foundation, and the citizens of West Virginia.

11. Although Greer suffered substantial damages, it is not bringing this matter for its own personal enrichment, but instead to vindicate the rights of West Virginia and its citizens who have been injured by the Defendant and the cadre of self-interested, self-dealing

individuals' unlawful actions. To that end, Plaintiff Greer intends to donate any recovery in excess of its attorneys' fees and costs to the Foundation to benefit the WVU Children's Hospital.

B. The Foundation's Loss & WV Media's Gain

12. For at least the last decade, a cadre of self-interested, self-dealing individuals have used their influence at the Foundation to benefit themselves and other connected insiders personally.

13. As a non-profit charitable Foundation, the Foundation is obligated under West Virginia law to use any donations for the stated purpose of benefiting the University, its programs, and its students. W. Va. Code § 29-19-8 (2012).

14. This policy mirrors the Foundation's obligations as a federal 501(c)(3) tax entity. Under federal tax law, the Foundation must be organized and operated exclusively for religious, educational, or charitable purposes. See 26 U.S.C. 501(c)(3). Further, as a 501(c)(3) entity, the Foundation's net income cannot inure to the benefit of any private shareholder or provide substantial private benefit to any private shareholder or any individual.

15. Recognizing this obligation, the Foundation describes its investment policies as follows:

[I]n managing gift dollars the Foundation must serve a two-fold constituency. The first constituent is the donor whose gift is the result of loyalty and commitment to the University. The second constituent is the beneficiary of the gift – that is, the University. The Foundation serves as fiduciary for these funds and is accountable to donors for the use of contributions in accordance with their restrictions.

WVU Foundation Annual Report 2006-2007,
<http://www.wvuf.org/aReports/WVUF%20Annual%20Report%2006-07%20Final.pdf>.

16. The Foundation has described its ethical obligations on its website, stating that:

- It (the Foundation) does not grant or accept favors for the personal gain of any individual, nor does it solicit or accept favors where a higher public interest would be violated.
- It avoids actual or apparent conflicts of interest, and, if in doubt, seeks guidance from appropriate authorities.

See West Virginia University Foundation Code of Ethics and Standard of Conduct, § 3.3.1 (Professional Ethics).

17. Moreover, the Foundation has described its Core Value as follows:

- Integrity - We conduct our activities in an independent, fair, trustworthy and honest manner.
- Service - We perform our duties in a helpful manner. Relationships - We value relationships, teamwork and community involvement as fundamental to achieving our goals.
- Accountability - We are responsible for our actions.
- Professionalism - We perform our responsibilities as skilled practitioners, meeting our goals and tasks in a timely and effective manner.
- Exceeding Expectations - We continually set new standards of excellence.

WVU Foundation Annual Report July 1, 2013 to June 30, 2014.

18. Although state and federal law, as well as the Foundation's own policies, prevents the Foundation from using its resources to benefit private individuals, the Foundation allowed a cadre of self-interested, self-dealing individuals to ignore these legal obligations in their efforts to profit from their connections at WVU and its Foundation.

19. Each year, reputable accounting firms audit the Foundation and release audited financial statements setting forth the Foundation's yearly financial activities. The Foundation then makes its audited financial statements available to the general public by means that include publishing them on the Internet.

20. In 2007, the accounting firm of Dixon Hughes, PLLC audited the Foundation and prepared an audited financial statement for the Foundation covering the time period of June of 2006 through June of 2007. (See Exhibit 1, 2006-2007 Audited Financial Statement of the West Virginia Foundation, Inc., (the "Foundation's 2007 Financial Statement").)

21. In the Foundation's 2007 Financial Statement, the Foundation disclosed that it "purchased investments in West Virginia Media Holdings, LLC ("WV Media"), a media company operating television stations and a newspaper in West Virginia" in 2002. (Id. at 12.)

22. The Foundation's investment in WV Media was comprised of a \$2,000,000 equity investment and \$5,750,000 of "senior subordinated notes that mature in 2010." (Id.) In total, the Foundation invested \$7,750,000 in WV Media.

23. W. Marston Becker, an owner of WV Media, was a member of the Foundation's Board of Directors when this transaction took place. (Id.) Additionally, "five members of the Foundation's Board of Directors" advised the Foundation that "they have individual investments in WV Media." (Id.)

24. Further, Dorothy Dotson, the then Vice President of Investments and Chief Information Officer of the Foundation, served on the advisory board of WV Media from 2002 through 2008. (See, generally, Exhibit 2, WV Media Holdings, LLC's 2008 Ownership Report for Commercial Broadcast Stations.)

25. Pursuant to an August 1, 2002 Unit Option Agreement granted to her by W. Marston Becker, Ms. Dotson, in violation of the Foundation's policy with regard to conflicts of interest and while acting in her capacity as the Foundation's VP of Investments and CIO, received \$100,000 in stock warrants individually in WV Media. This was the ultimate conflict of interest, especially considering the fact that Mr. Becker indicated he was required to recuse

himself from the Foundation's investment in WV Media. (See, generally, Exhibit 3, WV Media Holdings Unit Option Agreement with Dorothy J. Dotson.)

26. The Foundation's investment in WV Media, therefore, was wholly improper under West Virginia law and its own stated rules because it did not benefit WVU, but instead benefited private individuals who also served upon its Board.

27. This investment was not only improper, it was disastrous.

28. In 2006, the Foundation took "an unrealized loss" on its investment in WV Media of \$5,047,000. (Exhibit 1 at 12.)

29. And in January of 2007, the Foundation sold its investment in WV Media at "the June 30, 2006 carrying value" of \$2,703,000. (Id.)

30. According to the Foundation's 2007 Financial Statement, the Foundation invested \$7,750,000 in WV Media and then sold its investment for \$2,703,000, *thereby losing \$5,047,000 in the process.*

31. Plaintiff Greer discovered these financial losses in the spring of 2013 when obtaining a copy of the Dixon Hughes PLLC audit referenced above.

32. Upon information and belief, the \$5,047,000 lost by the Foundation constituted monies raised from individuals, corporations, and other supporters of West Virginia University in hopes of bettering WVU and furthering its educational mission. These donations were not made to further the business of WV Media.

33. The Foundation, however, did not simply lose \$5,000,000 on its investment. It functioned as the piggybank for management and WV Media investors.

34. Upon information and belief, when the Foundation sold its investment at a \$5,000,000 loss, Bray Cary, general partner and part owner of WV Media, Andrew Payne,

former member of WVU Board of Governors from 2006 – 2013 and part owner of WV Media, and Ralph Ballard, part owner of WV Media, were among the purchasers of the Foundation's heavily discounted debt and equity investment in WV Media. (See, generally, Exhibit 2.)

35. Accordingly, Bray Cary, Andrew Payne, and Ralph Ballard received the benefit of the Foundation's \$7,750,000 investment in WV Media and were able to buy the Foundation's equity and debt in WV Media at an approximately 65% discount, positioning themselves to benefit tremendously if WV Media ever became profitable (by, for example, securing lucrative media rights for West Virginia University athletics).

36. Further, the Foundation's investment allowed WV Media to acquire television stations and other media properties that it otherwise could not have afforded. In other words, the Foundation's improper and illegal investment in WV Media allowed the small media startup to grow into a substantial player in the West Virginia media market.

37. But the Foundation received nothing of significant benefit in return and ultimately lost over \$5,000,000.

C. The Scoreboard Transaction

38. For the purposes of this Complaint, the next unlawful action taken against the Foundation involved Andrew Payne, Ralph Ballard, and Richard Ballard, who are, upon information and belief, part owners in WV Media.

39. This unlawful transaction was for the purpose of WVU's purchase of Panasonic scoreboards and other equipment for the Coliseum, the Milan Puskar Football Stadium (the "Football Stadium"), the basketball training facility (the "WVU Basketball Practice Facility"), the Milan Puskar Center facilities building (the "Facilities Building"), as well as other athletic and nonathletic facilities located at WVU's Morgantown campus.

40. Andrew Payne, Ralph Ballard, Richard Ballard, and others intentionally concealed the unlawful nature of the transactions described below in an attempt to evade redress. Plaintiff Greer discovered this improper conduct sometime after February 8, 2013. Upon discovering this unlawful conduct, Plaintiff Greer has moved to bring this action within the statute of limitations.

41. Beginning in 2004, WVU began exploring the replacement of the video scoreboards at the Coliseum, WVU's basketball facility (the "Scoreboard Project").

42. In 2007, WVU engaged the consulting firm of Ellerbe Becket – a national firm with substantial experience in designing, procuring, and installing scoreboards at sporting facilities – to assist it in the procurement of new scoreboards for the Coliseum.

43. Through their efforts, Ellerbe Becket generated substantial interest in the scoreboard manufacturing industry for the Scoreboard Project. Companies such as Daktronics (the leading scoreboard manufacturer in the world), HD Group, MMCC Canada, Inc., Texas Star Sports, LSI Graphic Solution Plus, Whiteway Sign, ANN Sports Enterprises, LLC, Nevco Scoreboard Company, CBS Outdoor, Lighthouse, and Tube Art all expressed an interest in bidding on the Coliseum Scoreboard Project.

44. Working in conjunction with the University's Procurement Department (the "WVU Procurement Department"), Ellerbe Becket began devising a request for proposals to allow interested, prequalified bidders to bid on the Coliseum Scoreboard Project (the "Scoreboard RFP").

45. At the same time Ellerbe Becket and the WVU Procurement Department were developing the Scoreboard RFP, individuals Andrew Payne, Ralph Ballard, Richard Ballard, and others were moving in the background to secure this opportunity.

46. In May of 2007, Richard Ballard approached Russell Sharp, Associate Athletic Director at WVU, to discuss the possibility of his employer, Panasonic, securing the Coliseum scoreboard contract. (See, e.g., Exhibit 4, May 14, 2007 e-mail from Russell Sharp to Richard Ballard.)

47. Although the Scoreboard RFP was not released to any other potential bidders and information concerning the project was to remain confidential, individuals at WVU continued conversations with Richard Ballard through the summer of 2007 regarding Panasonic's interest in supplying the Coliseum scoreboard.

48. These conversations, however, were not limited to Richard Ballard and WVU Athletic Department officials. Andrew Payne intervened, pushing Panasonic's interests in the Coliseum Scoreboard Project with Russell Sharp, Assistant Athletic Director. (See Exhibit 5, August 17, 2007 e-mail from Russell Sharp to Craig Walker ("After talking with Drew this morning, we have conflicting signals about the Panasonic deal from what we talked about, as far as schedule and the RFP process goes We are still moving along planning on a [sic] RFP until I hear different from you.").)

49. The intervention of Andrew Payne, Ralph Ballard and Richard Ballard into the Scoreboard RFP process initiated some concern at WVU. On November 28, 2007, Mr. Sharp sent an email to Narvel Weese, the Vice President of Finance of WVU, containing an attachment that described the Coliseum scoreboard procurement process to date. This attachment notes that Mr. Sharp "has met with Philip Charneskie [WVU Procurement Department] and Jay Rossello [WVU Associate General Counsel] in September... and they have no concerns *other than the favored sharing of information and discussions that have been taking place with Panasonic.*" (See Exhibit 6, November 28, 2007 e-mail from Russell Sharp to Narvel Weese with

attachment.) At the same time, King and Dotson became involved in this process when Dotson spoke with Richard Ballard on Christmas Eve, 2007 and reported the subject matter of the conversation by email to King on December 27, 2007. (See Exhibit 6, email from Richard Ballard to Lyn Dotson dated December 23, 2007 and email from Lyn Dotson to Wayne King dated December 27, 2007.)

50. Notwithstanding these objections from the WVU Procurement Department and its Associate General Counsel, discussions with Richard Ballard and the WVU Athletic Department over the Coliseum scoreboard continued into 2008.

51. Specifically, Richard Ballard represented to WVU that Panasonic would be willing to gift the Coliseum scoreboard to the Foundation, thereby obviating any need to release the Scoreboard RFP to other potential vendors.

52. This so-called "gift" to the Foundation, however, proved to be illusory because of the many strings attached.

53. In essence, Richard Ballard, on behalf of Panasonic, offered to "gift" the Coliseum scoreboard if WVU and the Foundation purchased a separate scoreboard for the football stadium. (See, e.g., Exhibit 7, January 16, 2008 e-mail from Russell Sharp to Rossi Wiles, Associate Director of WVU Contracting Services and Chad Francis of Ellerbe Becket ("we might end up just forwarding our info to Panasonic as they have indicated that they might make a gift of the Coliseum board and sound system *if the a [sic] board is purchased for the football stadium.* We should know soemthing [sic] in a few days. For now we should keep moving." (emphasis added)).)

54. On January 24, 2008, Wayne King and Narvel Weese, on behalf of WVU, agreed that the Foundation would accept a donation of a video scoreboard and sound system from

Panasonic for use in the Coliseum. Further, they committed the Foundation to seek the “necessary donations and other revenues to allow for the purchase of a video scoreboard and sound system to be installed at WVU’s primary football venue, the Mylan [sic] Puskar Stadium, located on the Evansdale [sic] Campus in Morgantown, West Virginia.” (See Exhibit 8, January 24, 2008 letter from R. Wayne King and Narvel Weese to John Baisley, President of Panasonic Broadcast and Television Systems Company.)

55. WVU further agreed to accept the video scoreboards and sound systems from the Foundation and install the equipment at the Coliseum and Milan Puskar Stadium. Additionally, WVU agreed to provide Panasonic with “opportunities to showcase their products to potential customers, which have been installed on the campus of West Virginia University,” hoping to “establish[] a strong business partnership” with Panasonic. (*Id.*)

56. As part of this relationship, WVU eventually purchased additional equipment from Panasonic, including video boards for the new WVU Basketball Practice Facility, the Facilities Building, and other athletic and non-athletic facilities.

57. Potentially realizing the troubling and improper nature of this transaction, Richard Ballard requested that the Foundation and WVU keep Panasonic’s so-called “gift” confidential for the time being. (See Exhibit 9, January 31, 2008 email from Narvel Weese to Russ Sharp forwarding January 30, 2008 email from Richard Ballard to Narvel Weese.)

58. On March 24, 2008, the Foundation and Panasonic Corporation of North America entered into a binding agreement in which the Foundation agreed to pay Panasonic a total of \$5 million to purchase the football scoreboard and secure Panasonic’s so-called “gift” of the Coliseum scoreboard. (See Exhibit 10, March 20, 2008 Sales Agreement between the Foundation and Panasonic.)

59. Although committing to spend \$5 million of its own funds, the Foundation did not competitively bid this purchase from Panasonic nor act to ensure that this purchase did not have substantial private benefit to a private individual or inure to the benefit of any private individual, namely Richard Ballard, who, upon information and belief, was personally enriched, receiving a commission, compensation, or other benefits on the \$5 million scoreboard sale as well as the subsequent equipment sales for the other athletic and nonathletic facilities.

60. Further, as of March 24, 2008, the Foundation did not possess \$5 million in funds dedicated or raised for the purpose of acquiring this Panasonic scoreboard for the Milan Puskar Stadium, requiring it to use funds raised for other purposes to make this payment.

61. Recognizing the Foundation's need to be repaid for this upfront outlay of its resources, Mr. Weese committed WVU to support the "Foundation's efforts to seek the necessary revenues to reimburse the Foundation for the purchase of these assets It is anticipated that the acquisition will be financed in a manner that allows for annual payments to occur over five to seven years *If sufficient revenues are not secured to reimburse the Foundation for the purchase then WVU agrees to utilize its resources to support the acquisition costs and/or financing related payment obligations.*" (See Exhibit 11, February 15, 2008 letter from Narvel Weese to R. Wayne King (emphasis added).)

62. At WVU's request, on February 16, 2008, the Foundation Board approved the transaction outlined in the King and Weese correspondence of January 24, 2008 and February 15, 2008. (See Exhibits 8, 11.)

63. By entering into this arrangement with Panasonic, WVU, through the Foundation, committed to purchase a scoreboard for the Milan Puskar Stadium at a cost of approximately \$5 million without going through the required procurement process mandated by the West

Virginia University Procurement Rules (2006) ("WVU Procurement Rules"), West Virginia law including W. Va. Code. § 18B-5-4 through § 18B-5-9 ("Procurement Code"), and W. Va. Code R. § 133-30-8, et seq. ("Procurement Regulations") (collectively, the "Procurement Laws").

64. Panasonic's "gift," as brokered by Richard Ballard, caused WVU to withhold the Scoreboard RFP from any other vendor, denying those vendors the opportunity to bid on either the Coliseum scoreboard or the Football Stadium scoreboard, which WVU, through the Foundation, committed to purchase from Panasonic to secure the supposed Coliseum scoreboard "gift."

65. This unlawful quid pro quo raised concerns with WVU's then Athletic Director, Edward Pastilong. Mr. Pastilong directed his subordinate Russell Sharp to question Mr. Weese as to the legality of this transaction with Panasonic. This direction created the following exchange:

April 29, 2008 email from Russell Sharp to Narvel Weese:

Narvel – are you confident that we are not going to get any "flack" or "pushback" from anyone because this project was not done through a competitive process? We certainly understand that this is a gift to the Foundation but athletic funds are going to be used to ultimately pay the \$4,250,000 not covered by the Statler gift and the boards are going to be placed on state property.

April 30, 2008 email from Narvel Weese to Russell Sharp:

Russ, the letter dated January 24, 2008 from me and Wayne to Baisely clearly states how the transaction is structured. The letter also states that WVU is willing to accept the gift. In addition, it is important to note that no state funds are involved in the transaction. All funds used to support this transaction will be generated through private fundraising and held on deposit with WVU Foundation.

April 30, 2008 email from Russell Sharp to Narvel Weese re: Panasonic gift:

Narvel, I have shared your email with Ed and he would like confirmation from you that we followed proper procurement

practices regarding these boards. This project began with a free board and has turned into a \$5,000,000 plus expense. Ed is still concerned that others did not have the same opportunities that Panasonic did.

(See Exhibit 12, April 29-30, 2008 email exchange between Russell Sharp and Narvel Weese.)

66. On May 9, 2008, Edward Pastilong drafted a memorandum to Narvel Weese in which he reiterated his concerns about the improper procurement process used for the scoreboard:

My concern that WVU is not following proper purchasing practices regarding the scoreboards continues as Russ shares a recent email from Panasonic complaining about the manner in which their name will be displayed on the boards. This project has gone from one free board to buying two boards for \$5,000,000 and now providing Panasonic the best advertising spot on the boards for free. I realize you, President Garrison, and Craig Walker have told me that we are within the law as the WVU Foundation is contracted for payment of the boards. However, Panasonic's name will be on state property, at the two most visible locations on campus, for free.

Mr. Pastilong copied President Mike Garrison as well as others on this correspondence.

(See Exhibit 13, May 9, 2008 memorandum from Edward Pastilong to Narvel Weese.)

67. Mr. Pastilong's concerns, however, fell on deaf ears. Mr. Weese continued forward to implement the Scoreboard Transaction.

68. Because the Foundation had to use funds raised for other purposes to pay the approximately \$5 million necessary to secure the Scoreboards, Mr. Weese sought to cause the Foundation to create a fund entitled the "Scoreboard Fund," which was to raise donations sufficient to repay the Foundation for the upfront \$5 million payment it was obligated to make to cover the cost of the two Panasonic scoreboards.

69. As structured, the Scoreboard Fund would begin with a deficit balance of approximately \$5 million because the Scoreboard Fund had already expended these monies, obligating it to raise these amounts to correct its negative balance.

70. Additionally, Mr. Weese drafted a proposed resolution for the West Virginia University Board of Governors, including Andrew Payne, to approve the acceptance of the Coliseum and Football Stadium scoreboards from the WVU Foundation. This draft proposed resolution omits the fact that WVU was obligated to expend approximately \$5 million in costs to repay the Foundation for these scoreboards. (See Exhibit 14, June 2008 Draft Proposed West Virginia Board of Governors Resolution.)

71. For reasons currently unknown, the West Virginia University Board of Governors failed to consider or approve Mr. Weese's proposed resolution. Upon information or belief, as of this date, the WVU BOG has never approved the Scoreboard Transaction, although WVU accepted, installed, and has used these scoreboards since 2009.

72. By 2009, it became clear that the Foundation would be unable to raise sufficient funds for the Scoreboard Fund to reimburse itself for the original \$5 million outlay for the Scoreboards and correct its negative balance.

73. As predicted in Mr. Weese's February 15, 2008 letter, therefore, WVU was obligated to use its own funds to repay the Foundation for the scoreboard expenditure.

74. On December 18, 2009, David R. Kosslow, Director of Treasury Operations at WVU, outlined WVU's plan for repaying the Foundation for its scoreboard expenditure. Specifically, WVU agreed that WVU Athletics would pay the Foundation approximately \$650,000 per year for four years starting in 2010. And, during the same period, WVU itself would pay the Foundation an additional \$570,000 per year. In total, the Foundation would

receive \$4,400,000 in principal (the net remaining deficient balance), plus \$480,000 in interest, resolving the Scoreboard Fund's deficient balance. (See, e.g., Exhibit 15, December 18, 2009, Email from David Kosslow to Russell Sharp; Exhibit 16, Graphic Representation of Transaction.)

75. Starting in 2014, WVU Athletics agreed to repay WVU the \$570,000 annual payments made by WVU until the University was made whole for its Scoreboard-related payments. To that end, WVU and WVU Athletics entered into an Internal Loan Program Agreement, which described the transaction as follows:

Central will transfer to the Athletic Department \$285,465.54 semi-annually for four years for a total of \$2,283,724.32. The Athletic Department will use this money to subsidize payment on scoreboard loan with WVU Foundation. After four years, the Athletic Department will repay central in the amount of \$285,465.54 semi-annually for four years.

(See Exhibit 17, June 2010 West Virginia University Internal Loan Program Agreement.)

76. On June 18, 2010, Pat Robertson of the Foundation acknowledged that certain funds had been transferred into the Scoreboard Fund under the plan outlined above. The email further states that "we are expecting to pay the final \$500,000 to Panasonic in the next 30 days. Which will increase the deficit balance in the cash fund. *Sometime after that payment is made, the Foundation will transfer the hard assets to the University at which point the fund will have both a deficit cash balance and a negative net asset balance. (Ouch --for us.)*" (See Exhibit 18, June 18, 2010, Email from Pat Robertson to David Kosslow (emphasis added).)

77. Accordingly, WVU and its Athletics Department have used their funds, including, upon information and belief, state funds, to acquire the Coliseum and Football Stadium scoreboards, using the Foundation as a conduit, without following the proper competitive bidding and procurement processes mandated by the Procurement Laws. Further, WVU and the

Foundation entered into a transaction without a “gift-purchase” component for the scoreboards that resulted in substantial private benefit and personal enrichment to Richard Ballard, who, upon information or belief, received a commission, compensation, or other benefits arising from the substantial sale of the scoreboards to WVU.

78. Upon information and belief, WVU and its Athletics Department have and will continue to make these payments to the Foundation for the scoreboards until 2014.

COUNTS

COUNT I – VIOLATION OF THE SOLICITATION OF CHARITABLE FUNDS ACT (Against Defendant West Virginia University Foundation, Inc.)

79. Plaintiff Greer incorporates by reference paragraphs 1 through 79 of its Complaint as if stated fully herein.

80. Pursuant to the Solicitation of Charitable Funds Act, “[n]o person may, in connection with the solicitation of contributions for charitable purposes, misrepresent, mislead, or omit information concerning how the proceeds will be used. Proceeds gathered from any given solicitation must be used for the charitable purposes represented in the materials sent or the presentation given by the solicitor.” W. Va. Code § 29-19-13 (2013).

81. For years, the West Virginia Foundation has solicited contributions for the stated purpose of providing student scholarships, faculty development, public service initiatives, and other priorities of West Virginia University.

82. At no time did the Foundation communicate to potential contributors that their contributions would be used to allow West Virginia University to side-step its procurement rules and obligations for the purpose of causing substantial private benefit and personal enrichment to politically connected insiders like Richard Ballard, or otherwise.

83. The Foundation, however, used charitable solicitations and contributions to allow West Virginia University to side-step its procurement rules and obligations for the purpose of causing substantial private benefit and personal enrichment to politically connected insiders like Richard Ballard, or otherwise, in relation to the acquisition of the Coliseum and Football Stadium Scoreboards as well as video boards for the new WVU Basketball Practice Facility, the Facilities Building, and other athletic and nonathletic facilities.

84. Accordingly, the Foundation violated the Solicitation of Charitable Funds Act when, in connection with the solicitation of contributions for charitable purposes, it misrepresented, misled, and omitted information regarding its intent to use charitable solicitations to allow West Virginia University to side-step its procurement rules and obligations for the purpose of causing substantial private benefit and personal enrichment to politically connected insiders like Richard Ballard, or otherwise, in relation to the acquisition of the Coliseum and Football Stadium Scoreboards as well as video boards for the new WVU Basketball Practice Facility, the Facilities Building, and other athletic facilities.

85. As a donor to the Foundation, Plaintiff Greer was injured by the Foundation's violation of the Solicitation of Charitable Funds Act and, therefore, has standing to seek the redress of these unlawful actions taken by the Foundation.

WHEREFORE, Plaintiff Greer respectfully requests that judgment be entered in its favor and the following relief be granted:

- (1) An award of compensatory damages or equitable relief to compensate Plaintiff for the injuries it has suffered;

(2) An award of exemplary damages to punish Defendant West Virginia University Foundation, Inc. and to deter other further violations of the Solicitation of Charitable Funds Act;

(3) An award of the costs Plaintiff has incurred in bringing this action;

(4) An award of Plaintiff's reasonable attorneys' fees; and

(5) Any such other relief the Court deems appropriate.

COUNT II – BREACH OF FIDUCIARY DUTY ACTION

87. Plaintiff Greer incorporates by reference paragraphs 1 through 79 of its Complaint as if stated fully herein.

88. Officers of the Foundation possess fiduciary obligations to act at all times in the best interest of the Foundation.

89. Pursuant to the Nonprofit Corporation Act, “[a]n officer, when performing in his or her official capacity, shall act:

(1) In good faith;

(2) With the care that a person in a like position would reasonably exercise under similar circumstances; and

(3) In a manner the officer reasonably believes to be in the best interests of the corporation.”

W. Va. Code § 31E-8-842 (2009).

90. Additionally, officers of the Foundation must comply with the Code of Ethics and Standard of Conduct of the West Virginia Foundation, Inc. (See WVU Foundation Inc., Policies/Procedures, Code of Ethics and Standard of Conduct, (Revised August 15, 2009.))

91. Officers of the Foundation breached their fiduciary obligations in the following manner:

- (a) By causing the Foundation to incur significant losses in 2007 attendant to the improper investments identified above;
- (b) By permitting the transactions described in this Complaint to occur for the purpose of ensuring that Richard Ballard received the value of these transactions in an unlawful, non-bid manner;
- (c) By failing to follow the policies and procedures of the Foundation with regard to ethics and standards of conduct;
- (d) By causing an unlawful substantial private benefit and personal enrichment to Richard Ballard and others as a result of the transactions described in this Complaint;
- (e) By causing the Foundation not to receive good and valuable consideration due to the fraudulent conduct identified above;
- (f) By failing to exercise due diligence to determine the veracity and reliability of the representations made unto the Foundation; and
- (g) By participating in violations of the purchasing and procurement laws of the state of West Virginia, and attendant rules and regulations of West Virginia University.

92. The actions officers of the Foundation were not made in good faith, were not reasonably believed to be in the best interests of WVU or the Foundation, and arose from their lack of objectivity due to their lack of independence and their domination or control by other persons having material interests in the transactions at issue.

93. For the reasons outlined above, the Foundation and its officers were, at a minimum, grossly negligent in performing their duties as officers of the Foundation.

94. As a taxpayer and donor to the Foundation, Plaintiff Greer has been injured by Defendant Foundation's officers' breaches of their fiduciary obligations and, therefore, has standing to seek the redress of these unlawful actions.

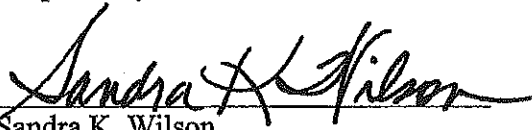
95. Moreover, Plaintiff Greer suffered damages as a result of Defendant Foundation's officers' breaches of their fiduciary duties.

WHEREFORE, Plaintiff Greer respectfully requests that judgment be entered in its favor and the following relief be granted:

- (1) An award of compensatory damages or equitable relief to compensate Plaintiff for the injuries it has suffered;
- (2) An award of exemplary damages to punish Defendant and to deter other future such breaches of the fiduciary obligations of its officers;
- (3) An award of the costs Plaintiff has incurred in bringing this action;
- (4) An award of Plaintiff's reasonable attorneys' fees; and
- (5) Any such other relief the Court deems appropriate.

DATED: January __, 2015

Respectfully submitted,



Sandra K. Wilson
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