

FILED
IN THE CIRCUIT COURT OF CABELL COUNTY, WEST VIRGINIA

PEOPLES BANK, NATIONAL ASSOCIATION, 7015 NOV 24 AM 10:02
a national banking association,

Plaintiff,

v.

APPALACHIAN MINING AND RECLAMATION,
L.L.C., a Kentucky limited liability company,
DJWV2, LLC, a West Virginia limited liability company,
GREEN COAL, LLC, a Kentucky limited liability company,
JOINT VENTURE DEVELOPMENT, LLC, a Kentucky
limited liability company,
PRODUCER'S COAL, INC., a Kentucky corporation
formerly known as Producer's Dock, Inc.,
PRODUCER'S LAND, LLC, a Kentucky limited liability
company,
REDBUD DOCK, LLC, a Kentucky limited liability
company,
SOUTHERN MARINE SERVICES LIMITED
LIABILITY COMPANY, a Kentucky limited liability
company,
SOUTHERN MARINE TERMINAL, LLC, a Kentucky
limited liability company,
DENISE DAWN JOHNSON, Trustee of the Denise
Johnson Real Estate Trust,
DENNIS JOHNSON, a West Virginia resident, and
MARK PINSON, a West Virginia resident,

Defendants.

J.E. HOOD
CIRCUIT CLERK
CABELL CO. KY
COPY

Civil Action No. 15-C- 807

Judge: _____

/s/ CHRISTOPHER D. CHILES

VERIFIED COMPLAINT

Plaintiff, Peoples Bank, National Association (the "Bank"), by counsel, Bowles

Rice LLP, states as follows for its Verified Complaint against the above-named defendants:

Parties and Jurisdiction

1. The Bank is, and was at all times relevant to this Verified Complaint, a national banking association organized under the laws of the United States as evidenced by articles on file with the Office of the Comptroller of the Currency.

2. Upon information and belief, Defendant Appalachian Mining and Reclamation, LLC (“AMR”) is a Kentucky limited liability company authorized to conduct business in West Virginia.

3. Upon information and belief, Defendant DJWV2, LLC (“DJWV2”) is a West Virginia limited liability company with its principal office in Cabell County, West Virginia.

4. Upon information and belief, Defendant Green Coal, LLC (“GC”) is a Kentucky limited liability company.

5. Upon information and belief, Defendant Joint Venture Development, LLC (“JVD”) is or formerly was a Kentucky limited liability company.

6. Upon information and belief, Defendant Producer’s Coal, Inc. (“PC”) is a Kentucky corporation formerly known as Producer’s Dock, Inc.

7. Upon information and belief, Defendant Producer’s Land, LLC (“PL”) is a Kentucky limited liability company.

8. Upon information and belief, Defendant Redbud Dock, LLC (“RD”) is a Kentucky limited liability company.

9. Upon information and belief, Defendant Southern Marine Services Limited Liability Company (“SMS”) is a Kentucky limited liability company.

10. Upon information and belief, Defendant Southern Marine Terminal, LLC (“SMT”) is a Kentucky limited liability company.

11. Upon information and belief, Denise Dawn Johnson is the trustee of the Denise Johnson Real Estate Trust.

12. Upon information and belief, Defendant Dennis Johnson (“Johnson”) is a West Virginia resident.

13. Upon information and belief, Defendant Mark Pinson (“Pinson,” together with Johnson, SMT, SMS, RD, PL, PC, JVD, GC, DJWV2, and AMR, the “Obligors”) is a West Virginia resident.

14. This Court has jurisdiction over the Bank’s claims, and venue is proper in this Court.

Factual Background

15. Upon information and belief, all of the entity Obligors are affiliates of each other and have substantially the same principal owners.

16. Upon information and belief, some of the entity Obligors are land holding companies, some are operational companies, and some are service companies.

17. Upon information and belief, all of the Obligors work together in connection with the businesses’ coal mining, dock loading, and other operations.

18. All of the loans identified below are commercial loans related to the businesses and operations of the various Obligors.

First RD Loan

19. On or about September 23, 2011, the Bank made a loan to RD in the original principal amount of \$1,950,000.00, evidenced by that certain Term Note, dated

September 23, 2011, made payable by RD to the Bank in the original principal amount of \$1,950,000.00 (the “**First RD Note**”). A copy of the First RD Note is attached to and made a part of this Verified Complaint as Exhibit A.

20. To secure repayment of the First RD Note and all other indebtedness of RD to the Bank, whether then existing or arising in the future, RD executed and delivered to the Bank a security agreement (the “**First RD Security Agreement**”), which granted the Bank a lien on and security interest in all of RD’s personal property (the “**RD Collateral**”), including, among other things, RD’s furniture, fixtures, equipment, motor vehicles, raw materials, inventory, and other goods. A copy of the First RD Security Agreement is attached to and made a part of this Verified Complaint as Exhibit B.

21. To secure repayment of the First RD Note and all other indebtedness of PC to the Bank, whether then existing or arising in the future, PC executed and delivered to the Bank a security agreement (the “**First PC Security Agreement**”), which granted the Bank a lien on and security interest in all of PC’s personal property (the “**PC Collateral**”), including, among other things, PC’s furniture, fixtures, equipment, motor vehicles, raw materials, inventory, and other goods. A copy of the First PC Security Agreement is attached to and made a part of this Verified Complaint as Exhibit C.

22. GC executed and delivered to the Bank a guaranty agreement (“**GC Guaranty 1**”) pursuant to which GC guaranteed repayment of the indebtedness owed to the Bank under the First RD Note. A copy of GC Guaranty 1 is attached to and made a part of this Verified Complaint as Exhibit D.

23. PC executed and delivered to the Bank a guaranty agreement (“**PC Guaranty 1**”) pursuant to which PC guaranteed repayment of the indebtedness owed to the Bank

under the First RD Note, as well as all expenses of collection, including reasonable attorneys' fees and costs. A copy of PC Guaranty 1 is attached to and made a part of this Verified Complaint as Exhibit E.

24. Johnson executed and delivered to the Bank a guaranty agreement ("**Johnson Guaranty 1**") pursuant to which Johnson guaranteed repayment of the indebtedness owed to the Bank under the First RD Note, as well as all expenses of collection, including reasonable attorneys' fees and costs. A copy of Johnson Guaranty 1 is attached to and made a part of this Verified Complaint as Exhibit F.

25. Pinson executed and delivered to the Bank a guaranty agreement ("**Pinson Guaranty 1**") pursuant to which Pinson guaranteed repayment of the indebtedness owed to the Bank under the First RD Note, as well as all expenses of collection, including reasonable attorneys' fees and costs. A copy of Pinson Guaranty 1 is attached to and made a part of this Verified Complaint as Exhibit G.

JVD Loan

26. On or about September 5, 2012, the Bank made a loan to JVD in the original principal amount of \$948,841.99, evidenced by that certain Promissory Note, dated September 5, 2012, made payable by JVD to the Bank in the original principal amount of \$948,841.99 (the "**JVD Note**"). A copy of the JVD Note is attached to and made a part of this Verified Complaint as Exhibit H.

27. Johnson executed and delivered to the Bank a guaranty agreement ("**Johnson Guaranty 2**") pursuant to which Johnson guaranteed repayment of the indebtedness owed to the Bank under the JVD Note, as well as all expenses of collection, including reasonable

attorneys' fees and costs. A copy of Johnson Guaranty 2 is attached to and made a part of this Verified Complaint as Exhibit I.

PC Loan

28. On or about January 7, 2013, the Bank made a loan to PC in the original principal amount of \$10,000,000.00, which was subsequently increased to \$12,500,000.00 on or about October 16, 2013, and which is evidenced by that certain Promissory Note, dated October 16, 2013, made payable by PC to the Bank in the original principal amount of \$12,500,000.00 (the "PC Note"). A copy of the PC Note is attached to and made a part of this Verified Complaint as Exhibit J.

29. To secure repayment of the PC Note, PC executed and delivered to the Bank two commercial security agreements (collectively, the "**Second PC Security Agreement**"), which granted the Bank a lien on and security interest in, among other things, PC's inventory and equipment. A copy of the Second PC Security Agreement is attached to and made a part of this Verified Complaint as Exhibit K.

30. AMR executed and delivered to the Bank a guaranty agreement (the "**AMR Guaranty**") pursuant to which AMR guaranteed repayment of the indebtedness owed to the Bank under the PC Note. A copy of the AMR Guaranty is attached to and made a part of this Verified Complaint as Exhibit L.

31. GC executed and delivered to the Bank a guaranty agreement ("**GC Guaranty 2**") pursuant to which GC guaranteed repayment of the indebtedness owed to the Bank under the PC Note. A copy of GC Guaranty 2 is attached to and made a part of this Verified Complaint as Exhibit M.

32. PL executed and delivered to the Bank a guaranty agreement (the “**PL Guaranty**”) pursuant to which PL guaranteed repayment of the indebtedness owed to the Bank under the PC Note. A copy of the PL Guaranty is attached to and made a part of this Verified Complaint as Exhibit N.

33. RD executed and delivered to the Bank a guaranty agreement (the “**RD Guaranty**”) pursuant to which RD guaranteed repayment of the indebtedness owed to the Bank under the PC Note. A copy of the RD Guaranty is attached to and made a part of this Verified Complaint as Exhibit O.

34. SMS executed and delivered to the Bank a guaranty agreement (the “**SMS Guaranty**”) pursuant to which SMS guaranteed repayment of the indebtedness owed to the Bank under the PC Note. A copy of the SMS Guaranty is attached to and made a part of this Verified Complaint as Exhibit P.

35. SMT executed and delivered to the Bank a guaranty agreement (the “**SMT Guaranty**”) pursuant to which SMT guaranteed repayment of the indebtedness owed to the Bank under the PC Note. A copy of the SMT Guaranty is attached to and made a part of this Verified Complaint as Exhibit Q.

36. Johnson executed and delivered to the Bank a guaranty agreement (“**Johnson Guaranty 3**”) pursuant to which Johnson guaranteed repayment of the indebtedness owed to the Bank under the PC Note. A copy of Johnson Guaranty 3 is attached to and made a part of this Verified Complaint as Exhibit R.

37. Pinson executed and delivered to the Bank a guaranty agreement (“**Pinson Guaranty 2**”) pursuant to which Pinson guaranteed repayment of the indebtedness owed to the

Bank under the PC Note. A copy of Pinson Guaranty 2 is attached to and made a part of this Verified Complaint as Exhibit S.

Second RD Loan

38. On or about April 23, 2013, the Bank made a loan to RD in the original principal amount of \$36,019.00, evidenced by that certain Promissory Note, dated April 23, 2013, made payable by RD to the Bank in the original principal amount of \$36,019.00 (the “**Second RD Note**”). A copy of the Second RD Note is attached to and made a part of this Verified Complaint as Exhibit T.

39. To secure repayment of the Second RD Note, RD executed and delivered to the Bank a commercial security agreement (the “**Second RD Security Agreement**”), which granted the Bank a lien on and security interest in, among other things, that certain 2012 Dodge 4500, VIN 3C7WDL0L3CG340202 (the “**Vehicle**”). A copy of the Second RD Security Agreement is attached to and made a part of this Verified Complaint as Exhibit U.

PL Loan

40. On or about May 5, 2014, the Bank made a loan to PL in the original principal amount of \$3,600,000.00, evidenced by that certain Term Note, dated May 5, 2014, made payable by PL to the Bank in the original principal amount of \$3,600,000.00 (the “**PL Note**,” together with the Second RD Note, the First RD Note, the PC Note, and the JVD Note, the “**Notes**”). A copy of the PL Note is attached to and made a part of this Verified Complaint as Exhibit V.

41. To secure repayment of the PL Note and all other indebtedness of PL to the Bank, whether then existing or arising in the future, PL executed and delivered to the Bank a security agreement (the “**PL Security Agreement**,” together with the First RD Security

Agreement, the Second RD Security Agreement, the First PC Security Agreement, and the Second PC Security Agreement, the “**Security Agreements**”), which granted the Bank a lien on and security interest in all of PL’s personal property (the “**PL Collateral**,” together with the RD Collateral (including the Vehicle) and the PC Collateral, the “**Personal Property Collateral**”),¹ including, among other things, PL’s furniture, fixtures, equipment, motor vehicles, raw materials, inventory, and other goods. A copy of the PL Security Agreement is attached to and made a part of this Verified Complaint as Exhibit W.

42. Each of Johnson, PC, and DJWV2 executed and delivered to the Bank a guaranty agreement (the “**PL Note Guaranty**,” together with GC Guaranty 1, PC Guaranty 1, Johnson Guaranty 1, Pinson Guaranty 1, Johnson Guaranty 2, the AMR Guaranty, GC Guaranty 2, the PL Guaranty, the RD Guaranty, the SMS Guaranty, the SMT Guaranty, Johnson, Guaranty 3, and Pinson Guaranty 2, the “**Guaranties**,” and the Guaranties together with the Notes and the Security Agreements, the “**Instruments**”), pursuant to which each of Johnson, PC, and DJWV2 jointly and severally guaranteed repayment of the indebtedness owed to the Bank under the PL Note, as well as all other indebtedness of PL to the Bank. A copy of the PL Note Guaranty is attached to and made a part of this Verified Complaint as Exhibit X.

Default and Forbearance

43. Each of the Obligors defaulted in payment and performance covenants under the various Instruments to which such Obligors were parties or under which such Obligors were bound.

44. The PC Note matured on or about April 16, 2015. All of the indebtedness under the PC Note is due and payable.

¹ The Bank retains other valid, perfected security interests in and liens on real and personal property collateral of the various Obligors.

45. All of the indebtedness under the other Notes has been accelerated.

46. Accordingly, pursuant to the Notes and the Guaranties, all of the indebtedness under the Notes and the Guaranties (the “**Indebtedness**”) is due and payable.

47. The Obligors requested that the Bank forbear from exercising its rights and remedies under the Instruments and the other loan documents.

48. The Bank and the Obligors entered into that certain Forbearance Agreement, dated as of June 30, 2015, among the Bank, the Obligors, and other affiliates of the Obligors, as amended by that certain First Amendment to Forbearance Agreement, dated as of July ___, 2015 [sic], among the same parties (collectively, the “**Forbearance Agreement**”). A copy of the Forbearance Agreement is attached to and made a part of this Verified Complaint as Exhibit Y.

49. Pursuant to the Forbearance Agreement, the Bank agreed to forbear from exercising its rights and remedies under the Instruments and the other loan documents if the Obligors and others performed a multitude of payment and performance covenants in the Forbearance Agreement.

50. The Obligors and their affiliates that are parties to the Forbearance Agreement defaulted with respect to several of their performance covenants under the Forbearance Agreement, resulting in the termination of the Forbearance Agreement.

Funds Mismanagement

51. Upon information and belief, the Obligors are materially failing effectively to manage their businesses, affairs, and cash flow to the detriment of themselves and their creditors, including the Bank.

Fraudulent Transfer

52. Upon information and belief, in March 2015, Johnson conveyed (the “**Fraudulent Transfer**”) his interest in all of the issued and outstanding shares of Sabbatical, Inc., a West Virginia corporation (“**Sabbatical**”), to his wife, Denise Dawn Johnson, as trustee of the Denise Johnson Real Estate Trust.

53. Upon information and belief, Johnson made the Fraudulent Transfer with the intent to hinder, delay, or defraud the Bank and Johnson’s other creditors.

54. Additionally, upon information and belief, Johnson made the Fraudulent Transfer without receiving a reasonably equivalent value in exchange and while Johnson was insolvent or was rendered insolvent by the Fraudulent Transfer itself.

COUNT I – Breach of Contract (First RD Note)

55. The Bank incorporates and re-alleges paragraphs 1 through 54 above.

56. Contrary to the terms of the First RD Note, RD has failed to make the required payments to the Bank and is in default pursuant to the terms of the First RD Note.

57. The indebtedness under the First RD Note has been accelerated, and the Forbearance Agreement has been terminated as a result of the Obligors’ defaults thereunder, and, accordingly, the full amount outstanding under the First RD Note is now due and payable.

58. Pursuant to the terms of the First RD Note, RD owes the Bank the amount of \$176,690.25 in principal and \$25,038.36 in accrued interest and charges as of November 13, 2015, plus interest that continues to accrue on the outstanding principal balance of the First RD Note at the rate of \$24.5403125 per day, plus additional costs and expenses, including, without limitation, attorneys’ fees and expenses.

COUNT II – Breach of Contract (GC Guaranty 1)

59. The Bank incorporates and re-alleges paragraphs 1 through 58 above.

60. Pursuant to the terms of GC Guaranty 1, GC owes the Bank all indebtedness arising under the First RD Note.

61. Pursuant to the terms of GC Guaranty 1, GC owes the Bank the amount of \$176,690.25 in principal and \$25,038.36 in accrued interest and charges as of November 13, 2015, plus interest that continues to accrue on the outstanding principal balance of the First RD Note at the rate of \$24.5403125 per day, plus additional costs and expenses, including, without limitation, attorneys' fees and expenses.

COUNT III – Breach of Contract (PC Guaranty 1)

62. The Bank incorporates and re-alleges paragraphs 1 through 61 above.

63. Pursuant to the terms of PC Guaranty 1, PC owes the Bank all indebtedness arising under the First RD Note.

64. Pursuant to the terms of PC Guaranty 1, PC owes the Bank the amount of \$176,690.25 in principal and \$25,038.36 in accrued interest and charges as of November 13, 2015, plus interest that continues to accrue on the outstanding principal balance of the First RD Note at the rate of \$24.5403125 per day, plus additional costs and expenses, including, without limitation, attorneys' fees and expenses.

COUNT IV – Breach of Contract (Johnson Guaranty 1)

65. The Bank incorporates and re-alleges paragraphs 1 through 64 above.

66. Pursuant to the terms of Johnson Guaranty 1, Johnson owes the Bank all indebtedness arising under the First RD Note.

67. Pursuant to the terms of Johnson Guaranty 1, Johnson owes the Bank the amount of \$176,690.25 in principal and \$25,038.36 in accrued interest and charges as of November 13, 2015, plus interest that continues to accrue on the outstanding principal balance of the First RD Note at the rate of \$24.5403125 per day, plus additional costs and expenses, including, without limitation, attorneys' fees and expenses.

COUNT V – Breach of Contract (Pinson Guaranty 1)

68. The Bank incorporates and re-alleges paragraphs 1 through 67 above.

69. Pursuant to the terms of Pinson Guaranty 1, Pinson owes the Bank all indebtedness arising under the First RD Note.

70. Pursuant to the terms of Pinson Guaranty 1, Pinson owes the Bank the amount of \$176,690.25 in principal and \$25,038.36 in accrued interest and charges as of November 13, 2015, plus interest that continues to accrue on the outstanding principal balance of the First RD Note at the rate of \$24.5403125 per day, plus additional costs and expenses, including, without limitation, attorneys' fees and expenses.

COUNT VI – Breach of Contract (JVD Note)

71. The Bank incorporates and re-alleges paragraphs 1 through 70 above.

72. Contrary to the terms of the JVD Note, JVD has failed to make the required payments to the Bank and is in default pursuant to the terms of the JVD Note.

73. The indebtedness under the JVD Note has been accelerated, and the Forbearance Agreement has been terminated as a result of the Obligors' defaults thereunder, and, accordingly, the full amount outstanding under the JVD Note is now due and payable.

74. Pursuant to the terms of the JVD Note, JVD owes the Bank the amount of \$798,586.24 in principal and \$8,782.88 in accrued interest as of November 13, 2015, plus

interest that continues to accrue on the outstanding principal balance of the JVD Note at the rate of \$99.82328 per day, plus additional costs and expenses, including, without limitation, attorneys' fees and expenses.

COUNT VII – Breach of Contract (Johnson Guaranty 2)

75. The Bank incorporates and re-alleges paragraphs 1 through 74 above.

76. Pursuant to the terms of Johnson Guaranty 2, Johnson owes the Bank all indebtedness arising under the JVD Note.

77. Pursuant to the terms of Johnson Guaranty 2, Johnson owes the Bank the amount of \$798,586.24 in principal and \$8,782.88 in accrued interest as of November 13, 2015, plus interest that continues to accrue on the outstanding principal balance of the JVD Note at the rate of \$99.82328 per day, plus additional costs and expenses, including, without limitation, attorneys' fees and expenses.

COUNT VIII – Breach of Contract (PC Note)

78. The Bank incorporates and re-alleges paragraphs 1 through 77 above.

79. Contrary to the terms of the PC Note, PC has failed to make the required payments to the Bank and is in default pursuant to the terms of the PC Note.

80. The PC Note has matured, and the Forbearance Agreement has been terminated as a result of the Obligors' defaults thereunder, and, accordingly, the full amount outstanding under the PC Note is now due and payable.

81. Pursuant to the terms of the PC Note, PC owes the Bank the amount of \$12,464,140.00 in principal and \$513,322.00 in accrued interest and charges as of November 13, 2015, plus interest that continues to accrue on the outstanding principal balance of the PC Note

at the rate of \$1,644.574027777 per day, plus additional costs and expenses, including, without limitation, attorneys' fees and expenses.

COUNT IX – Breach of Contract (AMR Guaranty)

82. The Bank incorporates and re-alleges paragraphs 1 through 81 above.

83. Pursuant to the terms of the AMR Guaranty, AMR owes the Bank all indebtedness arising under the PC Note.

84. Pursuant to the terms of the AMR Guaranty, AMR owes the Bank the amount of \$12,464,140.00 in principal and \$513,322.00 in accrued interest and charges as of November 13, 2015, plus interest that continues to accrue on the outstanding principal balance of the PC Note at the rate of \$1,644.574027777 per day, plus additional costs and expenses, including, without limitation, attorneys' fees and expenses.

COUNT X – Breach of Contract (GC Guaranty 2)

85. The Bank incorporates and re-alleges paragraphs 1 through 84 above.

86. Pursuant to the terms of GC Guaranty 2, GC owes the Bank all indebtedness arising under the PC Note.

87. Pursuant to the terms of GC Guaranty 2, GC owes the Bank the amount of \$12,464,140.00 in principal and \$513,322.00 in accrued interest and charges as of November 13, 2015, plus interest that continues to accrue on the outstanding principal balance of the PC Note at the rate of \$1,644.574027777 per day, plus additional costs and expenses, including, without limitation, attorneys' fees and expenses.

COUNT XI – Breach of Contract (PL Guaranty)

88. The Bank incorporates and re-alleges paragraphs 1 through 87 above.

89. Pursuant to the terms of the PL Guaranty, PL owes the Bank all indebtedness arising under the PC Note.

90. Pursuant to the terms of the PL Guaranty, PL owes the Bank the amount of \$12,464,140.00 in principal and \$513,322.00 in accrued interest and charges as of November 13, 2015, plus interest that continues to accrue on the outstanding principal balance of the PC Note at the rate of \$1,644.574027777 per day, plus additional costs and expenses, including, without limitation, attorneys' fees and expenses.

COUNT XII – Breach of Contract (RD Guaranty)

91. The Bank incorporates and re-alleges paragraphs 1 through 88 above.

92. Pursuant to the terms of the RD Guaranty, RD owes the Bank all indebtedness arising under the PC Note.

93. Pursuant to the terms of the RD Guaranty, RD owes the Bank the amount of \$12,464,140.00 in principal and \$513,322.00 in accrued interest and charges as of November 13, 2015, plus interest that continues to accrue on the outstanding principal balance of the PC Note at the rate of \$1,644.574027777 per day, plus additional costs and expenses, including, without limitation, attorneys' fees and expenses.

COUNT XIII – Breach of Contract (SMS Guaranty)

94. The Bank incorporates and re-alleges paragraphs 1 through 89 above.

95. Pursuant to the terms of the SMS Guaranty, SMS owes the Bank all indebtedness arising under the PC Note.

96. Pursuant to the terms of the SMS Guaranty, SMS owes the Bank the amount of \$12,464,140.00 in principal and \$513,322.00 in accrued interest and charges as of November 13, 2015, plus interest that continues to accrue on the outstanding principal balance of

the PC Note at the rate of \$1,644.574027777 per day, plus additional costs and expenses, including, without limitation, attorneys' fees and expenses.

COUNT XIV – Breach of Contract (SMT Guaranty)

97. The Bank incorporates and re-alleges paragraphs 1 through 96 above.

98. Pursuant to the terms of the SMT Guaranty, SMT owes the Bank all indebtedness arising under the PC Note.

99. Pursuant to the terms of the SMT Guaranty, SMT owes the Bank the amount of \$12,464,140.00 in principal and \$513,322.00 in accrued interest and charges as of November 13, 2015, plus interest that continues to accrue on the outstanding principal balance of the PC Note at the rate of \$1,644.574027777 per day, plus additional costs and expenses, including, without limitation, attorneys' fees and expenses.

COUNT XV – Breach of Contract (Johnson Guaranty 3)

100. The Bank incorporates and re-alleges paragraphs 1 through 99 above.

101. Pursuant to the terms of Johnson Guaranty 3, Johnson owes the Bank all indebtedness arising under the PC Note.

102. Pursuant to the terms of Johnson Guaranty 3, Johnson owes the Bank the amount of \$12,464,140.00 in principal and \$513,322.00 in accrued interest and charges as of November 13, 2015, plus interest that continues to accrue on the outstanding principal balance of the PC Note at the rate of \$1,644.574027777 per day, plus additional costs and expenses, including, without limitation, attorneys' fees and expenses

COUNT XVI – Breach of Contract (Pinson Guaranty 2)

103. The Bank incorporates and re-alleges paragraphs 1 through 102 above.

104. Pursuant to the terms of Pinson Guaranty 2, Pinson owes the Bank all indebtedness arising under the PC Note.

105. Pursuant to the terms of Pinson Guaranty 2, Pinson owes the Bank the amount of \$12,464,140.00 in principal and \$513,322.00 in accrued interest and charges as of November 13, 2015, plus interest that continues to accrue on the outstanding principal balance of the PC Note at the rate of \$1,644.574027777 per day, plus additional costs and expenses, including, without limitation, attorneys' fees and expenses.

COUNT XVII – Breach of Contract (Second RD Note)

106. The Bank incorporates and re-alleges paragraphs 1 through 105 above.

107. Contrary to the terms of the Second RD Note, RD has failed to make the required payments to the Bank and is in default pursuant to the terms of the Second RD Note.

108. The indebtedness under the Second RD Note has been accelerated, and the Forbearance Agreement has been terminated as a result of the Obligors' defaults thereunder, and, accordingly, the full amount outstanding under the Second RD Note is now due and payable.

109. Pursuant to the terms of the Second RD Note, RD owes the Bank the amount of \$21,671.77 in principal and \$(0.16) in accrued interest and charges as of November 13, 2015, plus interest that continues to accrue on the outstanding principal balance of the Second RD Note at the rate of \$2.70897125 per day, plus additional costs and expenses, including, without limitation, attorneys' fees and expenses.

COUNT XVIII – Breach of Contract (PL Note)

110. The Bank incorporates and re-alleges paragraphs 1 through 109 above.

111. Contrary to the terms of the PL Note, PL has failed to make the required payments to the Bank and is in default pursuant to the terms of the PL Note.

112. The indebtedness under the PL Note has been accelerated, and the Forbearance Agreement has been terminated as a result of the Obligors' defaults thereunder, and, accordingly, the full amount outstanding under the PL Note is now due and payable.

113. Pursuant to the terms of the PL Note, PL owes the Bank the amount of \$3,470,026.22 in principal and \$139,467.50 in accrued interest and charges as of November 13, 2015, plus interest that continues to accrue on the outstanding principal balance of the PL Note at the rate of \$530.142894722 per day, plus additional costs and expenses, including, without limitation, attorneys' fees and expenses.

COUNT XIX – Breach of Contract (PL Note Guaranty)

114. The Bank incorporates and re-alleges paragraphs 1 through 113 above.

115. Pursuant to the terms of the PL Note Guaranty, each of Johnson, PC, and DJWV2 owes the Bank all indebtedness arising under the PL Note, as well as all other indebtedness of PL to the Bank.

116. The amount due and owing to the Bank under the PL Note is \$3,470,026.22 in principal and \$139,467.50 in accrued interest and charges as of November 13, 2015, plus interest that continues to accrue on the outstanding principal balance of the PL Note at the rate of \$530.142894722 per day, plus additional costs and expenses, including, without limitation, attorneys' fees and expenses.

117. Additionally, PL additionally owes the Bank the amount of \$12,464,140.00 in principal and \$513,322.00 in accrued interest and charges as of November 13, 2015, plus interest that continues to accrue on the outstanding principal balance of the PC Note at the rate of \$1,644.574027777 per day, plus additional costs and expenses, including, without limitation, attorneys' fees and expenses.

118. Pursuant to the terms of the PL Note Guaranty, each of Johnson, PC, and DJWV2 owes the Bank the amount of \$15,934,166.22 in principal and \$652,789.50 in accrued interest and charges as of November 13, 2015, plus interest that continues to accrue on the outstanding principal balance of the PL Note at the rate of \$530.142894722 per day and interest that continues to accrue on the PC Note at the rate of \$1,644.574027777 per day, plus additional costs and expenses, including, without limitation, attorneys' fees and expenses.

COUNT XX - Appointment of Receiver

119. The Bank incorporates and re-alleges paragraphs 1 through 118 above.

120. W. Va. Code § 53-6-1 permits a court to appoint a special receiver when there is danger of the loss or misappropriation of the funds or property of a person or entity.

121. Upon information and belief, there is a continuing risk of loss of the funds or property of each of the Obligors because of (a) the Obligors' mismanagement of their operations, businesses, and financial affairs, and (b) the Obligors' continued operation of their businesses under significantly-adverse financial conditions.

122. Accordingly, appointment of a special receiver is warranted under W. Va. Code § 53-6-1.

COUNT XXI - Recovery of Personal Property

123. The Bank incorporates and re-alleges paragraphs 1 through 122 above.

124. The Bank is entitled, upon Defendants' default, to repossess the Personal Property Collateral.

COUNT XXI - Setting Aside Fraudulent Transfer

125. The Bank incorporates and re-alleges paragraphs 1 through 124 above.

126. W. Va. Code § 40-1A-1, *et seq.* (the “**West Virginia Uniform Fraudulent Transfer Act**”), provides judicial remedies for creditors to avoid fraudulent transfers.

127. The Fraudulent Transfer constitutes a fraudulent transfer pursuant to W. Va. Code §§ 40-1A-4, -5, and should be avoided and set aside. W. Va. Code § 40-1A-7.

128. The Bank is a creditor of Johnson and is entitled to relief under the West Virginia Uniform Fraudulent Transfer Act.

WHEREFORE, the Bank respectfully prays that this Court grant it relief against Defendants as follows:

(a) Pursuant to Count I of this Verified Complaint, (i) find that RD is in breach of the First RD Note, (ii) find that RD is liable to the Bank pursuant to the terms of the First RD Note, and (iii) award the Bank judgment against RD in the amount of \$176,690.25, plus interest and charges in the amount of \$25,038.36 as of November 13, 2015, plus interest that continues to accrue on the outstanding principal balance of the First RD Note at the rate of \$24.5403125 per day until paid;

(b) Pursuant to Count II of this Verified Complaint, (i) find that GC is in breach of GC Guaranty 1, (ii) find that GC is liable to the Bank pursuant to the terms of GC Guaranty 1, and (iii) award the Bank judgment in the amount of \$176,690.25, plus interest and charges in the amount of \$25,038.36 as of November 13, 2015, plus interest that continues to accrue on the outstanding principal balance of the First RD Note at the rate of \$24.5403125 per day until paid;

(c) Pursuant to Count III of this Verified Complaint, (i) find that PC is in breach of PC Guaranty 1, (ii) find that PC is liable to the Bank pursuant to the terms of PC

Guaranty 1, and (iii) award the Bank judgment in the amount of \$176,690.25, plus interest and charges in the amount of \$25,038.36 as of November 13, 2015, plus interest that continues to accrue on the outstanding principal balance of the First RD Note at the rate of \$24.5403125 per day until paid;

(d) Pursuant to Count IV of this Verified Complaint, (i) find that Johnson is in breach of Johnson Guaranty 1, (ii) find that Johnson is liable to the Bank pursuant to the terms of Johnson Guaranty 1, and (iii) award the Bank judgment in the amount of \$176,690.25, plus interest and charges in the amount of \$25,038.36 as of November 13, 2015, plus interest that continues to accrue on the outstanding principal balance of the First RD Note at the rate of \$24.5403125 per day until paid;

(e) Pursuant to Count V of this Verified Complaint, (i) find that Pinson is in breach of Pinson Guaranty 1, (ii) find that Pinson is liable to the Bank pursuant to the terms of Pinson Guaranty 1, and (iii) award the Bank judgment in the amount of \$176,690.25, plus interest and charges in the amount of \$25,038.36 as of November 13, 2015, plus interest that continues to accrue on the outstanding principal balance of the First RD Note at the rate of \$24.5403125 per day until paid;

(f) Pursuant to Count VI of this Verified Complaint, (i) find that JVD is in breach of the JVD Note, (ii) find that JVD is liable to the Bank pursuant to terms of the JVD Note, and (iii) award the Bank judgment in the amount of \$798,586.24, plus interest and charges in the amount of \$8,782.88 as of November 13, 2015, plus interest that continues to accrue on the outstanding principal balance of the JVD Note at the rate of \$99.82328 per day until paid;

(g) Pursuant to Count VII of this Verified Complaint, (i) find that Johnson is in breach of Johnson Guaranty 2, (ii) find that Johnson is liable to the Bank pursuant

to the terms of Johnson Guaranty 2, and (iii) award the Bank judgment in the amount of \$798,586.24, plus interest and charges in the amount of \$8,782.88 as of November 13, 2015, plus interest that continues to accrue on the outstanding principal balance of the JVD Note at the rate of \$99.82328 per day until paid;

(h) Pursuant to Count VIII of this Verified Complaint, (i) find that PC is in breach of the PC Note, find that PC is liable to the Bank pursuant to the terms of the PC Note, and (iii) award the Bank judgment in the amount of \$12,464,140.00, plus interest and charges in the amount of \$513,322.00 as of November 13, 2015, plus interest that continues to accrue on the outstanding principal balance of the PC Note at the rate of \$1,644.574027777 per day until paid;

(i) Pursuant to Count IX of this Verified Complaint, (i) find that AMR is in breach of the AMR Guaranty, (ii) find that AMR is liable to the Bank pursuant to the terms of the AMR Guaranty, and (iii) award the Bank judgment in the amount of \$12,464,140.00, plus interest and charges in the amount of \$513,322.00 as of November 13, 2015, plus interest that continues to accrue on the outstanding principal balance of the PC Note at the rate of \$1,644.574027777 per day until paid;

(j) Pursuant to Count X of this Verified Complaint, (i) find that GC is in breach of GC Guaranty 2, (ii) find that GC is liable to the Bank pursuant to the terms of GC Guaranty 2, and (iii) award the Bank judgment in the amount of \$12,464,140.00, plus interest and charges in the amount of \$513,322.00 as of November 13, 2015, plus interest that continues to accrue on the outstanding principal balance of the PC Note at the rate of \$1,644.574027777 per day until paid;

(k) Pursuant to Count XI of this Verified Complaint, (i) find that PL is in breach of the PL Guaranty, (ii) find that PL is liable to the Bank pursuant to the terms of the PL Guaranty, and (iii) award the Bank judgment in the amount of \$12,464,140.00, plus interest and charges in the amount of \$513,322.00 as of November 13, 2015, plus interest that continues to accrue on the outstanding principal balance of the PC Note at the rate of \$1,644.574027777 per day until paid;

(l) Pursuant to Count XII of this Verified Complaint, (i) find that RD is in breach of the RD Guaranty, (ii) find that RD is liable to the Bank pursuant to the terms of the RD Guaranty, and (iii) award the Bank judgment in the amount of \$12,464,140.00, plus interest and charges in the amount of \$513,322.00 as of November 13, 2015, plus interest that continues to accrue on the outstanding principal balance of the PC Note at the rate of \$1,644.574027777 per day until paid;

(m) Pursuant to Count XIII of this Verified Complaint, (i) find that SMS is in breach of the SMS Guaranty, (ii) find that SMS is liable to the Bank pursuant to the terms of the SMS Guaranty, and (iii) award the Bank judgment in the amount of \$12,464,140.00, plus interest and charges in the amount of \$513,322.00 as of November 13, 2015, plus interest that continues to accrue on the outstanding principal balance of the PC Note at the rate of \$1,644.574027777 per day until paid;

(n) Pursuant to Count XIV of this Verified Complaint, (i) find that SMT is in breach of the SMT Guaranty, (ii) find that SMT is liable to the Bank pursuant to the terms of the SMT Guaranty, and (iii) award the Bank judgment in the amount of \$12,464,140.00, plus interest and charges in the amount of \$513,322.00 as of November 13, 2015, plus interest

that continues to accrue on the outstanding principal balance of the PC Note at the rate of \$1,644.574027777 per day until paid;

(o) Pursuant to Count XV of this Verified Complaint, (i) find that Johnson is in breach of Johnson Guaranty 3, (ii) find that Johnson is liable to the Bank pursuant to the terms of Johnson Guaranty 3, and (iii) award the Bank judgment in the amount of \$12,464,140.00, plus interest and charges in the amount of \$513,322.00 as of November 13, 2015, plus interest that continues to accrue on the outstanding principal balance of the PC Note at the rate of \$1,644.574027777 per day until paid;

(p) Pursuant to Count XVI of this Verified Complaint, (i) find that Pinson is in breach of Pinson Guaranty 2, (ii) find that Pinson is liable to the Bank pursuant to the terms of Pinson Guaranty 2, and (iii) award the Bank judgment in the amount of \$12,464,140.00, plus interest and charges in the amount of \$513,322.00 as of November 13, 2015, plus interest that continues to accrue on the outstanding principal balance of the PC Note at the rate of \$1,644.574027777 per day until paid;

(q) Pursuant to Count XVII of this Verified Complaint, (i) find that RD is in breach of the Second RD Note, (ii) find that RD is liable to the Bank pursuant to the terms of the Second RD Note, and (iii) award the Bank judgment in the amount of \$21,671.77, plus interest and charges in the amount of \$(0.16) as of November 13, 2015, plus interest that continues to accrue on the outstanding principal balance of the Second RD Note at the rate of \$2.70897125 per day until paid;

(r) Pursuant to Count XVIII of this Verified Complaint, (i) find that PL is in breach of the PL Note, (ii) find that PL is liable to the Bank pursuant to the terms of the PL Note, and (iii) award the Bank judgment in the amount of \$3,470,026.22, plus interest and

charges in the amount of \$139,467.50 as of November 13, 2015, plus interest that continues to accrue on the outstanding principal of the PL Note at the rate of \$530.142894722 per day until paid;

(s) Pursuant to Count XIX of this Verified Complaint, (i) find that each of Johnson, PC, and DJWV2 is in breach of the PL Note Guaranty, (ii) find that each of Johnson, PC, and DJWV2 is liable to the Bank, jointly and severally, pursuant to the terms of the PL Note Guaranty, and (iii) award the Bank judgment in the amount of \$15,934,166.22, plus interest and charges in the amount of \$652,789.50 as of November 13, 2015, plus interest that continues to accrue on the outstanding principal of the PL Note at the rate of \$530.142894722 per day until paid and interest that continues to accrue on the outstanding principal of the PC Note at the rate of \$1,644.574027777 per day until paid;

(t) Award post-judgment interest on the full amount of the Court's judgment, from the date of judgment until paid, at the maximum rate allowed by law upon a judgment of this Court;

(u) Award the Bank all of its attorneys' fees, costs, and expenses of this suit, and all of its other costs and expenses related to the Instruments;

(v) Appoint a special receiver for each of the Obligors;

(w) (i) Hold a hearing, pursuant to W. Va. Code §§ 55-6-1, *et seq.*, regarding the Bank's right to immediate possession of the Vehicle and the other Personal Property Collateral and the respective Defendants' right to retain possession of the Vehicle and the other Personal Property Collateral, and (ii) if this Court holds such a hearing, upon such hearing, enter an order directing an officer to take possession, custody, and control of the Vehicle and each of the other items of Personal Property Collateral, conditioned upon the Bank's posting

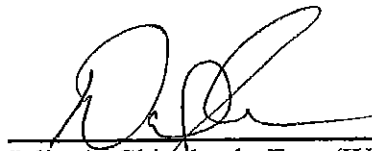
of a bond in twice the amount of the value of the Personal Property Collateral, and that if Defendants fail to post a counter bond in like amount, then such officer shall forthwith release the Vehicle and the other Personal Property Collateral to the custody and control of the Bank or its designee;

(x) (i) Either (A) avoid and set aside the Fraudulent Transfer, or (B) grant the Bank an equitable, first-priority lien on and security interest in the Sabbatical shares that were the subject of the Fraudulent Transfer, and (ii) enjoin Johnson or the trust from further disposing of the Sabbatical shares that were the subject of the Fraudulent Transfer; and

(y) Award the Bank such other relief as this Court deems appropriate.

PEOPLES BANK, NATIONAL
ASSOCIATION

By Counsel



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**EXHIBITS ARE ON FILE IN
THE CLERK'S OFFICE OF
THE WEST VIRGINIA
SUPREME COURT OF
APPEALS**

AND

**THE CABELL COUNTY
CIRCUIT CLERK'S OFFICE**