

IN THE CIRCUIT COURT OF MINERAL COUNTY, WEST VIRGINIA

AMERICAN LEGION DEPARTMENT  
MARYLAND, INC., VICTORY POST 155,

Plaintiff,

v.

Civil Action No. 15-c-90

FIRST UNITED BANK AND TRUST,  
a foreign banking corporation,

Defendant and Third-Party Plaintiff,

v.

ROGER LOUGH,

Third-Party Defendant.

**DEFENDANT'S THIRD-PARTY COMPLAINT AGAINST ROGER LOUGH**

Defendant First United Bank and Trust ("FUBT"), by counsel, Bowles Rice LLP, hereby states and alleges for its Third-Party Complaint against Roger Lough as follows:

**THE PARTIES**

1. Plaintiff's Complaint alleges that, at all times relevant, Plaintiff American Legion Department Maryland, Inc., Victory Post 155, ("Legion"), was and is an incorporated organization chartered in the state of Maryland.

2. First United Bank & Trust, ("FUBT") is a corporation chartered in the state of Maryland and authorized to do business in the state of West Virginia. FUBT maintains a branch bank office in Mineral County, West Virginia.

3. At all times relevant, Roger Lough has been a resident of Allegheny County, Maryland. Plaintiff's Complaint alleges that FUBT wrongfully allowed Roger Lough to open a

personal bank account at its branch in Mineral County, West Virginia, and deposit checks made payable to the Legion into it.

#### **FACTUAL BACKGROUND**

4. FUBT incorporates by reference the allegations contained in Paragraphs 1 through 3 of this Third-Party Complaint as if fully set forth herein.

5. Plaintiff filed its Complaint against FUBT alleging it negligently, willfully and intentionally violated the West Virginia Consumer Credit and Protection Act. *See* West Virginia Code § 46A-1-101, *et seq.*

6. Plaintiff's Complaint alleges that FUBT, without commercial justification, negligently, willfully and intentionally allowed Roger Lough to open a personal bank account at its branch in Mineral County, West Virginia, and deposit checks made payable to the Legion into it. Further, that Roger Lough converted funds made payable to the Legion for his personal use.

7. FUBT denies any and all liability as alleged by Plaintiff in its Complaint.

#### **COUNT ONE (Indemnification)**

8. FUBT incorporate by reference the allegations contained in Paragraphs 1 through 7 of this Third-Party Complaint as if fully set forth herein.

9. To the extent that FUBT is found liable to Plaintiff for damages, if any, such liability was the result of acts, omission and/or negligent conduct of Roger Lough.

10. If damages are awarded to Plaintiff, Roger Lough has a duty to indemnify FUBT from any such liability.

#### **COUNT TWO (Contribution)**

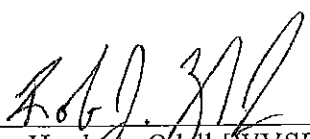
11. FUBT incorporate by reference the allegations contained in Paragraphs 1 through 10 of this Third-Party Complaint as if fully set forth herein.

12. To the extent FUBT is found liable to Plaintiff for any damages, such liability was the result of acts, omission and/or negligent conduct on the part of Roger Lough.

13. As such, Roger Lough has a duty of contribution to the extent any liability is imposed upon FUBT pursuant to West Virginia Code § 55-7-13, *et seq.*,<sup>1</sup> as well as West Virginia common law.

WHEREFORE, First United Bank and Trust demands judgment against the third-party defendant, Roger Lough, in the amount of any and all damages which may be awarded to Plaintiff, plus any and all pre-judgment and post-judgment interest, the costs incurred in defending the Complaint, including but not limited to reasonable attorneys' fees, and any further relief this Court deems appropriate.

FIRST UNITED BANK AND TRUST, INC.  
By counsel

  
\_\_\_\_\_  
Ashley Hardesty Odell [WVSB # 9380]  
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Robert J. Zak [WVSB # 11726]

<sup>1</sup> West Virginia Code §§ 55-7-13, *et seq.*, were repealed effective May 25, 2015. However, statutory contribution is still in effect with regard to the present matter. West Virginia Code § 2-2-8 states as follows:

The repeal of a law, or its expiration by virtue of any provision contained therein, shall not affect any offense committed, or penalty or punishment incurred, before the repeal took effect, or the law expired, save only that the proceedings thereafter had shall conform as far as practicable to the laws in force at the time such proceedings take place, unless otherwise specially provided; and that if any penalty or punishment be mitigated by the new law, such new law may, with the consent of the party affected thereby, be applied to any judgment pronounced after it has taken effect.

W. Va. Code § 2-2-8. *See also* West Virginia Code § 55-7-13c(j) ("This section applies to all causes of action arising on or after the effective date of its enactment.").

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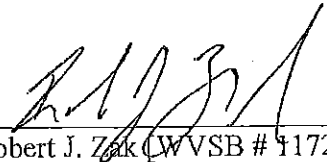
ROGER LOUGH,

Third-Party Defendant.

CERTIFICATE OF SERVICE

The undersigned does hereby certify that the foregoing document titled "*Defendant's Third-Party Complaint Against Roger Lough*" was this 22nd of February, 2016, served on Plaintiff's counsel by depositing a true and correct copy of the same in the United States Mail, postage prepaid, and addressed as follows:

Stephen P. Meyer, Esq.  
Meyer, Ford, Glasser & Radman, PLLC  
120 Capitol Street  
Charleston, West Virginia 25301

  
Robert J. Zak (WVSB # 11726)