

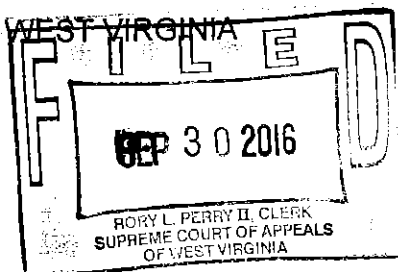
IN THE CIRCUIT COURT OF PRESTON COUNTY, WEST VIRGINIA

GREATWIDE CHEETAH TRANSPORTATION, LLC,  
a Delaware Limited Liability Company,  
successor in interest to,  
CHEETAH TRANSPORTATION, LLC,

Plaintiff,

v.

Civil Action No. 14-C-106  
Judge Lawrance S. Miller



RONALD O. SLEMBOSKI, JR., an individual,  
SANDRA L. SLEMBOSKI, an individual,  
d/b/a MTF AGENCY, and MEDALLION  
TRANSPORT AND LOGISTICS, LLC, a North  
Carolina Limited Liability Company,

Defendants.

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**MEDALLION TRANSPORT AND LOGISTICS, LLC'S**  
**MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION**  
**FOR SUMMARY JUDGMENT**

Now comes Defendant Medallion Transport and Logistics, LLC (hereinafter "Medallion"), by the undersigned counsel, and, submits this Memorandum of Law in support of its Motion for Summary Judgment, submitted contemporaneously herewith.

**STATEMENT OF FACTS**

Medallion was added to this case by Amended Complaint served December 18, 2014. In the Amended Complaint, Plaintiff, Greatwide Cheetah Transportation, LLC ("Greatwide"), pursued two alternative theories of liability against Medallion. First, Greatwide alleges that Medallion tortiously interfered with a contract between Greatwide and "the Slemboski defendants (collectively referring to defendants Ronald O. Slemboski, Jr., and Sandra L. Slemboski), by purposefully acting to interfere with the contractual and business relationship with them, and by soliciting them to breach their

contract with Greatwide, and enter into a contractual relationship with Medallion. (Am. Compl. Count V.)

Alternatively, Greatwide alleges that Medallion conspired with Sandra L. Slemboski to induce Ronald O. Slemboski to transition business away from Greatwide (in other words, to tortiously interfere with Ronald O. Slemboski, Jr.'s contract with Greatwide). (Am. Compl. Count VI.)

The documentary evidence upon which Greatwide bases its claims to contractual relationships with one, or both, of the Slemboski defendants, has been produced by Greatwide in a form that is, in many instances, incomplete, fragmentary, and out of chronological or numerical order. At this point, it is apparent that all such documents in the possession of Greatwide have been produced. Where they are reproduced herein as exhibits, an effort has been made to place such documents as Greatwide has produced in chronological order, numerical order, and logical relationship. Greatwide's Bates stamp numbers will, therefore, not always appear in numerical order, and this does not represent an omission of any produced pages that form a part of a particular document.

#### I Summary of Contract Documents

The contractual agreement upon which Greatwide bases its theory of tortious interference with a contract between "Slemboski Defendants" and Greatwide, was a September 5, 1997 Sales Agency Agreement (Am. Compl. ¶ 13), for which Greatwide has produced only a partial document, titled "SECTION F---STATEMENT OF UNDERSTANDING AND AGENT CONTRACT" (a true copy of which is attached hereto as "Exhibit A.") The September 5, 1997 agreement identifies the Agency as "MTF," the

Agent as "Ronald O. Slemboski." The signature line for the agent bears the signature of "Ronald O. Slemoski, Jr." Sandra L. Slemboski is not a signatory to, nor is she mentioned, in the September 5, 1997 agreement.

At the time the September 5, 1997 agency agreement between MTF, Ronald O. Slemboski, Jr., and Greatwide was created, Sandra L. Slemboski, and her husband Ronald O. Slemboski, Sr., were signatories to an agency agreement between "Greatwide Transportation Company" (a predecessor in interest to Plaintiff, Greatwide) and an agency designated as "SLS, Inc.", dated September 18, 1996 (see "SECTION F--STATEMENT OF UNDERSTANDING AND AGENT CONTRACT, dated September 18, 1996, and "INFORMATION SHEET\*\*\*NEW AGENCIES," dated September 19, 1996, attached hereto as "Exhibit B.")

Sandra L. Slemboski and her company, SLS, Inc., or Sandra L. Slemboski, individually, continued to be a contracted agent of Greatwide, through June 25, 2006. This is evidenced by the following contracts (in some instances, parts of written contracts) produced by Greatwide in discovery: 1) a Sales Agency Agreement dated April 24, 2002, between Cheetah Transportation, LLC (a predecessor in interest to Greatwide) and SLS, Inc., signed by Sandra L. Slemboski as authorized agent (attached hereto as "Exhibit C"; and 2) an Addendum to Sales Agency Agreement, dated June 25, 2003, whereby Greatwide (under the name of predecessor Cheetah Transportation, LLC) extended the Sales Agency Agreement dated April 24, 2002 for three years and added a clause requiring that Sandra Slemboski act as the exclusive agent of Greatwide for that period (attached hereto as "Exhibit D.")

The second agreement, which, by its own terms, expired on June 25, 2006, bears one signature by "Sandy Slemboski," on behalf of herself, and two signatures by "Ronald Slemboski," one on behalf of himself, and one on behalf of "Agent MTF." Although this single document refers to "the Sales Agency Agreement," dated April 24, 2002, there were two independent sales agency agreements executed on April 24, 2002: one for SLS, Inc., Sandra L. Slemboski authorized agent; and one for MTF as Agent. The signature lines for Sandra L. Slemboski and Ronald O. Slemboski, Jr., on behalf of themselves, are labeled with printing that reads, "individually and jointly." (Exhibit D.)

For the duration of Sandra L. Slemboski's agency contracts with Greatwide, Ronald O. Slemboski, Jr. and his d/b/a name, MTF, continued to be a contracted agent of Greatwide, separately, through June 25, 2006, as evidenced by: 1) a Sales Agency Agreement dated April 24, 2002, between Cheetah Transportation, LLC and MTF as Agent (attached hereto as "Exhibit E;") and 2) the previously mentioned June 25, 2003 Addendum extending both Sandra L. Slemboski's and Ronald O. Slemboski's sales agency agreements of April 24, 2002 (Exhibit D.).

After June 25, 2006, there were no contracts between Greatwide and Sandra L. Slemboski, or her company, SLS, Inc. (W. Winey Dep. 171:5-172:5.) (J. Wojciechowski Dep. 29:16-30:9.) In late 2006, SLS, Inc. was dissolved in bankruptcy. (S. Slemboski Dep. 6:14-25.) (W. Winey Dep. 170:10-171:4.)

There is no evidence that Greatwide paid any money to Sandra L. Slemboski from 2006 to the present. In fact, 1099 forms prepared by Greatwide show payment issued exclusively to Ronald O. Slemboski, Jr., from 2006 through 2013. See "Exhibit P"

to "Defendant Sandra L. Slemboski's Memorandum of Law in Support of Her Motion for Summary Judgment."

When, in October of 2008, Cheetah Transportation, LLC, along with many related entities [a consolidated group of debtors under the name GWLS Holdings, Inc., consisting of fifty-one (51) companies, including Cheetah Transportation, LLC, and American Trans-Freight, LLC] filed for Chapter 11 bankruptcy, Ronald O. Slemboski, Jr., and MTF were listed as creditors. Sandra L. Slemboski and SLS, Inc. were not. (See "Consolidated List of Creditors" from United States Bankruptcy Court for the District of Delaware, Case No. 12430, attached hereto as "Exhibit F.")

Greatwide also entered into another contract with Ronald O. Slemboski, Jr. after the June 25, 2003 Addendum, which had referred back to his April 24, 2002 contract, and expired, by its own terms on June 25, 2006. On April 2, 2008, Cheetah Transportation, LLC d/b/a Greatwide Cheetah Transportation (the "Company"), entered into an "INDEPENDENT SALES AGENT AGREEMENT," with "Ronald Slemboski, Jr. d/b/a MTF (the 'Sales Agent'), Proprietorship. On that same date, April 2, 2008, Cheetah Transportation, LLC entered into an Addendum ("Addendum A") to the April 2, 2008 contract, with "Ronald Slemboski, Jr. d/b/a MTF. (Both the Independent Sales Agency Agreement, and Addendum A are attached hereto, jointly, as "Exhibit G.")

Paragraph 14 of the Independent Sales Agency Agreement, titled "**Entire Agreement.**", states, "This Agreement sets forth the entire understanding of the parties hereto with respect to the subject matter hereof **and supersedes all prior agreements between the parties hereto.** (emphasis added.)" (Exhibit G, p. 5). Greatwide's Executive Vice President, and designated company representative for the purpose of

attending court proceedings and depositions in this case, Joseph Wojciechowki, has admitted in deposition testimony that Paragraph 14 of the April 24, 2008 Sales Agency Agreement means that it supersedes any and all prior agreements between Greatwide and Ronald O. Slemboski, Jr., specifically including agreements entered into in 1997, 2002, and 2003. (J. Wojciechowski Dep. 47: 14-48: 11, 118: 13-22),

Addendum A was "part of and incorporated by reference into (the Independent Sales Agency Agreement). Addendum A also stated, "In the event the terms, conditions or provisions of this Addendum conflict with the terms of the Agreement, the terms, conditions and provisions of the Addendum shall govern and control, in all respects. (Exhibit G, p. 7). Furthermore, Addendum A, like the Agreement of which it was made a part, was expressly stated to, "... replace any and all Addendum A's executed prior to the Effective Date with this new Addendum A." (Id.).

The Addendum A of the April 2, 2008 Agreement replaced the original one year term contained in Paragraph 10 of the Agreement, with a four year term, and an exclusivity requirement stating as follows:

"Unless otherwise terminated by the company as set forth below and in consideration for the requested loan of \$300,000.00 the Agent, Principal and all Successors shall be and remain an exclusive Agent of the company for a period of four (4) years (the "Initial Term") from the date of the Agreement for all present and future customers and business of **Ronald Slemboski Jr. d/b/a MTF** (emphasis added). After the initial Term, this addendum and Agreement shall continue from year to year until terminated by either party upon 30 days written notice to the other party prior to the end of any term. Notwithstanding the foregoing, the company may terminate this Addendum and the Agreement at any time upon written termination notice delivered to the agent." (Exhibit G, p. 7-8).

On July 15, 2011, Greatwide (now called Greatwide Cheetah Transportation, LLC,) despite having entered into three (3) intervening contracts with Ronald O.

Slemboski, Jr. (Exhibits D, E, and G), including one that expressly superseded all previous contracts (Exhibit G) prepared an "Addendum C" to the Sales Agency Agreement dated September 5, 1997 (Exhibit A.) The July 15, 2011 Addendum names the Agent as MTF, the Principal as Ronald O. Slemboski, Jr., and is signed by Ronald O. Slemboski, Jr. as owner and principal of MTF, and by Joseph Wojciechowski, as Vice President and General Manager of Greatwide Cheetah Transportation, LLC (See **"ADDENDUM C"** attached hereto as "Exhibit H.") It is on the basis of Addendum C that Greatwide has expressly based its case against the defendants herein. (Am. Compl. ¶¶ 16-20).

Apart from referring to an expressly superseded Agreement from nearly fourteen (14) years previous, Addendum C is notable in other regards. First, it mentions a forgivable loan to MTF in the amount of \$100,000.00. The terms of the loan are described in full in the following paragraph:

"Upon signing of this addendum Agent will receive a \$100,000.00 forgivable loan. Agent acknowledges and agrees that the forgivable loan is based on Agent exceeding 16 Million in Adjusted Gross Revenue ("AGR") over the 48 month period commencing on August 1, 2011. The forgivable loan will be amortized over the 4 year sales agency addendum term, \$25,000.00 per year. Should Agency AGR not Exceed 16 Million during the 4 years, Agent will be responsible to reimburse Greatwide Cheetah Transportation, LLC **the percentage shortfall difference multiplied by the \$100,000.00 forgivable loan amount.**" (Exhibit H).

Second, Addendum C expressly identifies the forgivable loan as the consideration for making Ronald O. Slemboski, Jr. the exclusive agent of Greatwide, for a period of four (4) years from the date of the addendum.

Third, Addendum C makes the agreement terminable by the parties as follows:

"After the initial Term, this addendum and Agreement shall continue from year to year until terminated by either party upon 30 days written notice to

the other party prior to the end of any term. Notwithstanding the foregoing, **the Company may terminate this Addendum and the Agreement at any time** upon written termination notice delivered to Sales Agent (emphasis added)."

Fourth, and finally, Addendum C contains a clause, under the title, "**Breach by Agent: Cure**," requiring Greatwide, if it believed Ronald O. Slemboski, Jr. was in breach of the contract, to:

"...deliver notice to Agent setting forth (a) the nature of the breach and (b) providing 15 days within which Agent may cure the breach." (Id.)

On March 11, 2014, Greatwide, through its then Executive Vice President Joseph Wojciechowski, asked Ronald O. Slemboski, Jr. and Sandra L. Slemboski to meet with Mr. Wojciechowski and Robert LaRose, Greatwide's then president, at the agent office in Reedsville, West Virginia, to talk about, bringing "business" back to Greatwide. (J. Wojciechowski Dep. 7:7-13, 81:15-82:19.) The meeting took place, and this oral conversation, neither preceded nor accompanied by, a letter or agenda setting forth the topics to be discussed, turned into an ultimatum from President LaRose. The ultimatum was that either Sandra L. Slemboski returned to work with Ronald O. Slemboski, Jr., and through him, Greatwide, or Greatwide would make Ronald O. Slemboski, Jr. pay back all of the \$100,000.00 "forgivable" loan. (J. Wojciechowski Dep. 82:20-83:13, 83:24-84:3, 85: 8-25, 88: 7-89: 11.) (R. LaRose Dep. 45:10-23, 46:2-47:1.)

Both Mr. Wojciechowski, then and current Executive Vice President of Greatwide, and Mr. LaRose, then president, have testified that under Addendum C, the Agent, in this case, MTF, a d/b/a name of Ronald O. Slemboski, Jr., would have to pay back the entire \$100,000.00 forgivable loan, regardless of the amount of money he had earned for Greatwide up to that time. They both testified that this was true regardless of



when during the exclusivity period Greatwide terminated the agency [the four (4) year term contained in Addendum C would have expired on July 15, 2015.] or for what reason. (J. Wojciechowski Dep. 57:7–59:7, 67:4–24.) (R. LaRose Dep. 49:11–51:1.)

Assuming, *arguendo*, that Addendum C, dated July 15, 2011, was an addendum to a contract applicable to Ronald O. Slemboski, Jr., and roughly calculating from the figures provided by Greatwide's expert witness, Edward P. McDonough, CPA (See Report of Edward P. McDonough, CPA, CVA, dated October 22, 2015, attached hereto as "Exhibit K"), as of the early 2014 termination of Ronald O. Slemboski, Jr.'s agency, had generated "adjusted gross revenue" for Greatwide, in the amount of approximately \$11,746,380.00, and "total gross margin" (profits) for Greatwide in the amount of \$1,429,757.80.<sup>1</sup> (Exhibit K). In other words, Ronald O. Slemboski, Jr.'s agency had earned 73.4% of the \$16,000,000 adjusted gross revenue required by Addendum C (Exhibit H) at the time of termination, which pursuant to the terms under the heading "**Forgivable Loan**" would amortize the amount of the loan down from \$100,000.00 to \$26,600.00.

In addition to demanding return of the full \$100,000.00 during the March 11, 2014 meeting, it is undisputed that neither Mr. Wojciechowski, nor Mr. LaRose, "delivered" to Ronald O. Slemboski, Jr., either, "a) the nature of the breach," or, "(b) 15 days within which Agent may cure the breach," in accordance with the express terms of Addendum C. (Exhibit H). Instead, they had an oral conversation, or conversations, with him asking

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<sup>1</sup> Calculated as follows: Mr. McDonough shows, in the schedule attached to his report, "Slemboski" generating \$5,228,717.00 in "total adjusted gross revenue" during the full year of 2011. As of July 15, 2011, 46% of calendar year 2011 remained. 46% of \$5,228,717.00 is \$2,405,209.80. Add to that figure, the total adjusted gross revenue figures reported by Mr. McDonough for 2012 of \$5,274,810.00, for 2013 of \$3,818,197, and for 2014 (the year the agency was terminated) of \$248,164.00, and the total is \$11,746,380.00. Applying the same method to the total gross margin figures Mr. McDonough provides results in this calculation  $\$653,028.00 \times .46 = \$300,382.88 + \$647,411.00 + \$452,896.00 + \$29,068.00 = \$1,429,757.80$ .

him to bring Sandy's business back to Greatwide, without stating that he was in breach of a contract, and without providing him fifteen (15) days to cure any alleged breach. (J. Wojciechowski Dep. 95: 12-96: 17). (R. LaRose Dep. 57: 3-16).

Finally, although Mr. Wojciechowski testified in deposition, and Greatwide later took the position, in correspondence (discussed *infra*), that Ronald O. Slemboski, Jr. decided to terminate his agency, his deposition testimony is clear that, Mr. Slemboski made the statement, "Well, if that's the case, well, then just terminate my entire agency," only in response to a threat that Greatwide's, "attorneys were going to look at them to repay the forgivable loan of \$100,000.00." (J. Wojciechowski Dep. 88: 20-89: 11).

In fact, as Mr. Wojciechowski, and Mr. LaRose, both acknowledged in their depositions, Addendum C would not permit the Agent, Ronald O. Slemboski, Jr., to terminate the agency agreement. (J. Wojciechowski Dep. 54:25-55:9, 89:29-90:24). (R. LaRose Dep. 51:16-52:19).

Eight (8) days after the meeting of March 11, 2014, Greatwide sent a letter addressed solely to Ronald O. Slemboski, Jr., informing him that his Independent Sales Agency Agreement was, "hereby terminated." (See Letter of March 19, 2014, for "Greatwide Truckload Management" to "Ronald O. Slemboski, Jr.," signed by "Kim DeMarco, Agent/Customer Svc." and cc'd to Joe Wojciechowski and Robert C. LaRose, attached hereto as "Exhibit I.") Although the clear purpose of the March 19, 2014 letter is to serve as notice to Mr. Slemboski that Greatwide was terminating his agency, the letter does not refer to either the July 15, 2011 "Addendum C" (Exhibit H) or the superseding agreement of April 2, 2008 (Exhibit G), but rather, to the agreement

between Greatwide and Mr. Slemboski of April 24, 2002 (Exhibit E). The March 19, 2014 letter does not state that Mr. Slemboski breached his contract, or give any notice of a time period to cure a breach. It simply informs Mr. Slemboski that the terms of his agency agreement are terminated "per his request." (Exhibit I). Of course, as previously established, Addendum C, upon which Greatwide bases its claims in this case, gave Mr. Slemboski no right to terminate his agency agreement during the four (4) year exclusivity period.

Greatwide, wrote to MTF Agency, Ronald O. Slemboski, Jr., , and Sandra L. Slemboski, demanding return of the \$100,000.00 forgiveable loan Greatwide had made to Ronald O. Slemboski, Jr., on or about July 15, 2011 (See letter of April 11, 2014, attached hereto as "Exhibit J.") The April 11, 2014 letter informed Mr. Slemboski, for the first time, that Greatwide took the position he had breached his contract, "no later than December 1, 2013." The letter went on to state, without any factual or legal basis, that, "Each of the individuals named above is jointly and severally responsible for MTF's full repayment of the loan (referring to Ronald O. Slemboski, Jr., his d/b/a MTF, and Sandra L. Slemboski, as joint parties to all agency agreements, despite the clear written evidence to the contrary, has been the legal strategy of Greatwide from April 11, 2014 to the present)." (Exhibit J). Finally, the letter demanded that Mr. Slemboski repay the full amount of the loan, "not later than April 25, 2014 [fourteen (14) days after the letter is dated]." (Id.)

It is undisputed that all of the agency agreements, those between Greatwide and Sandra L. Slemboski and SLS, Inc. (September 18, 1996; April 24, 2002; and June 25, 2003), and those between Greatwide and Ronald O. Slemboski, Jr., d/b/a MTF

(September 5, 1997; April 24, 2002; June 25, 2003; April 2, 2008; and July 15, 2011), were drafted by Greatwide. (S. Slemboski Dep. 55:13-24). (W. Winey Dep. 172:13-173:5). (J. Wojciechowski Dep. 122:19-123:10, 136:16-137:4, 160:10-17).

### III. Relevant Factual History Regarding Slemboski

#### Defendants' Independent Trucking Agent Work

Prior to working in the trucking field, Sandra L. Slemboski, had some education in, and worked, both as an employee of H & R Block, and independently, in the field of accounting. (S. Slemboski Dep. 5:4-6:2). Her work in the trucking industry began in 1993 with her and her husband, Ronald O. Slemboski, Sr., purchasing a single truck. (S. Slemboski Dep. 6:3-17). She and her husband incorporated their business as SLS, Inc., and that business was in operation from 1994 through 1996. (S. Slemboski Dep. 6:3-21). During all of that period, Mrs. Slemboski also worked separately as a tax preparer, and bookkeeper for other individuals and businesses. She continued to do this for friends and family members until at least the time of her deposition in this case in 2014. (S. Slemboski 7:5-9:12).

After the discontinuance of SLS, Inc., in 2006, Mrs. Slemboski went to work for her son, doing dispatching, bookkeeping, parts ordering, and, "whatever they needed me to do to help him out." (S. Slemboski Dep. 10:1-21). She was not part of the business, or an owner of the business, but an employee. (R. Slemboski Dep. 21:17-22:18). (S. Slemboski Dep. 10:22-11:4, 14:5-23). Her work for her son became gradually more limited beginning in 2011; due to the terminal illnesses of first, her mother, and then, her father. (S. Slemboski Dep. 24:20-25:11, 42:15-44:21).

As has already been thoroughly established, for the entirety of the time that Sandra L. Slemboski was helping her son with his agency, as his employee and/or simply his mother, and voluntary bookkeeper, she was never a contracted agent of Greatwide. Robert LaRose, who had been Greatwide's president during that time, recalled that Mrs. Slemboski was not a named party, or a signatory to a contract at that time, because "they" (Sandra L. Slemboski, and/or Ronald O. Slemboski, Jr.) did not wish her to be. (J. Wojciechowski 160:10-21).

Independent trucking agents solicit customers who need a carrier like Greatwide or Medallion to deliver freight. They then communicate with the customers and plan the delivery of the freight, coordinate trucks to do the delivery (these may be the agent's own trucks if they have a fleet, or they may be other owner/ operator's trucks), and sometimes assist with collecting the fees due for shipment. (R. LaRose 115:7-116:14). For soliciting shipping customers and arranging shipments, the agents would receive a commission. (S. Bauder Depo. 20:5-21:2). The revenue obtained by the carrier, and the commission earned by the agent, are categorized as earnings through "**TRUCKLINE FREIGHT**." (See "Addendum A" to Exhibit C).

Another way for the carrier to earn revenue, and the agent to earn commissions is through brokerage. Brokerage is when the agent finds trucks from another available carrier to haul a shipment for a customer, and obtains for the carrier for whom the agent is working, a percentage of the fees for the shipment, and receives a commission on the their carrier's percentage. This type of revenue is referred to as revenue for "**BROKERED FREIGHT**." (Id.)

The trucks with which the agents coordinate shipments act under the operating authority of a carrier like Greatwide or Medallion which is a federally regulated entity. (J. Wojciechowski Dep. 153:1-8, 160:2-9). The lease agreements for those trucks are entirely separate agreements from an agent agreement, even if the agent is the owner of the truck. In this case, they are for an initial renewable term of a year, and can be terminated by either the truck owner, or the leasing carrier, upon the giving of written notice by either party to the other of intent to terminate (J. Wojciechowski Dep. 73:18-74:3, 100:9-102:14). (R. LaRose Dep. 118:4-119:12). (See e.g., Paragraph 17 of "Independent Contractor Agreement" between Greatwide Cheetah Transportation, LLC, and Ronald O. Slemboski, Jr., dated October 12, 2010, and attached hereto as "Exhibit N.")

The majority of independent trucking agents have no obligation to act exclusively on behalf of a particular carrier. (G. Weilheimer Dep. 28:12-29:3). The only consideration for their agency agreements are the commissions they may earn through soliciting customers, or brokering freight to other carriers. Exclusive contracts, on the other hand, provide consideration for the agent's exclusive work for the single carrier, sometimes provided, as in the case of Addendum C, between Greatwide and Ronald O. Slemboski, Jr., in the form of a forgivable loan. (J. Wojciechowski Dep. 61:23-62:4). (R. LaRose Dep. 47:21-49:1, ) (Exhibit H). Typically, their agreements are of short duration (i.e. initial renewable term of one year.) Terms of their agreements permit either party to cancel the agreement by sending written notice to the other (See, e.g. Exhibit C, paragraph 10, and Addendum A).

Most of the customers solicited by the independent trucking agents, and all of the customers relevant to this case, are not bound by contract or any other enforceable agreement with either the agent, or the carrier for whom the agent may solicit the customer's business. (J. Wojciechowski Dep. 68:9-19, 104:11-105:1).

#### IV. Sandra O. Slemboski's Signing as an Agent with Medallion

##### And Ronald O. Slemboski, Jr.'s Lease of His Trucks

##### To Medallion

While working for and/or assisting her son with his ongoing business, and doing his books Sandra L. Slemboski noticed "short" payments for commissions from Greatwide, for the period from 2002 to 2013. (S. Slemboski Dep. 89:9-90:22). She communicated this information to Greatwide executives on numerous occasions. (S. Slemboski Dep. 89:3-89:19, 91:15-95:1). (J. Wojciechowski Dep. 132:2-133:12). (R. Slemboski Dep. 75:4-77:5). At present, counsel for Robert O. Slemboski, Jr. has produced evidence in discovery showing \$83,738.53 in commissions Greatwide has failed to pay him (See "Defendant Ronald O. Slemboski, Jr.'s Third Supplemental Responses to Plaintiff's Second Set of Requests for Production of Documents," attached hereto as "Exhibit L."

On November 21, 2012, Mrs. Slemboski sent an e-mail to Ronald O. Slemboski, Jr., and copied four or five Greatwide employees, informing all of them that she was going to take "her accounts" to another company. Slemboski Dep. 45:13-22, 47:24-48:2). "Her accounts," to which she referred were companies with which she had longstanding personal relationships, predating her initial involvement with Greatwide in

1996. She had continued to think of them and work with them as her accounts. (R. Slemboski Dep. 113:4-23). (S. Slemboski Dep. 48:3-17). However, again, they are undisputedly simply customers, who have been free at all times to select the agents and carriers with whom they wish to do business, at will. Mrs. Slemboski did not become an agent for any carrier, or attempt to take the customers with whom she had relationships ("her accounts"), to any carrier, in 2012. (S. Slemboski Dep. 51:14-23).

In October of 2013, Sandra L. Slemboski, placed a phone call to William "Bill" Winey, at Medallion, to notify him that she desired to become an agent for Medallion, and start brokering freight for them. (S. Slemboski Dep. 66:8-67:7). (G. Weilheimer 35:22-36:3). Mr. Winey was, then, and, is now, the chief operating officer of Medallion. (W. Winey Dep. 13:24-14:8). Mr. Winey had previously been employed by Greatwide, through January 1, 2009, and left there to work for Medallion on January 2, 2009. (W. Winey Dep. 11:9-14). Part of Mr. Winey's role at Medallion was, and is, to assist with the recruitment of agents. (W. Winey Dep. 14:15-21).

Both Greatwide and Medallion actively recruit agents. (W. Winey Dep. 14:22-16:15). (J. Wojciechowski Dep. 7:14-8:20). The agents they recruit include agents who are working for other carriers at the time they recruit them. (G. Weilheimer Dep. 31:18-32:4). (W. Winey Dep. 19:2-18). (J. Wojciechowski Dep. 8:10-12, 10:15-11:7). (R. LaRose Dep. 21:24-22:18). Greatwide has taken agents away from Medallion, and gotten them to leave without notice. (W. Winey Dep. 190:6-15). During Greatwide's recruitment of potential agents, they will make initial contacts with potential agents without inquiring about the nature of their existing agreements with other carriers. (J. Wojciechowski Dep. 13:6-12). Both companies make assurances to the potential



agents that discussions about a potential agency agreement will remain confidential. (W. Winey 49:12-50:19). (J. Wojciechowski Dep. 14:17-15:16). At some point in the recruitment process, both companies will inquire of the agent they are interested in, whether he or she has an exclusive agency agreement with any other carrier, and ask the agent for copies of any such agreements. (J. Wojciechowski Dep. 15:17-16:1). (R. LaRose Dep. 22:19-23:2, 62:3-23).

In Sandra Slemboski's case, before she called Bill Winey, in October of 2014, Mr. Winey had never attempted to solicit her as an agent. (R. Slemboski 72:20-24). (S. Slemboski 49:4-51:1). (W. Winey 34:9-23). During the discussions about Mrs. Slemboski becoming a Medallion agent, Medallion asked her whether she had any exclusive agency agreements with any other carrier, both through oral conversations, and through a written question on an agency application. Mrs. Slemboski informed Medallion that she did not have any such agency agreement with any other carrier. (S. Slemboski Dep. 57:24-59:14). (S. Bauder Dep. 29:11-15). (G. Weilheimer Dep. 43:24-44:18).

On November 20, 2013, Sandra Slemboski entered into an "Independent Business Agent Agreement" with Medallion (See Agreement attached as "Exhibit O"). Ronald O. Slemboski, Jr. remained as an agent with Greatwide. (R. Slemboski, Jr. Dep. 146:10-20, 155:3-23). Mr. Slemboski, Jr. has never become an agent with Medallion. (W. Winey Dep. 178:9-15).

In January of 2014, Ronald O. Slemboski, Jr., as a truck owner/operator, began to lease his trucks to Medallion, because he was having difficulty finding customers to load freight on them, or drivers to drive them. (R. Slemboski 155:24-156:12). (S.

Members of Medallion's safety department primarily took care of the process of transitioning Mr. Slemboski, Jr.'s trucks to Greatwide. (W. Winey 60:19-23).

Terminating lease agreements to Greatwide for Ronald O. Slemboski, Jr.'s trucks, and leasing them to Medallion, involved many administrative tasks and generated a great deal of e-mail. An example of one such task of which Greatwide's counsel has made much moment, is the replacement of Greatwide signage on those trucks, with Medallion signage (and, separately, providing a sign for Sandra Slemboski's new agency). (W. Winey Dep. 176:5-177:21). Removing Greatwide's signs from the truck when they were leased to a new carrier was actually required by Greatwide's own truck lease agreements. (Paragraph 17, Exhibit N).

Greatwide executive, Joseph Wojciechowski testified in deposition, that it was the termination of one truck lease agreement that initially led to the March 11, 2014 meeting, in which Greatwide demanded the return of the consideration for Ronald O. Slemboski, Jr.'s exclusive agency agreement. (J. Wojciechowski Dep. 73:3-17). Greatwide's then president, Robert Larose, testified that it was a notice drop in revenue for Mr. Slemboski's agency that prompted the meeting. (R. Larose 20:4-17).

One undisputed way for Greatwide to continue to derive revenue from Ronald O. Slemboski, Jr.'s agency activities, would be to permit him to broker his own trucks to Medallion to ship any freight from customers obtained by Sandra Slemboski, allowing Greatwide to receive brokerage revenue. (S. Bauder Dep. 110:22-111:7, 122:1-14). (R. LaRose Dep. 59:12-60:3 However, contrary to industry wide practice, Greatwide would not, as a matter of policy, broker freight shipping business to trucks leased by its competitor Medallion, and would not permit Medallion to broker freight to trucks leased

to Greatwide. (S. Bauder Dep. 111:8-112:2, 122:15-19). (J. Wojciechowski Dep. 162:15-165:24). (R. LaRose Dep. 60:7-71:3).

Instead of mitigating any losses by permitting brokerage between Greatwide and Medallion, Greatwide condition all future business with Ronald O. Slemboski, Jr. on his mother leaving Medallion and returning to work for Mr. Slemboski's agency, bringing with her, her customer relationships. (J. Wojciechowski Dep. 82:20-83:13, 83: 24-84:3, 85: 8-25, 88: 7-89: 11). (R. LaRose Dep. 45:10-23, 46:2-47:1).

When Sandra Slemboski applied to become an agent for Medallion, she projected that her customer relationships would enable her to obtain business from thirteen (13) customers. (J. Wojciechowski Dep. 156:6-157:16). According to Greatwide's own documentation, Ronald O. Slemboski, Jr. obtained business for 1,016 customers from 2009 through 2014, Making Mrs. Slemboski's projection of her potential thirteen customers, less than one percent (1%) of the total amount of customers that the single agent Ronald O. Slemboski, Jr. had successfully solicited for Greatwide. (J. Wojciechowski Dep. 157:17-159:22). Deposition testimony in this case puts Greatwide's total number of agents, enterprise wide, at somewhere over 100 agents. (W. Winey Dep. 173:12-15). Greatwide has approximately seventy (70) agents who bring over \$1,000,000.00 in revenue to Greatwide per year. (R. LaRose 71:8-14).

Eight years before Greatwide made the decisions to terminate Ronald O. Slemboski, Jr.'s agency relationship, and pursue the instant lawsuit against Sandra Slemboski, in 2006, Greatwide was operating under the name American Trans Freight ("ATF"). Greatwide executive Joseph Wojciechowski worked for ATF at that time. (J. Wojciechowski 6:8-18).

In 2006, Greatwide's predecessor ATF brought a lawsuit in the United States District Court for the Eastern District of Pennsylvania, styled, "ATF Trucking, L.L.C. v. Quick Freight, Inc., Transportation Resources, Inc., and Joseph E. Workman, under Civil Action No. 06-4627. True copies of the "Findings of Fact" and "Memorandum Opinion," both dated July 29, 2008, and issued after a bench trial of the case, are attached hereto as "Exhibit M."

The ATF v. Quick Freight case had facts nearly identical to this one, with two significant differences that will be mentioned after this summary. In ATF v. Quick Freight, ATF sued an independent agent, Joseph E. Workman, who had ceased to do agency work for ATF, and begun performing the same work for an ATF competitor called Mason and Dixon Lines, Inc. ("MADL"), during a period in which Workman had a written exclusive agency agreement with ATF, into which he was induced to enter by ATF agreeing to pay him a \$100,000.00 signing bonus, in exchange for a commitment to earn \$4.5 million dollars in revenue for ATF, per year, for a period of three and one-half (3 ½) years. Pursuant to the terms of the contract, Workman would have to reimburse ATF a pro-rata portion of the \$100,000.00 signing bonus, for each year in which he failed to meet 85% of the revenue target.

In less than a year from the time Workman began working under the ATF contract, he was having problems similar to those Ronald O. Slemboski, Jr. had encountered in this case: difficulty in obtaining agreed upon amounts of compensation, either for Workman as an agent, or for the drivers and owner/ operators he had gotten to drive for, and/or lease trucks to, ATF; difficulty in keeping sufficient drivers qualified to drive the trucks, due to lack of support from ATF; lack of timely billing of customers; and

driver and owner/operator discontent leading to threats to quit driving for, or leasing to, ATF.

As a result of these difficulties, Workman had decided to leave his agency relationship with ATF. When he encountered the same recruiter who had brought him to ATF, and who now worked for MADL, he voiced his complaints in a conversation, that led to the recruiter working to bring Workman to ATF.

As MADL was preparing to bring Workman into ATF, it engaged in the same activities Medallion has in this case: learning about potential customers Workman might bring to their business, and undertaking the administrative tasks necessary to transition truck leases and drivers from ATF to MADL.

One year and sixteen (16) days after executing his ATF contract, Workman sent notice in writing that he was terminating his agency with ATF. Approximately five (5) months later, ATF brought suit against Workman alleging breach of contract. As in this case, some time after bringing suit against Workman, ATF filed an amended complaint bringing allegations of tortious interference with contract against MADL.

In the July 29, 2008 Findings of Fact, and Memorandum Opinion, the Pennsylvania federal court found and held that: a) ATF could not prevail in a breach of contract claim against Workman, because ATF had also breached the contract by unilaterally altering his agreed commission percentage; and b) MADL did not tortiously interfere with ATF's contract with Workman, because although MADL acted intentionally to recruit Workman as an agent and secure the business his customer relationships could bring, it did not act with the intent to harm ATF's business, but simply seized on a

legitimate business opportunity when it learned from Workman that he intended to leave ATF. (Exhibit M).

Just a cursory review of the Findings of Fact and Memorandum Opinion will reveal how uncannily similar the case at bar is to the one in ATF v. Quick Freight. The two significant differences in the instant case, mentioned at the beginning of this summary, are that (1) Defendant Workman, in the ATF case, unlike Sandra L. Slemboski, actually was a named party and signatory to a written exclusive agency agreement at the time he left ATF, and (2) Workman, unlike Ronald O. Slemboski, Jr., terminated his agency relationship with ATF in writing, and left of his own will.

The relevance of the ATF v. Quick Freight case to the instant case is that it establishes that Greatwide had an institutional knowledge of the nearly identical issues in the two case, when it took the positions it took in its dealings with Ronald O. Slemboski, Jr., and Sandra L. Slemboski, and when it brought the instant litigation against them and Medallion.

#### **LEGAL STANDARD APPLICABLE TO MOTIONS FOR SUMMARY JUDGMENT**

"A motion for summary judgment should be granted only when it is clear that there is no genuine issue of fact to be tried and inquiry concerning the facts is not desirable to clarify the application of the law." Syllabus Point 3, Aetna Casualty & Surety Company v. Federal Insurance Company of New York, 148 W.Va. 169, 133 S.E.2d 770 (1963).

"Summary judgment is appropriate if, from the totality of the evidence presented, the record could not lead a rational trier of fact to find for the nonmoving party, such as

where the nonmoving party has failed to make a sufficient showing on an essential element of the case that it has the burden to prove." Syllabus Point 2, Williams v. Precision Coil, Inc., 194 W.Va. 52, 459 S.E. 2d 329 (1995).

### **ARGUMENT**

As all claims Plaintiff Greatwide alleges against Medallion in this action, are, at their core, different ways of alleging that Defendant Medallion tortiously interfered with a contract, we should begin by examining the elements of a tortious interference claim in West Virginia.

"2. To establish prima facie proof of tortious interference, a plaintiff must show:

- (1) existence of a contractual or business relationship or expectancy;
- (2) an intentional act of interference by a party outside that relationship or expectancy;
- (3) proof that the interference caused the harm sustained; and
- (4) damages.

If a plaintiff makes a prima facie case, a defendant may prove justification or privilege, affirmative defenses. Defendants are not liable for interference that is negligent rather than intentional, or if they show defenses of legitimate competition between plaintiff and themselves, their financial interest in the induced party's business, their responsibility for another's welfare, their intention to influence another's business policies in which they have an interest, their giving of honest, truthful requested advice, or other factors that show the interference was proper." Syllabus Point 2, Torbett v. Wheeling Dollar, 173 W.Va. 210, 314 S.E.2d 166 (1984).

With the elements of the alleged tort in mind, let us now examine the numerous reasons why Greatwide cannot make prove this tort under the undisputed facts of this case.

#### **I. Under the Undisputed Facts of this Case, Medallion Can Not Have Tortiously Interfered with a Greatwide Contract By Hiring Sandra L. Slemboski**

**Because at All Times Relevant Hereto Sandra L. Slomboski Was Not a Party to Any Contract with Greatwide**

Under the Torbett case, cited *supra*, the very first element of a prima facie case of tortious interference is that, "The Plaintiff must show: (1) existence of a contractual or business relationship or expectancy; ...' (Id.) One need look no further than the basic law of contractual interpretation to recognize that under the undisputed facts of this case, Sandra Slomboski was not a party to the contract Greatwide seeks to show by virtue of the September 5, 1997 contract between Ronald O. Slomboski, Jr. and Greatwide (Exhibit A), and the July 15, 2011 addendum. (Exhibit H).

**A. All Documents Purporting to Create Contractual Agreements Between Greatwide and Either of the Slomboski Defendants Unambiguously Identify Which of the Slomboski Defendant's is the Agent Under the Contract, and Sandra L. Slomboski Was Not an Agent for Greatwide at the Time of the Alleged Tortious Interference**

Sandra L. Slomboski was neither a named party in, nor a signatory to, Exhibit A or Exhibit H.

In determining whether non-signatories to an oil and gas lease, containing an arbitration clause, were bound by the terms of that lease, the Supreme Court of Appeals of West Virginia reasoned:

"First, defendants Mr. Capouillez, Geological Assessment & Leasing, and Range Resources were only signatories to the December 2005 and July 2006 leases. They essentially argue that they can only be compelled to arbitrate under those two leases. As Range Resources asserts, they played no role in the negotiation, procurement or signing of the January 2011 lease, and were not parties to the January 2011 lease, and therefore the circuit court erred in compelling them to arbitrate under the terms of that lease. We agree and reverse the circuit court's order on this point.



It is a fundamental tenet of contract law that the parties must enter into a meeting of the minds in order to form an enforceable contract. 'A meeting of the minds of the parties is a *sine qua non* of all contracts.' Syllabus Point 1, Martin v. Ewing, 112 W.Va. 332, 164 S.E. 859 (1932)." Chesapeake Appalachia, L.L.C. v. Hickman, 235 W.Va. 421, 781 S.E.2d 198, 216 (2015).

In the instant case, the agent is described in the September 5, 1997 agreement as, "MTF," and the signatory is Ronald O. Slemboski, Jr. on a line labeled, "Signature of Agent." (Exhibit A). The July 15, 2011 Addendum names the Agent as MTF, and is signed by Ronald O. Slemboski, Jr. as owner and principal of MTF. (Exhibit H).

One of the intervening agreements between Greatwide and Ronald O. Slemboski, Jr. explicitly identifies "MTF" as the "d/b/a" name for Ronald O. Slemboski, Jr. (Exhibit G). There is no evidence in this case that MTF is a corporation or an LLC, or a legal entity of any kind. As the West Virginia Supreme Court has noted in a footnote,

"This Court has yet to comment on the legal effect of d/b/a (doing business as), but several other jurisdictions have stated that the term d/b/a is directory language. For example, in Bauer v. Pounds a Connecticut court stated:

It appears well settled that the use of a fictitious or assumed business name does not create a separate legal entity ... [and that] [t]he designation [d/b/a] '...is merely descriptive of the person or corporation who does business under some other name.' (citations omitted)." Lawyer Disciplinary Board v. Losch, 219 W.Va. 316, 319, 633 S.E.2d 261,264 (2006).

In each of the two alleged agency documents, upon which Plaintiff Greatwide bases its claims in this case, the agent bound by those agreements was clearly always and only Ronald O. Slemboski, Jr. No history, subjective impression, or outside discussion can alter what the written contracts plainly set forth.

"It is well-settled parol evidence of prior or contemporaneous oral negotiations or stipulations is inadmissible to vary, contradict, add to, or explain the terms of a complete, unambiguous, written instrument in the

absence of fraud, accident or mistake in its procurement. Haymaker v. General Tire, Inc., 187 W.Va. 532, 187 W.Va. 532, 420 S.E.2d 292 (1992).

The language in Exhibit A, and Exhibit H is not at all ambiguous. Neither is the language in the September 18, 1996 document marked, "Exhibit C," which was in effect at the same time as the September 5, 1997 agreement marked as "Exhibit A," whereby Sandra L. Slemboski and SLS, Inc. (a corporation created by Mrs. Slemboski and her husband,) entered into a non-exclusive agency relationship with Greatwide. This contract, and the others in the history, whereby Sandra Slemboski was an agent through 2006, demonstrate that Greatwide clearly knew how to enter into an agency contract with Mrs. Slemboski if that was its intention.

Because the identities of the parties named in, or acting as signatories to, all of the contract documents in evidence have clear, legally enforceable, meanings, there is no room for the admission of parole evidence, or witness interpretations of what person or entity was a party to the contracts they evidence.

"Where a provision of a contract is ambiguous, it is construed against the drafter. Payne v. Weston, 195 W.Va. 502, 507, 466 S.E.2d 161,166 (1995). (citing Syllabus Point 1, West Virginia Ins. Co. v. Lambert, 193 W.Va. 681, 458 S.E.2d 774 (1995)). A contract containing unambiguous language must be construed according to its plain and natural meaning. Payne v. Weston, 195 W.Va. 502, 507, 466 S.E.2d 161,166 (1995)." Cited in Wood County Airport Authority v. Crown Airways, Inc., 919 F.Supp. 960, 965 (1996).

If, for the sake of argument, there was any ambiguity in the September 5, 1997 agreement (Exhibit A), in the meaning of "MTF" for example, it would have to be interpreted against Greatwide, because Greatwide drafted all of the agreements.

Finally, firmly established and well known law regarding the formation of contracts requires that there be consideration for a party to enter into the contract. See,

generally, Chesapeake Appalachia, L.L.C. v. Hickman, 235 W.Va. 421, 781 S.E.2d 198, 215-16 (2015). It is undisputed in this case, that from at least 2006, Greatwide did not pay Sandra Slemboski the commissions that would be the sole consideration for a non-exclusive agency agreement, or make to her a "forgivable loan" or "signing bonus" that would be the consideration for an exclusive agency agreement. (See "Exhibit P" to "Defendant Sandra L. Slemboski's Memorandum of Law in Support of Her Motion for Summary Judgment.") (Exhibit F). (Exhibit H). The lack of any consideration for a contract binding Sandra Slemboski to an exclusive agency agreement with Greatwide, at any time relevant to this case, is reason enough, standing alone, to conclude as a matter of law that there was no such contract.

For all of the reasons stated above, Plaintiff Greatwide has failed to make a sufficient showing on an essential element of the case that it has the burden to prove, that being that it had a "contractual or business relationship or expectancy" with Sandra L. Slemboski, when Medallion contracted with her as an independent trucking agent, and, therefore, Medallion is entitled to summary judgment as to, and dismissal with prejudice of, all of Count V, of Greatwide's Amended Complaint. Syllabus Point 2, Williams v. Precision Coil, Inc., 194 W.Va. 52, 459 S.E. 2d 329 (1995).. Syllabus Point 2, Torbett v. Wheeling Dollar, 173 W.Va. 210, 314 S.E.2d 166 (1984).

#### B. Partnership Theory

Although not plead in its Amended Complaint, Greatwide has taken the position in its Pretrial Memorandum, that Sandra Slemboski is a party to the July 15, 2011 Addendum C (Exhibit H) which names Greatwide, MTF, and Ronald O. Slemboski, Jr.,

as owner and principal of MTF, as parties, because Sandra Slemboski was an unnamed partner of MTF.

This argument is completely without merit. As previously stated, all evidence, and particularly contract documents, in this case point to "MTF" as nothing but another name for an individual, Ronald O. Slemboski, Jr.

Furthermore, under West Virginia law, " 'Partnership' means an association of two or more persons *to carry on as coowners a business for profit* formed under section two, article two of this chapter, predecessor law, or comparable law of another jurisdiction and includes, for all purposes of the laws of this state, a registered limited liability partnership (emphasis added.) " W.Va. Code §47B-1-1. As previously stated, it is undisputed in this case that Sandra Slemboski was neither a co-owner of Ronald O. Slemboski, Jr.'s d/b/a MTF, nor did she receive any of his agency's profits. She cannot, therefore, by definition, have been participating in a partnership with him, so as to be a party to any contract into which he allegedly entered.

Greatwide, through its counsel, has made a belabored effort to characterize Sandra Slemboski as a partner in her son's agency, by examining a history of her signing loan documents for loans to Ronald O. Slemboski, Jr., and/or MTF. Without further encumbering this memorandum with all of those loan documents, or individual references to them, we will summarize the history here (if invited to by Greatwide, we can certainly examine them all individually.)

Sandra Slemboski signed a number of promissory notes for loans from Greatwide: some for loans to herself and/or SLS, Inc.; some as a managerial employee, for loans to Ronald O. Slemboski, Jr. and/or MTF, mostly while Sandra Slemboski,

herself, was an agent for Greatwide under an entirely separate written agreement [Greatwide acknowledged Mrs. Slemboski's involvement in her son's business as something less than a partner (specifically as a "dispatcher,") in writing, as far back as 1997, the very beginning of Ronald O. Slemboski's Jr.s individual work as a Greatwide Agent- See "Exhibit C" attached to "Defendant Sandra L. Slemboski's Memorandum of Law in Support of Her Motion for Summary Judgment"); and some, solely as a guarantor for, or witness to, loans from Greatwide to Ronald O. Slemboski, Jr.

One such loan is an illustrative example. On January 6, 2012, Greatwide prepared a Deed of Trust to secure a \$196,000.00 loan from Greatwide to Ronald O. Slemboski, Jr. The property described in the Deed of Trust was purchased, and owned, solely by Ronald O. Slemboski, Jr. The sole "borrower" identified in the Deed of Trust was Ronald O. Slemboski, Jr. Sandra L. Slemboski signed this Deed of Trust as a "witness." Greatwide also prepared a Promissory Note on the same date, for the same loan amount. The Promissory Note states that repayment of the loan would be made by, "a weekly set-off or settlement in the amount of weekly payments in the amount of (\$2,270.00) from those amounts due *Ronald O. Slemboski, Jr.* under the Agency Agreement, as hereinafter defined (emphasis added)." The Agency Agreement referenced in the note is never defined, but is mentioned again, as follows, "This Note is further conditioned upon *Ronald O. Slemboski, Jr.* executing and delivering to Holder, a four year extension relating to his Sales Agency Agreement by and between Ronald O. Slemboski, Jr. and Holder (the "Agency Agreement") (emphasis added)." ("Exhibit L" and "Exhibit M" attached to "Defendant Sandra L. Slemboski's Memorandum of Law in Support of Her Motion for Summary Judgment.")

Sandra L. Slemboski signed the Deed of Trust, as a witness, and the Promissory Note as a "Maker" at the request of Greatwide, the preparer of both documents, in order, in her own understanding and that of Ronald O. Slemboski, Jr., to serve as a guarantor in order to help her son obtain the loan (R. Slemboski, Jr. Dep. 99:3-105:18). (S. Slemboski Dep. 37:22-41:8). As the deed of trust and note clearly indicate, and there is no evidence to the contrary, the loan was for the sole benefit of Ronald O. Slemboski, Jr., was expressly designed to be paid by Ronald O. Slemboski, Jr. through his agency earnings, and was conditioned upon Ronald O. Slemboski, Jr. extending some agency agreement with Greatwide. Sandra Slemboski had no interest, other than a motherly one, in the loan being made, and derived no profit from it.

West Virginia Code §47B-2-2(c), is quite explicit in identifying types of payment, including payment as an independent contractor or employee, or payment of debts or interest, which will not evidence the formation of a partnership:

"(c) In determining whether a partnership is formed, the following rules apply:

(1) Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property, or part ownership does not by itself establish a partnership, even if the coowners share profits made by the use of the property.

(2) The sharing of gross returns does not by itself establish a partnership, even if the persons sharing them have a joint or common right or interest in property from which the returns are derived.

(3) A person who receives a share of the profits of a business is presumed to be a partner in the business, unless the profits were received in payment:

(i) Of a debt by installments or otherwise;

(ii) For services as an independent contractor or of wages or other compensation to an employee;

(iii) Of rent;

(iv) Of an annuity or other retirement or health benefit to a beneficiary, representative or designee of a deceased or retired partner;

(v) Of interest or other charge on a loan, even if the amount of payment varies with the profits of the business, including a direct or indirect present

or future ownership of the collateral, or rights to income, proceeds or increase in value derived from the collateral; or  
(vi) For the sale of the goodwill of a business or other property by installments or otherwise." W.Va. Code §47B-2-2(c).

Needless to say, if collecting payments or interest on a debt are insufficient to establish the presumption of a partnership, incurring a secondary loan obligation cannot be, as it is in no way even arguably a sharing of profits. With regard to Sandra Slemboski working as employee of Ronald O. Slemboski, Jr., the sole complete contract document Greatwide has produced in this case, for "Ronald O. Slemboski, Jr., d/b/a MTF (the 'Sales Agent'), Proprietorship," (Exhibit G) expressly states that, "Sales Agent has sole responsibility for the day-by-day operation of its business activities and full control and direction of Sales Agents' employees." (Exhibit G, p. 2, "Independent Contractor Relationship"). This language evidences that Greatwide knew Ronald O. Slemboski, Jr. was likely to have employees. Greatwide certainly knew of the existence of Sandra L. Slemboski, through its work with her as a separate, and, at a minimum, her work for Ronald O. Slemboski, Jr., as a dispatcher. Worked as an employee of Ronald O. Slemboski, Jr., would not render her his business partner, under either the express language of any contract documents in this case, or the express language of West Virginia statute.

The late adopted "partnership theory" of Greatwide has no relevance to this motion, or the case in general, and does not alter the fact that Medallion is entitled to summary judgment as to, and dismissal with prejudice of, Count V of Greatwide's Amended Complaint.

**II. Medallion Can Not Have Acted in Concert with Sandra L. Slemboski to Tortiously Interfere with a Contract Between Greatwide and Ronald O. Slemboski,**

**Jr., Because at all Times Relevant Hereto, Greatwide Had No Valid Contract with Ronald O. Slemboski, Jr.**

Greatwide's alternative theory, given the actual certainty that Sandra L. Slemboski had no contract with Greatwide, with which Medallion could tortiously interfere, is that Medallion acted in concert with Sandra Slemboski, to tortiously interfere with an exclusive agency agreement between Greatwide and Ronald O. Slemboski, Jr. Given all undisputed material facts in this case, at the time Medallion reciprocated Sandra Slemboski's interest in her working as an agent for Medallion, Ronald O. Slemboski, Jr. was not a party to a valid contract with Greatwide.

There was no contract between Greatwide and Ronald O. Slemboski, Jr. with which Sandra L. Slemboski and Medallion could tortiously interfere for three reasons: a) the contract to which Ronald O. Slemboski, Jr.'s alleged exclusivity agreement was an addendum was expressly superseded by another contract; b) the addendum on which Ronald O. Slemboski, Jr.'s alleged exclusivity agreement is based was breached by Greatwide failing to perform its own obligations under the contract, and terminating it prematurely in violation of the express terms of the contract; and c) the addendum on which Ronald O. Slemboski, Jr.'s alleged exclusivity agreement is based was void for lack of consideration.

**A. The September 5, 1997 Contract to Which Addendum C Allegedly Added Time and an Exclusivity Agreement Was Expressly Superseded by an Independent Sales Agency Agreement Dated April 2, 2008**

Addendum C, dated July 15, 2011, naming "MTF" as agent, and Ronald O. Slemboski, Jr. as principal, clearly states that it is, "part of and incorporated by



reference into,..." "Sales Agency Agreement by and between (MTF) and (Greatwide) dated September 5, 1997." (Exhibit H). However, the September 5, 1997 Sales Agency Agreement to which Addendum C refers, produced only in part by Greatwide (Exhibit A), was expressly superseded by another Sales Agency Agreement, dated April 2, 2008 (Exhibit G).

The April 2, 2008 "Independent Sales Agency Agreement" expressly "supersedes all prior agreements between the parties hereto," and "Addendum A," attached to the agreement, "replace(s) any and all Addendum A's executed prior to the above Effective Date with this new Addendum A." (Exhibit G, p. 5, ¶14, Addendum A, "BACKGROUND," ¶B).

Addendum C, which plainly states that it is an addendum to, and incorporated by reference into the sales agency agreement between MTF and Greatwide, dated September 25, 1997 cannot stand alone. It lacks essential terms of such a contract, such as a description of the agency's duties, or the rate of compensation (consideration) for generated revenue. Exhibit H. Of course, the September 5, 1997 agreement, at least inasmuch as it has ever been produced by Greatwide, also lacks those essential terms. By asking the Court or jury to enforce an Addendum, containing no description of the bargained for services, or the rate of compensation for those services, to an abrogated contract, also containing neither of those terms, is to ask the Court to invent a contract for the Plaintiff from whole cloth.

1. "It is not the right or province of a court to alter, pervert or destroy the clear meaning and intent of the parties as expressed in unambiguous language in their written contract or to make a new or different contract for them." Syllabus Point 3, Cotiga Development Co. v. United Fuel Gas Co., 147 W.Va. 484, 128 S.E.2d 626 (1962)." Cited in Syllabus Point 1, Hatfield

v. Health Management Associates of W.Va., Inc., 223 W.Va. 259, 672 S.E.2d 395 (2008).

Addendum C, with its incorrect reference to a superseded contract, of which the Plaintiff has only ever produced a partial copy, reveals a complete lack of evidence to support Greatwide's claim that it had a contractual relationship with Ronald O. Slemboski, Jr., at the time Sandra Slemboski joined Medallion. However, when taken together with the tortured history of other attempted contracts between Greatwide and Ronald O. Slemboski, Jr. the documents demonstrate a complete failure to obtain a meeting of the minds, and parties attempting to enter into contract under mistake of material facts.

Between the time of first contracting with Ronald O. Slemboski, Jr. and the time of bringing this lawsuit, Greatwide has prepared and asked Ronald O. Slemboski, Jr. to sign four additional contracts and/or addenda (Exhibits D, E, G and H). It has also prepared a Promissory Note, less than six months after the alleged four year exclusivity agreement referred to in Exhibit H, for a loan conditioned upon Mr. Slemboski signing an another agreement four year exclusivity provision, which further agreement it never obtained from him. ("Exhibit L" and "Exhibit M" attached to "Defendant Sandra L. Slemboski's Memorandum of Law in Support of Her Motion for Summary Judgment.") Greatwide next sent Ronald O. Slemboski, Jr. letters dated March 19, 2014 (Exhibit I,) and April 11, 2014 (Exhibit J,) notifying Mr. Slemboski that it was terminating his contract dated April 24, 2002 (Exhibit E), and demanding repayment, in full, of the \$100,000.00 forgivable loan referenced in the July 25, 2011 Addendum C. (Exhibit H).

Based on the aforementioned avalanche of inconsistent documents, it cannot be said that either Greatwide or Ronald O. Slemboski, Jr. had any clear understanding of

his duties under the contract, the term of the contract, the consideration for him, or the means of termination.

As stated, *supra*, "A meeting of the minds of the parties is a *sine qua non* of all contracts." Syllabus Point 1, Martin v. Ewing, 112 W.Va. 332, 164 S.E. 859 (1932)." Chesapeake Appalachia, L.L.C. v. Hickman, 235 W.Va. 421, 781 S.E.2d 198, 216 (2015). No such meeting of minds between Greatwide and Ronald O. Slemboski, Jr. is in evidence in late 2013, when his mother decided to approach Medallion about becoming its agent.

Furthermore:

"As a general rule, one who enters into a contract or performs some act while laboring under a mistake of material fact is entitled to have the transaction or the act set aside in a court of equity[.]" Syllabus Point 1, in part, Webb v. Webb, 171 W.Va. 614, 301 S.E.2d 570 (1983).. "A mistake of fact consists of an unconscious ignorance or forgetfulness of a material fact, past or present, or of a mistaken belief in the past or present existence of a material fact which did not or does not actually exist." Syllabus Point 2, in part, *Id.* See also, Brannon v. Riffle, 197 W.Va. 97, 101, 475 S.E. 97, 101 (1996).

The material facts regarding which Greatwide and Ronald O. Slemboski, Jr. seem to be mistaken appear to be whether or not Mr. Slemboski had a contract with Greatwide at any given time, and, if so, the terms of that contract. Because of all of these confusing circumstances, Greatwide cannot meet its burden of proving that Ronald O. Slemboski, Jr. and Greatwide had a contract with which Medallion and Sandra Slemboski could conspire to interfere. Syllabus Point 2, Torbett v. Wheeling Dollar, 173 W.Va. 210, 314 S.E.2d 166 (1984).

C. Medallion and Sandra Slemboski Cannot Have Conspired to Tortiously Interfere in an Exclusive Agency Agreement Between Greatwide and Ronald O.

Slemboski, Jr. Because Assuming *Arguendo*, that Such a Contract Existed, Greatwide Breached it Before it Could Be Completed

Defendant Ronald O. Slemboski, Jr. has produced discovery in this action, allegedly documenting that as of the end of 2013, Greatwide had underpaid him in agreed commissions, by the sum of \$83,738.53. (Exhibit L). Although this alleged breach of contract by Greatwide can be fairly argued to create a question of fact, it is worth noting that despite Ronald O. Slemboski, Jr. having counterclaimed Greatwide on this basis, and produced documentation of the aforesaid damages, Greatwide has yet to produce, with the discovery period closed, documentation or testimony evidencing that it fully paid all of the commissions due him.

More importantly, however, as set forth in detail, with meticulous reference to the record, in the "Statement of Facts" *supra*, the following facts are undisputedly true:

1) Assuming *arguendo* that, Ronald O. Slemboski, Jr. was party to a four-year exclusive agency Greatwide, on the basis of a July 25, 2011 addendum, Greatwide breached that contract by demanding, orally on March 11, 2014, and in writing, on April 12, 2014 that he repay the full \$100,000.00 forgivable loan, when over a year and three months remained on his contract; 2) Greatwide gave Mr. Slemboski neither notice of the nature of his alleged breach, nor the fifteen (15) days to cure explicitly required by the July 25, 2011 addendum; and 3) Greatwide, by policy, would not allow Mr. Slemboski to generate brokerage revenue, either by brokering Greatwide freight to Medallion trucks, or to generate trucking revenue, by permitting his mother to broker Medallion freight, thus preventing him from generating some of the revenue required by the alleged contract.

The latter group of undisputed breaches of contract make it impossible for Greatwide to meet its burden of proving that it had a contractual relationship or expectancy with Ronald O. Slemboski, Jr., with which Medallion and Sandra Semboski could tortiously interfere.

C. Any Alleged Exclusive Agency Agreement Between Greatwide and Ronald O. Slemboski, Jr., d/b/a MTF Was, In Any Case, Unilateral, and Void for Want of Consideration

The July 25, 2011, on which Greatwide bases its claims to a contractual expectation with Ronald O. Slemboski, Jr., is, as interpreted by Greatwide, both terminable at will by Greatwide, and requires Mr. Slemboski to completely reimburse the \$100,000.00 forgivable loan that would be the sole consideration for his agreement to act as its exclusive agent, in the event Greatwide terminates the agreement before the end of four years. (Exhibit H). (J. Wojciechowski Dep. 57:7-59:7, 67:4-24). (R. LaRose Dep. 49:11-51:1).

Consideration that can be entirely removed at the will of one of the parties simply isn't consideration. The contract between Greatwide and Ronald O. Slemboski, Jr., as drawn up, interpreted, and attempted to be enforced by Greatwide, would have him work exclusively for Greatwide two and a half years, bring them profits that greatly exceeded the amount of his forgivable loan, and then be obligated to repay that loan in its entirety when Greatwide terminated it early.

Such contracts are termed "substantively unconscionable by the West Virginia Supreme Court, and held to be unenforceable.

"10. In assessing whether a contract provision is substantively unconscionable, a court may consider whether the provision lacks mutuality of obligation. If a provision creates a disparity in the rights of the contracting parties such that it is one-sided and unreasonably favorable to one party, then a court may find the provision is substantively unconscionable." Dan Ryan Builders, Inc. v. Nelson, 230 W.Va. 281, 737 S.E.2d 550 (2012).

Similarly, the Supreme Court of Appeals of West Virginia has held that "royalty only" gas leases, that provide consideration for the lessor, only if and when the lessee decides to extract oil or gas from the leased proper, as unenforceable for lack of mutuality.

"Where a lease does not obligate the lessee to make any payments in lieu of production, and allows the lessee to indefinitely delay production under the promise of paying royalties if the lessee chooses to develop the property, courts will tend to invalidate the lease. Such a lease "would allow the lessee to do absolutely nothing with the lease [ ]" while the lessor remained bound by the lease. ICG Natural Res., LLC v. BPI Energy, Inc., 399 Ill.App.3d, 554, 558, 926 N.E.2d 446, 450 (2010). Such "royalty only" leases are "held unenforceable for lack of mutuality, based on the elementary principle of the law of contracts that if one party to a contract is under no obligation to perform at all, the contract is void." Davis v. Nokomis Quarry, Inc., 77 Ill.App.3d 1011, 1013, 397 N.E.2d 216, 218 (1979)." Chesapeake Appalachia, L.L.C. v. Hickman, 236 W.Va. 421, 781 S.E.2d 198, 219, 220 (2015).

Clearly, the alleged contract between Greatwide and Ronald O. Slemboski, Jr., based on Addendum C so lacked mutuality, and consideration for Mr. Slemboski's exclusive agency work, that it would be unenforceable. Such a contract cannot satisfy the requirement of the existence of a contractual relationship, that might be the object of tortious interference.

**III. There Are No Genuine Issues of Material Fact, and Under All Facts Material to this Case, There is No Evidence of Medallion Acting in Conspiracy with Sandra L. Slemboski to Tortiously Interfere With a Greatwide Contract**

The West Virginia Supreme Court has very clearly and thoroughly explained the meaning of civil conspiracy in the context of a tortious interference claim.

"This Court has recognized the concept of a civil conspiracy, and in Dixon v. American Industrial Leasing Company, 162 W.Va. 832, 253 S.E.2d 159 (1979), adopted the definition of civil conspiracy set forth in 15A C.J.S. Conspiracy §1(1). The Court stated:

'As succinctly stated in 15A C.J.S. Conspiracy §1(1), a civil conspiracy is a combination of two or more persons by concerted action to accomplish an unlawful purpose or to accomplish some purpose, not in itself unlawful, by unlawful means. Id. at 834, 253 S.E.2d at 152..

The law on civil conspiracy recognizes a distinction between a combination which is motivated by the malicious desire to destroy another's business and one motivated by the simple desire to compete and engage in business. As stated in 15A C.J.S. Conspiracy § 10(1): 'There is a clear distinction between acts which have inducement in malice or ill-will and those which have inducement in business competition and rivalry; the latter are legal competitions and the former are not.' Where two or more people combine together simply for the purpose of engaging in business competition and rivalry, the combination cannot be considered a civil conspiracy. "On the other hand, where persons combine not for the purpose of protecting or advancing their own legitimate interests but for the purpose of injuring another in his trade or business, they are guilty of an unlawful conspiracy which, when executed and when damage results therefrom, is actionable .... 15A C.J.S. Conspiracy §10(1)." Politino v. Azzon, Inc., 212 W.Va. 200, 204, 569 S.E.2d 447, 451 (2002).

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Using these standards as guidelines, should any reasonable contractual expectancy be found to exist between Greatwide and Ronald O. Slemboski, Jr., there is no evidence of conspiracy to interfere with that contractual expectancy.

The history of activity between Medallion and Sandra Slemboski begins with her asking if she might enter into an agency contract, with Medallion, after she had

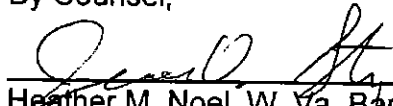
Both Medallion and Greatwide engage in trying to retain agents, and watching for opportunities like those presented by Sandra Siemboski's phone call. It is extremely disingenuous for Greatwide to characterize this activity, in which it engages daily, as conspiracy to tortiously interfere.

### CONCLUSION

For all of the reasons set forth above, Medallion **MOVES** for summary judgment as to all counts and alleged causes of action asserted against it herein by Plaintiff, and respectfully requests dismissal of the Amended Complaint against it herein, in its entirety, with prejudice.

Respectfully submitted.

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and LOGISTICS, LLC,  
By Counsel,



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