

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

HILB GROUP OF WEST VIRGINIA, LLC,  
a Delaware limited liability company,

Plaintiff,

v.

Civil Action No. 16-C-1333  
Judge Webster

MICHAEL M. IDLEMAN, individually, and  
MAIN STREET INSURANCE, LLC,  
a West Virginia limited liability company,

Defendants.

**DEFENDANT MICHAEL M. IDLEMAN'S  
ANSWER TO PLAINTIFF'S COMPLAINT**

Now comes the defendant Michael M. Idleman, by counsel, in response to the plaintiff's Complaint, and states as follows:

**ANSWER**

**First Defense**

The Complaint, in its entirety, fails to state a claim against this defendant upon which relief can be granted.

**Second Defense**

This defendant asserts the affirmative defense of estoppel.

### **Third Defense**

The wrongful conduct, if any, was that of another party, individual, or entity to this action or not named in this action and not the wrongful conduct of this defendant.

### **Fourth Defense**

To the extent that plaintiff's damages and injuries, if any, were proximately caused by any act or omission, such act or omission was not that of this defendant but, rather, were those of a third party over whom this defendant exercised no control and for whom control was not the responsibility of this defendant.

### **Fifth Defense**

This defendant, at all times material to the plaintiff's Complaint, took those actions which might reasonably have been expected of a person of ordinary prudence who desired to comply with the law.

### **Sixth Defense**

This defendant is entitled to a dollar-for-dollar credit for any settlements paid prior to judgment, as offset against any adverse verdict returned against it.

### **Seventh Defense**

To the extent that the Complaint asserts or alleges that plaintiff is entitled to recover punitive or exemplary damages from this defendant, then this defendant asserts the following defenses:

A. Plaintiff's claim for punitive damages violates, and it is, therefore, barred by, the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments to the Constitution of the United States of America on grounds, including the following:

- (a) it is a violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the United States Constitution to impose punitive damages, which are penal in nature, against a civil defendant upon the plaintiffs satisfying a burden of proof which is less than the "beyond a reasonable doubt" burden of proof required in criminal cases;
- (b) the procedures pursuant to which punitive damages are awarded may result in the award of joint and several judgments against multiple defendants for different alleged acts of wrongdoing, which infringes upon the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the United States Constitution;
- (c) the procedures pursuant to which punitive damages are awarded fail to provide a reasonable limit on the amount of the award against defendant, which thereby violates the Due Process Clause of the Fourteenth Amendment of the United States Constitution;
- (d) the procedures pursuant to which punitive damages are awarded fail to provide specific standards for the amount of the award of punitive damages which thereby violates the Due Process

Clause of the Fourteenth Amendment of the United States  
Constitution;

(e) the procedures pursuant to which punitive damages are  
awarded result in the imposition of different penalties for the same  
or similar acts and, thus, violate the Equal Protection Clause of the  
Fourteenth Amendment of the United States Constitution;

(f) the procedures pursuant to which punitive damages are  
awarded permit the imposition of punitive damages in excess of  
the maximum criminal fine for the same or similar conduct, which  
thereby infringes upon the Due Process Clause of the fifth and  
Fourteenth Amendments and the Equal Protection Clause of the  
Fourteenth Amendment of the United States Constitution;

(g) the procedures pursuant to which punitive damages are  
awarded permit the imposition of excessive fines in violation of the  
Eighth Amendment of the United States Constitution;

(h) the award of punitive damages to the plaintiff in this  
action would constitute a deprivation of property without due  
process of law; and

(i) the procedures pursuant to which punitive damages are  
awarded permit the imposition of an excessive fine and penalty.

B. Plaintiff's claim for punitive damages violates and is, therefore,  
barred by the provision of the Constitution of the State of West Virginia, including, but not  
limited to, Article III, Sections 4, 5, 6, and 10, on grounds, including the following:

- (a) it is a violation of the Due Process and Equal Protection Clauses to impose punitive damages, which are penal in nature, against a civil defendant upon the plaintiffs satisfying a burden of proof which is less than the "beyond a reasonable doubt" burden of proof required in criminal cases;
- (b) the procedures pursuant to which punitive damages are awarded may result in the award of joint and several judgments against multiple defendants for different alleged acts of wrongdoing;
- (c) the procedures pursuant to which punitive damages are awarded fail to provide a limit on the amount of the award against this defendant;
- (d) the procedures pursuant to which punitive damages are awarded fail to provide specific standards for the amount of award of punitive damages;
- (e) the procedures pursuant to which punitive damages are awarded result in the imposition of different penalties for the same or similar acts;
- (f) the procedures pursuant to which punitive damages are awarded permit the imposition of punitive damages in excess of the maximum criminal fine for the same or similar conduct;
- (g) the procedures pursuant to which punitive damages are awarded permit the imposition of excessive fines;

- (h) the award of punitive damages to the plaintiff in this action would constitute a deprivation of property without due process of law; and
- (i) the procedures pursuant to which punitive damages are awarded permit the imposition of an excessive fine and penalty.

#### **Eighth Defense**

This defendant hereby preserves each and every defense set forth in Rules 8, 9, and 12 of the West Virginia Rules of Civil Procedure and further reserves the right to raise such additional defenses as may become apparent following the further discovery and factual development of this case.

#### **Ninth Defense**

This defendant asserts the affirmative defenses, including, but not limited to, as discovery reveals appropriate, accord and satisfaction, assumption of the risk, discharge, estoppel, waiver, and all other defenses which may be applicable and are required to be affirmatively pled under Rule 8(c) of the West Virginia Rules of Civil Procedure.

#### **Tenth Defense**

This defendant reserves unto itself the right to assert such claims, whether it be counterclaims, cross-claims, third-party claims or otherwise, if a sufficient factual basis is developed through continuing investigation and discovery.

### **Eleventh Defense**

1. In response to the allegations of paragraph 1 of the Complaint, this defendant is without sufficient information to form a belief as to the truth of the allegations contained therein and, therefore, neither admits nor denies the same but calls for strict proof thereof.

2. In response to the allegations of paragraph 2 of the Complaint, this defendant admits the same.

3. In response to the allegations of paragraph 3 of the Complaint, this defendant is without sufficient information to form a belief as to the truth of the allegations contained therein and, therefore, neither admits nor denies the same but calls for strict proof thereof.

4. In response to the allegations of paragraph 4 of the Complaint, this defendant states that the matters asserted in said paragraph represent legal conclusions, rather than allegations of fact, and, therefore, does not require a response by way of admission or denial; however, to the extent any factual allegations regarding this defendant are contained therein, such are denied.

5. In response to the allegations of paragraph 5 of the Complaint, this defendant admits he was employed from April 24, 2006, until July 8, 2016. To the extent the said paragraph alleges by "Hilb and its predecessor," such matters asserted represent legal conclusions, rather than allegations of fact, and, therefore, does not require a response by way of admission or denial; however, to the extent any factual allegations regarding this defendant are contained therein, such are denied.

6. In response to the allegations of paragraph 6 of the Complaint, this defendant states that the matters asserted in said paragraph represent legal conclusions, rather

than allegations of fact, and, therefore, does not require a response by way of admission or denial; however, to the extent any factual allegations regarding this defendant are contained therein, such are denied.

7. In response to the allegations of paragraph 7 of the Complaint, this defendant states that the matters asserted in said paragraph represent legal conclusions, rather than allegations of fact, and, therefore, does not require a response by way of admission or denial; however, to the extent any factual allegations regarding this defendant are contained therein, such are denied.

8. In response to the allegations of paragraph 8 of the Complaint, this defendant admits the same.

9. In response to the allegations of paragraph 9 of the Complaint, this defendant admits he entered into a Severance Agreement. To the extent said paragraph alleges the same, "... which set forth various obligations of the parties," such matters asserted in said paragraph represent legal conclusions, rather than allegations of fact, and, therefore, does not require a response by way of admission or denial; however, to the extent any factual allegations regarding this defendant are contained therein, such are denied.

10. In response to the allegations of paragraph 10 of the Complaint, this defendant states the subject Severance Agreement speaks for itself and, therefore, neither admits nor denies the allegations contained therein but calls for strict proof thereof.

11. In response to the allegations of paragraph 11 of the Complaint, this defendant states that the matters asserted in said paragraph represent legal conclusions, rather than allegations of fact, and, therefore, does not require a response by way of admission or denial; however, to the extent any factual allegations regarding this defendant are contained therein, such are denied.



12. In response to the allegations of paragraph 12 of the Complaint, this defendant denies the same.

13. In response to the allegations of paragraph 13 of the Complaint, this defendant denies the same.

14. In response to the allegations of paragraph 14 of the Complaint, this defendant is without sufficient information to form a belief as to the truth of the allegations contained therein and, therefore, neither admits nor denies the same but calls for strict proof thereof.

15. In response to the allegations of paragraph 15 of the Complaint, this defendant denies the same.

16. In response to the allegations of paragraph 16 of the Complaint, this defendant states the subject *The Herald-Dispatch* newspaper speaks in whole for itself and, therefore, neither admits nor denies the allegations contained therein but calls for strict proof thereof.

17. In response to the allegations of paragraph 17 of the Complaint, this defendant states the subject "link" in whole speaks for itself and, therefore, neither admits nor denies the allegations contained therein but calls for strict proof thereof.

18. In response to the allegations of paragraph 18 of the Complaint, this defendant denies the same.

19. In response to the allegations of paragraph 19 of the Complaint, this defendant is without sufficient information to form a belief as to the truth of the allegations contained therein and, therefore, neither admits nor denies the same but calls for strict proof thereof.

20. In response to the allegations of paragraph 20 of the Complaint, this defendant denies the same.

21. In response to the allegations of paragraph 21 of the Complaint, this defendant reasserts his answers to paragraphs 1 through 20 of the Complaint and incorporates the same herein by reference.

22. In response to the allegations of paragraph 22 of the Complaint, this defendant states that the matters asserted in said paragraph represent legal conclusions, rather than allegations of fact, and, therefore, does not require a response by way of admission or denial; however, to the extent any factual allegations regarding this defendant are contained therein, such are denied.

23. In response to the allegations of paragraph 23 of the Complaint, this defendant states that the matters asserted in said paragraph represent legal conclusions, rather than allegations of fact, and, therefore, does not require a response by way of admission or denial; however, to the extent any factual allegations regarding this defendant are contained therein, such are denied.

24. In response to the allegations of paragraph 24 of the Complaint, this defendant states that the matters asserted in said paragraph represent legal conclusions, rather than allegations of fact, and, therefore, does not require a response by way of admission or denial; however, to the extent any factual allegations regarding this defendant are contained therein, such are denied.

25. In response to the allegations of paragraph 25 of the Complaint, this defendant states that the matters asserted in said paragraph represent legal conclusions, rather than allegations of fact, and, therefore, does not require a response by way of admission or

denial; however, to the extent any factual allegations regarding this defendant are contained therein, such are denied.

26. In response to the allegations of paragraph 26 of the Complaint, this defendant states that the matters asserted in said paragraph represent legal conclusions, rather than allegations of fact, and, therefore, does not require a response by way of admission or denial; however, to the extent any factual allegations regarding this defendant are contained therein, such are denied.

27. In response to the allegations of paragraph 27 of the Complaint, this defendant reasserts his answers to paragraphs 1 through 26 of the Complaint and incorporates the same herein by reference.

28. In response to the allegations of paragraph 28 of the Complaint, this defendant states that the matters asserted in said paragraph represent legal conclusions, rather than allegations of fact, and, therefore, does not require a response by way of admission or denial; however, to the extent any factual allegations regarding this defendant are contained therein, such are denied.

29. In response to the allegations of paragraph 29 of the Complaint, this defendant states that the matters asserted in said paragraph represent legal conclusions, rather than allegations of fact, and, therefore, does not require a response by way of admission or denial; however, to the extent any factual allegations regarding this defendant are contained therein, such are denied.

30. In response to the allegations of paragraph 30 of the Complaint, this defendant states that the matters asserted in said paragraph represent legal conclusions, rather than allegations of fact, and, therefore, does not require a response by way of admission or

denial; however, to the extent any factual allegations regarding this defendant are contained therein, such are denied.

31. In response to the allegations of paragraph 31 of the Complaint, this defendant states that the matters asserted in said paragraph represent legal conclusions, rather than allegations of fact, and, therefore, does not require a response by way of admission or denial; however, to the extent any factual allegations regarding this defendant are contained therein, such are denied.

32. In response to the allegations of paragraph 32 of the Complaint, this defendant states that the matters asserted in said paragraph represent legal conclusions, rather than allegations of fact, and, therefore, does not require a response by way of admission or denial; however, to the extent any factual allegations regarding this defendant are contained therein, such are denied.

33. In response to the allegations of paragraph 33 of the Complaint, this defendant reasserts his answers to paragraphs 1 through 32 of the Complaint and incorporates the same herein by reference.

34. In response to the allegations of paragraph 34 of the Complaint, this defendant is without sufficient information to form a belief as to the truth of the allegations contained therein and, therefore, neither admits nor denies the same but calls for strict proof thereof.

35. In response to the allegations of paragraph 35 of the Complaint, this defendant denies the same.

36. In response to the allegations of paragraph 36 of the Complaint, this defendant states that the matters asserted in said paragraph represent legal conclusions, rather than allegations of fact, and, therefore, does not require a response by way of admission or

denial; however, to the extent any factual allegations regarding this defendant are contained therein, such are denied.

37. In response to the allegations of paragraph 37 of the Complaint, this defendant reasserts his answers to paragraphs 1 through 36 of the Complaint and incorporates the same herein by reference.

38. In response to the allegations of paragraph 38 of the Complaint, this defendant states that the matters asserted in said paragraph represent legal conclusions, rather than allegations of fact, and, therefore, does not require a response by way of admission or denial; however, to the extent any factual allegations regarding this defendant are contained therein, such are denied.

39. In response to the allegations of paragraph 39 of the Complaint, this defendant states that the matters asserted in said paragraph represent legal conclusions, rather than allegations of fact, and, therefore, does not require a response by way of admission or denial; however, to the extent any factual allegations regarding this defendant are contained therein, such are denied.

40. In response to the allegations of paragraph 40 of the Complaint, this defendant states that the matters asserted in said paragraph represent legal conclusions, rather than allegations of fact, and, therefore, does not require a response by way of admission or denial; however, to the extent any factual allegations regarding this defendant are contained therein, such are denied.

41. In response to the allegations of paragraph 41 of the Complaint, this defendant reasserts his answers to paragraphs 1 through 40 of the Complaint and incorporates the same herein by reference.

42. In response to the allegations of paragraph 42 of the Complaint, this defendant states that the matters asserted in said paragraph represent legal conclusions, rather than allegations of fact, and, therefore, does not require a response by way of admission or denial; however, to the extent any factual allegations regarding this defendant are contained therein, such are denied.

43. In response to the allegations of paragraph 43 of the Complaint, this defendant states that the matters asserted in said paragraph represent legal conclusions, rather than allegations of fact, and, therefore, does not require a response by way of admission or denial; however, to the extent any factual allegations regarding this defendant are contained therein, such are denied.

44. In response to the allegations of paragraph 44 of the Complaint, this defendant states that the matters asserted in said paragraph represent legal conclusions, rather than allegations of fact, and, therefore, does not require a response by way of admission or denial; however, to the extent any factual allegations regarding this defendant are contained therein, such are denied.

45. In response to the allegations of paragraph 45 of the Complaint, this defendant states that the matters asserted in said paragraph represent legal conclusions, rather than allegations of fact, and, therefore, does not require a response by way of admission or denial; however, to the extent any factual allegations regarding this defendant are contained therein, such are denied.

46. In response to the allegations of paragraph 46 of the Complaint, this defendant reasserts his answers to paragraphs 1 through 45 of the Complaint and incorporates the same herein by reference.

47. In response to the allegations of paragraph 47 of the Complaint, this defendant states that the matters asserted in said paragraph represent legal conclusions, rather than allegations of fact, and, therefore, does not require a response by way of admission or denial; however, to the extent any factual allegations regarding this defendant are contained therein, such are denied.

48. In response to the allegations of paragraph 48 of the Complaint, this defendant states that the matters asserted in said paragraph represent legal conclusions, rather than allegations of fact, and, therefore, does not require a response by way of admission or denial; however, to the extent any factual allegations regarding this defendant are contained therein, such are denied.

49. In response to the allegations of paragraph 49 of the Complaint, this defendant states that the matters asserted in said paragraph represent legal conclusions, rather than allegations of fact, and, therefore, does not require a response by way of admission or denial; however, to the extent any factual allegations regarding this defendant are contained therein, such are denied.

50. In response to the allegations of paragraph 50 of the Complaint, this defendant states that the matters asserted in said paragraph represent legal conclusions, rather than allegations of fact, and, therefore, does not require a response by way of admission or denial; however, to the extent any factual allegations regarding this defendant are contained therein, such are denied.

51. In response to the allegations of paragraph 51 of the Complaint, this defendant reasserts his answers to paragraphs 1 through 50 of the Complaint and incorporates the same herein by reference.

52. In response to the allegations of paragraph 52 of the Complaint, this defendant is without sufficient information to form a belief as to the truth of the allegations contained therein and, therefore, neither admits nor denies the same but calls for strict proof thereof.

53. In response to the allegations of paragraph 53 of the Complaint, this defendant states that the matters asserted in said paragraph represent legal conclusions, rather than allegations of fact, and, therefore, does not require a response by way of admission or denial; however, to the extent any factual allegations regarding this defendant are contained therein, such are denied.

54. In response to the allegations of paragraph 54 of the Complaint, this defendant states that the matters asserted in said paragraph represent legal conclusions, rather than allegations of fact, and, therefore, does not require a response by way of admission or denial; however, to the extent any factual allegations regarding this defendant are contained therein, such are denied.

55. This defendant denies any and all allegations against him contained in said Complaint which have not been specifically admitted herein. To the extent any allegations of fact are contained therein, they are denied and strict proof thereof is demanded.

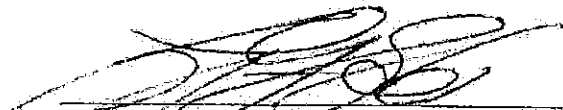
WHEREFORE, the defendant Michael M. Idleman demands that the Complaint against him be dismissed, with prejudice, and that he have his costs in his behalf expended, including reasonable attorney's fees, together with such other relief as this Court deems appropriate.

**THE DEFENDANT MICHAEL M. IDLEMAN DEMANDS A TRIAL BY JURY ON ALL ISSUES.**



Dated this 29th day of September, 2016.

**ROBINSON & McELWEE PLLC**

A handwritten signature in black ink, appearing to read 'S. Gandee', is written over a horizontal line.

Stephen E. Gandee  
(W. Va. State Bar I.D.: 5204)

Post Office Box 128  
140 West Main Street, Suite 300  
Clarksburg, West Virginia 26302-0128  
(304) 326-5313

Attorney for Defendant Michael M. Idleman

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HILB GROUP OF WEST VIRGINIA, LLC,  
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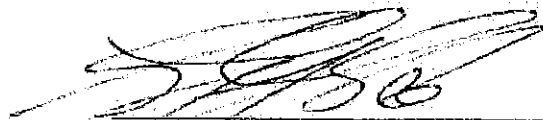
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MICHAEL M. IDLEMAN, individually, and  
MAIN STREET INSURANCE, LLC,  
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Defendants.

**CERTIFICATE OF SERVICE**

I hereby certify that on the 29th day of September, 2016, I served the foregoing **Defendant Michael M. Idleman's Answer to Plaintiff's Complaint** upon Kurt E. Entsminger, attorney for plaintiff, and upon Edward P. Tiffey, attorney for defendant Main Street Insurance, LLC, by depositing true copies thereof in the United States mail, postage prepaid, in envelopes addressed to them at Flaherty Sensabaugh Bonasso PLLC, Post Office Box 3843, Charleston, West Virginia, 25338-3843, and at Tiffey Law Practice PLLC, Post Office Box 3785, Charleston, West Virginia, 25337-3785, respectively.



Stephen F. Gandee  
(W. Va. State Bar I.D.: 5204)