

IN THE CIRCUIT COURT OF PRESTON COUNTY, WEST VIRGINIA

DOMENICK MARRARA, JR., individually and
as co-Trustee of the SANDRA JEAN MARRARA TRUST,
SANDRA JEAN MARRARA,
as co-Trustee of the SANDRA JEAN MARRARA TRUST, and
SANDRA JEAN MARRARA TRUST,

PLAINTIFFS,

v.

CIVIL ACTION NO. 13-C-198

ROCCO S. MARRARA, JR., individually and
as Trustee of the MARY JANE MARRARA IRREVOCABLE TRUST, and
as Trustee of the ROCCO S. MARRARA, SR. CREDIT SHELTER TRUST
MARY JANE MARRARA IRREVOCABLE TRUST,
ROCCO S. MARRARA, SR. CREDIT SHELTER TRUST,
FIREBIRD CO., D & R DISTRIBUTORS, INC., and
PURE LAND, CO.,

DEFENDANTS.

MOTION TO REFER MATTER TO BUSINESS COURT DIVISION

Come now Defendants, by counsel, pursuant to Rule 29.06(a)(2) of the West Virginia
Trial Court Rules, and hereby move that this action be referred and transferred to the Business
Court Division.

In support of this motion, Defendants assert that the issues raised in this action involve
"business litigation" as defined in Trial Court Rule 29.04(a) in that the action involves issues of
corporate governance; a request for judicial supervision of corporate dissolution per West
Virginia Code §31D-14-1431; and claims of malfeasance by the individual party Plaintiffs and
Defendants in their capacities as officers and directors of the corporate entities named as

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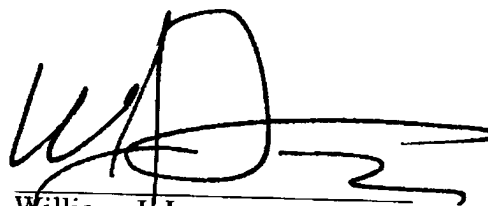
Defendants in this litigation. A copy of Plaintiffs' Complaint and Defendants' Counterclaim are attached hereto and incorporated herein by reference.

In further support of this motion, Defendants' counsel believes and asserts that this litigation contains potentially complex issues regarding corporate governance, malfeasance by corporate officers and shareholders and that, therefore, specialized knowledge or expertise of the issues raised in this litigation and with the specific legal principles governing the same will likely improve the expectation of a fair, reasonable and expeditious resolution of the controversy between the parties.

Per Trial Court Rule 29.06(a)(1), Defendants state that a civil action involving the parties in this litigation is pending in the Circuit Court of Preston County, West Virginia and is styled *Rocco S. Marrara, Jr., Trustee, et al. v. Firebird Company, et al.*, Civil Action No. 11-C-220 and further that said litigation concerns issues tangentially related to the issues raised in the present litigation for which Defendants seek referral.

Wherefore, Defendants respectfully request that their motion to refer this action to the Business Court Division be granted, with such other and further relief as the Court deems appropriate.

Respectfully submitted
Defendants, by counsel,

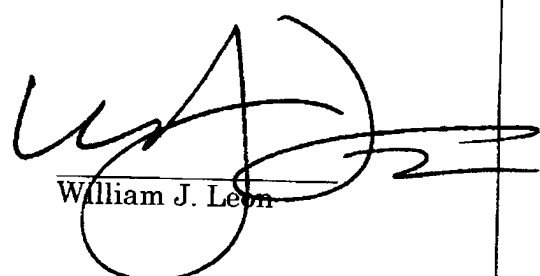


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CERTIFICATE OF SERVICE

I certify that I served the attached Motion to Refer via facsimile transmission and by placing the same in the United States Mail, first class and postage prepaid, upon counsel for Plaintiffs at the address listed below this 4th of December, 2013.

William Brewer
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P.O. Box 4206
Morgantown, WV 26504


William J. Leon

IN THE CIRCUIT COURT OF PRESTON COUNTY, WEST VIRGINIA

DOMENICK MARRARA, JR., individually and
as co-Trustee of the SANDRA JEAN MARRARA TRUST,
SANDRA JEAN MARRARA,
as co-Trustee of the SANDRA JEAN MARRARA TRUST, and
SANDRA JEAN MARRARA TRUST,

Plaintiffs,

v.

CIVIL ACTION NO. 13-C-198

Judge Miller

ROCCO S. MARRARA, JR., individually and
as Trustee of the MARY JANE MARRARA IRREVOCABLE TRUST, and
as Trustee of the ROCCO S. MARRARA, SR. CREDIT SHELTER TRUST
MARY JANE MARRARA IRREVOCABLE TRUST,
ROCCO S. MARRARA, SR. CREDIT SHELTER TRUST,
FIREBIRD CO.,
D & R DISTRIBUTORS, INC., and
PURE LAND, CO.,

Defendants.

COMPLAINT AND PETITION FOR CORPORATE DISSOLUTION

1. Plaintiff, Domenick Marrara, Jr., is a resident of Preston County, West Virginia, is the former President of Firebird Inc, D&R Distributors, Inc., and Pure Land, Co., and is the former manager of Ripley Associates, LLC.

2. Plaintiff, Sandra Jean Marrara, is a resident of Preston County, West Virginia.

3. Plaintiff/Petitioner¹, Sandra Jean Marrara Trust, is a trust organized under the laws of the State of West Virginia.

4. Plaintiffs, Domenick Marrara, Jr., and Sandra Jean Marrara, are co-Trustees of Plaintiff Sandra Jean Marrara Trust.

5. Defendant, Rocco S. Marrara, Jr., is a resident of the State of West Virginia, is the current President of Firebird, Co., D&R Distributors, Inc., and Pure Land, Co, and the current manager of Ripley Associates, LLC.

6. Defendant, Mary Jane Marrara Irrevocable Trust is a trust organized under the laws of the State of West Virginia.

7. Defendant Rocco S. Marrara, Jr., is the Trustee of the Mary Jane Marrara Irrevocable Trust.

8. Defendant Rocco S. Marrara, Sr. Credit Shelter Trust is a trust organized under the laws of the State of West Virginia.

9. Defendant Rocco S. Marrara, Jr., is the Trustee of the Rocco S. Marrara, Sr. Credit Shelter Trust.

10. Robert Marrara is a resident of the State of West Virginia.

11. Mary Lou Marrara is a resident of the State of West Virginia.

12. Defendant/Respondent² Firebird Co. (hereinafter "Firebird"), is a West Virginia closely held corporation.

¹ For the sake of uniformity Plaintiff/Petitioner Sandra Jean Marrara Trust will simply be characterized as a "Plaintiff" herein.

² For the sake of uniformity Defendant/Respondent Firebird, Co. will simply be characterized as a "Defendant" herein.

13. Defendant Firebird Co., has one thousand (1,000) outstanding shares.
14. Plaintiff Sandra Jean Marrara Trust possesses three hundred thirty-three and one-third ($333 \frac{1}{3}$) shares of Defendant Firebird.
15. Upon information and belief, Defendant Mary Jane Marrara Irrevocable Trust possesses three hundred thirty-three and one-third ($333 \frac{1}{3}$) shares of Defendant Firebird.
16. Upon information and belief, Robert Marrara possesses three hundred thirty-two and one-third shares ($332 \frac{1}{3}$) of Defendant Firebird.
17. Upon information and belief, Mary Lou Marrara possesses one (1) share of Defendant Firebird.
18. Upon information and belief, Defendant Rocco S. Marrara Sr. Credit Shelter Trust and/or Defendant Rocco Marrara, Jr. may also have an interest in Defendant Firebird. Plaintiffs are unsure as to the scope of any such interest, due to the actions of Defendants, as set forth herein.
19. Defendant Firebird is a holding company.
20. Defendant D & R Distributors, Inc., (hereinafter "D&R") is a West Virginia closely held corporation.
21. Defendant D & R is a wholly owned subsidiary of Defendant Firebird.
22. Defendant Pure Land, Co. (hereinafter "Pure Land"), is a West Virginia closely held corporation.

23. Defendant Pure Land is a wholly owned subsidiary of Defendant Firebird.

24. Ripley Associates, LLC (hereinafter "Ripley") is a West Virginia limited liability company.

25. Defendant Pure Land owns a two-thirds (2/3) distributional interest in Ripley.

26. Upon information and belief, either Defendant Rocco S. Marrara, Sr. Credit Shelter Trust or Defendant Rocco Marrara, Jr. individually, owns a one-third (1/3) distributional interest in Ripley.

27. Accordingly, Plaintiff Sandra Jean Marrara Trust, has an interest, through Defendant Firebird, in Defendant D&R, Defendant Pure Land, and Ripley.

28. Ripley is the major revenue source for Pure Land.

29. On or about November 4, 2011, Defendant Rocco S. Marrara Jr. became president of Firebird, D&R, and Pure Land, and became managing member of Ripley.

30. Prior to November 4, 2011 Plaintiff Domenick Marrara, Jr. was the president of Firebird, D&R, and Pure Land, and was the managing member of Ripley.

Count I- Oppressive Conduct

31. Plaintiff hereby incorporates and re-alleges all of the allegations made in the preceding paragraphs as if set forth fully herein.

32. As a shareholder of Defendant Firebird, Plaintiff Sandra Jean Marrara Trust is entitled to certain records and financial information of Firebird.

33. On approximately May 25, 2012, Plaintiff Domenick Marrara, Jr., as the representative of Plaintiff Sandra Jean Marrara Trust, requested certain records from Firebird, through its President Defendant Rocco Marrara, Jr.

34. Defendant Rocco Marrara, Jr. unlawfully ignored Plaintiff Sandra Jean Marrara Trust's request and has refused to comply, in any way, with said request for records and information.

35. On approximately January 11, 2013, Plaintiff Domenick Marrara, Jr., as the representative of the Sandra Jean Marrara Trust, renewed its request for certain records from Firebird, through its officer Defendant Rocco Marrara, Jr.

36. Once again, Defendant Rocco Marrara, Jr., individually and as President of Firebird, unlawfully ignored Plaintiff Sandra Jean Marrara's request to inspect corporate records.

37. Defendant Firebird has completely failed to comply with Plaintiff Sandra Jean Marrara Trust's prior requests for documents and information.

38. Since becoming President of Firebird and President or Manager of its subsidiaries on November 4, 2011, Rocco Marrara, Jr. has authorized payments from Firebird and/or its subsidiaries to Robert Marrara.

39. Robert Marrara provides no meaningful services to Firebird or any of its subsidiaries.

40. Since November 4, 2011, Plaintiff Sandra Jean Marrara Trust has not received any salary, dividends, profit shares, or any other payments or benefits from Firebird or its subsidiaries.

41. Since November 4, 2011 Plaintiff Sandra Jean Marrara Trust has been treated oppressively and unequally to other Firebird shareholders.

42. Since November 4, 2011, Firebird, and/or its subsidiaries and/or its officers have taken several other actions and/or omissions that have resulted in Plaintiff Sandra Jean Marrara Trust's complete exclusion from participation in Firebird and its subsidiaries. Such includes, but is not limited to, the following actions by Firebird and its subsidiaries:

(a) failed to respond to communications and requests for documents and information from Plaintiff Sandra Jean Marrara Trust;

(b) failed to cooperate with, illicit advice, or even obtain routine information from Plaintiff Domenick Marrara, Jr. regarding the management of Firebird, and its subsidiaries, despite Defendant Rocco Marrara, Jr.'s management inexperience and Plaintiff Domenick Marrara, Jr.'s over fifty (50) years of experience in management of the Defendant companies; and

(c) acted maliciously and adversely towards Plaintiffs since taking over the companies on November 4, 2011. Examples of said malicious and adverse actions include failing to reasonably cooperate with Plaintiffs in business transactions, making unreasonable and baseless demands to Plaintiffs for records, and filing completely baseless lawsuits against Plaintiffs.

43. Defendant Rocco Marrara, Jr. has, at all times pertinent herein, ignored Plaintiff Sandra Jean Marrara Trust's rights and privileges as a minority shareholder of Firebird.

44. Because of Defendant Rocco Marrara, Jr.'s actions as officer of Defendant Firebird, Plaintiff Sandra Jean Marrara Trust has suffered financial harm and has been unable to realize any benefit from its ownership shares of Firebird.

45. Defendant Rocco Marrara, Jr. has attempted to "squeeze out" and/or "freeze out" Plaintiff Sandra Jean Marrara Trust from deriving any benefit from its investment in Firebird, Co., and its subsidiaries.

Count II- Breach of Fiduciary Duty

46. Plaintiffs hereby incorporate and re-allege all of the allegations made in the preceding paragraphs as if set forth fully herein.

47. As President of Firebird, Defendant Rocco Marrara, Jr. has a fiduciary duty to act in the interests of the shareholders of Firebird.

48. Since November 4, 2011, Defendant Rocco Marrara, Jr. has engaged in several actions detrimental to interests of the shareholders of Firebird.

49. On or about November 20, 2012, Defendant Rocco Marrara, Jr., as the President, for and on behalf, of Pure Land, authorized Pure Land to purchase a one-half interest in certain property situated in Westover, West Virginia, ["Westover Property"] from seller Defendant Rocco S. Marrara, Jr.

50. The price paid for the half-interest of Westover was well above the fair market value for a one-half interest in said property.

51. The transaction noted above benefitted Defendant Rocco Marrara, Jr. personally, to the detriment of Plaintiff Sandra Jean Marrara, Trust and the remaining shareholders of Firebird.

52. Said transaction constitutes self-dealing by Defendant Rocco Marrara, Jr., and was a breach of Defendant Rocco Marrara's fiduciary duty to Plaintiffs.

53. Since taking control of Firebird, and its subsidiaries on November 4, 2011, Defendant Rocco Marrara, Jr. has authorized payments from Firebird, and/or its subsidiaries to himself personally.

54. The payments are in excess of a reasonable fee for the services that Defendant Rocco Marrara, Jr. provides Firebird and its subsidiaries.

55. Defendant Rocco Marrara, Jr. has acted in bad faith.

56. Defendant Rocco Marrara, Jr. has breached his duty of loyalty he owes to the shareholders of Firebird.

57. Since taking control of Firebird and its subsidiaries on November 4, 2011, Defendant Rocco Marrara, Jr. has made several grossly negligent and reckless business decisions in the management of the shopping center in Ripley, West Virginia owned by Ripley. Such mismanagement is to the detriment of the shareholders of Firebird, as two-thirds (2/3) of Ripley is owned by Pure Land, which is a wholly owned subsidiary of Firebird. Specific examples of said negligent and/or reckless business decisions specifically include, but are not limited to:

a) failing to timely attend to a necessary roof repair for the Ripley Shopping Center;

- b) failing to be available for contact by tenants of the Ripley Shopping Center;
- c) failing to timely pay the liability insurance premium for the Ripley Shopping Center;
- d) failing to invoice and/or bill tenants at the Ripley Shopping Center for their rent; and
- e) failing to provide the necessary resources to the maintenance personnel at the Ripley Shopping Center.

58. Defendant Rocco Marrara, Jr. has engaged in reckless and grossly negligent conduct with regards to his management of Firebird and its subsidiaries.

59. Defendant Rocco Marrara, Jr. has wasted corporate assets.

60. Defendant Rocco Marrara, Jr. has breached his duty of care he owes to the shareholders of Firebird.

61. Defendant Rocco Marrara, Jr. has breached his fiduciary duty he owes to the shareholders of Firebird.

Count III- Unjust Enrichment

62. Plaintiffs hereby incorporate and re-allege all of the allegations made in the preceding paragraphs.

63. Defendant Rocco Marrara, Jr., received a personal benefit by selling an interest in real property in Westover, West Virginia to Pure Land, for above the fair market value.

64. The benefit received by Defendant Rocco Marrara, Jr. individually, came at the expense of Plaintiff Sandra Jean Marrara Trust and the other shareholders of Firebird, because Pure Land is a wholly owned subsidiary of Firebird.

65. No representative or trustee of Plaintiff Sandra Jean Marrara Trust was ever consulted as to the decision to purchase the interest in real property in Westover, West Virginia.

66. It would be unjust for Defendant Rocco Marrara, Jr. to retain the benefit for the above market value sale of the real property in Westover, West Virginia.

Count IV-Petition for Corporate Dissolution

67. Plaintiffs hereby incorporate and re-allege all of the allegations made in the preceding paragraphs, as if set forth fully herein.

68. As a shareholder of Firebird, Plaintiff Sandra Jean Marrara Trust has standing to Petition the court for judicial dissolution of Firebird under West Virginia Code § 31D-14-1430(2).

69. Defendant Rocco Marrara, Jr.'s aforementioned actions and omissions, as an officer of Firebird and/or its subsidiaries, constitute illegal, oppressive, and fraudulent actions. Said actions include but are not limited to: his refusal to respect shareholder rights; his violation of West Virginia statutes; his refusal to deal in good faith with minority shareholders; and his repeated self-dealing at the expense of minority shareholders.

70. Defendant Rocco Marrara, Jr.'s aforementioned actions and omissions, as an officer of Firebird and/or its subsidiaries, constitute a misapplication and/or waste of corporate assets. Said actions include but are not limited to: mismanagement of the

Ripley shopping center; use of Firebird corporate funds and/or its subsidiaries' funds to unjustly compensate himself; and use of corporate and/or its subsidiaries funds for purchasing property above market value.

71. Firebird Co. should be dissolved under the West Virginia Code, § 31D-14-1430(2).

72. Based upon Defendant Rocco Marrara, Jr's misapplication and/or waste of corporate actions, as well as his breach of fiduciary duties to other shareholders, sufficient grounds exist for the Court to appoint a receiver or a custodian pendente lite to preserve the corporate assets until a full hearing can be held, pursuant to West Virginia Code § 31D-14-1431 and § 31D-14-1432.

Count V-Purchase of Interest in Lieu of Dissolution

73. Plaintiffs hereby incorporate and re-allege all of the allegations made in the preceding paragraphs, as if set forth fully herein.

74. Alternatively, pursuant to the West Virginia Code, in lieu of dissolution, Firebird, or any of its shareholders, may elect to purchase the shares owned by Plaintiff Sandra Jean Marrara Trust for its fair market value.

75. Pursuant to West Virginia Code § 31D-14-1434, within ninety (90) days of the filing of this Petition, Firebird or any of its shareholders may file with the Court an election to purchase the shares of Petitioner Sandra Jean Marrara Trust.

76. If any of the eligible Defendants elect to purchase the shares currently owned by Plaintiff Sandra Jean Marrara Trust, said purchaser and Plaintiff Sandra Jean Marrara Trust have sixty (60) days after the filing of the initial election to agree on the value of Plaintiff Sandra Jean Marrara Trust's shares.

77. If the elected purchaser and Plaintiff Sandra Jean Marrara Trust fail to come to an agreement within sixty (60) days of the filing of the initial election, Plaintiff Sandra Jean Marrara Trust requests this court to determine the value of its shares in Defendant Firebird as the date of the filing of this Complaint/Petition, pursuant to West Virginia Code § 31D-14-1434(d).

WHEREFORE, based upon the facts set forth herein, the Plaintiffs respectfully request that the Court:

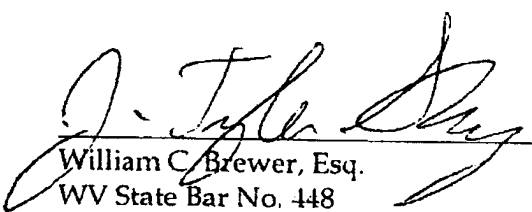
- a) Order that Firebird Co. be dissolved and that all assets owned by Firebird Co., or any of its wholly owned subsidiaries, be distributed and/or transferred to the shareholders of Firebird, Co. in proportion to their respective ownership interests.
- b) Appoint a Receiver to continue operation of the businesses for the benefit of all shareholders while this action is pending, and until corporate dissolution is completed.

- c) Find that Defendant Rocco Marrara, Jr. has breached his fiduciary duty he owes to Plaintiff Sandra Jean Marrara Trust
- d) Find that Defendant Rocco Marrara, Jr. has been unjustly enriched by his actions as an officer of Firebird and its subsidiaries.
- e) Award compensatory and punitive damages to Plaintiffs to account for said breaches of fiduciary duty and unjust enrichment in an amount sufficient to compensate Plaintiffs for their injuries.
- f) Award Plaintiffs' attorney's fees, costs, or any other reasonable expenses incurred by Plaintiffs in this proceeding.
- g) Award Plaintiffs such other and further relief, both general and special, as the Court deems just and proper.

PLAINTIFFS DEMAND TRIAL BY JURY.

RESPECTFULLY SUBMITTED,
PLAINTIFFS, BY COUNSEL

BREWER
&
GIGGENBACH
Attorneys at Law, PLLC
Of Counsel



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MARY JANE MARRARA IRREVOCABLE TRUST,
ROCCO S. MARRARA, SR. CREDIT SHELTER TRUST,
FIREBIRD CO., D & R DISTRIBUTORS, INC., and
PURE LAND, CO.,

DEFENDANTS.

ANSWER

Come now Defendants, by counsel, and for their answer to the complaint filed herein,
aver and state as follows:

1. Regarding the allegations contained in Paragraph 1 of the Complaint, Defendants admit that Plaintiff Domenick Marrara, Jr. is a resident of Preston County, West Virginia. Defendants further admit that said Plaintiff was a former manager of Ripley Associates, LLC and a former president of Firebird Company and Pure Land Company. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 1 of the Complaint.

2. Defendants admit the allegations contained in Paragraph 2 of the Complaint.

76. Paragraph 76 of the Complaint contains a statement of law requiring no response by Defendants.

77. Paragraph 77 of the Complaint contains a statement of law requiring no response by Defendants.

78. Defendants deny all allegations contained in Plaintiffs' complaint not herein expressly admitted.

FIRST AFFIRMATIVE DEFENSE

Regarding Plaintiff's equitable claim of unjust enrichment, Plaintiff Domenick Marrara, Jr., individually and in his capacity as trustee, is guilty of substantial inequitable conduct barring Plaintiffs' claim for relief in equity.

SECOND AFFIRMATIVE DEFENSE

Some or all of Plaintiffs' claims are barred by applicable statutes of limitation and/or the doctrine of laches.

Wherefore, Defendants request that Plaintiffs' Complaint be dismissed with prejudice; that they be awarded their costs and attorney fees incurred in the defense of this matter; and such other and further relief as the Court deems appropriate.

COUNTERCLAIM

Comes now Defendant, Firebird Company and for its counterclaim against Plaintiff Domenick Marrara, Jr., individually, avers and states as follows:

1. Defendant Firebird Company (hereafter "Firebird") is a corporation formed on March 3, 1989 under the laws of the State of West Virginia with its principal place of business located in Preston County, West Virginia.

2. That at all times relevant hereto, the Sandra Jean Marrara Trust has been a shareholder of Defendant Firebird and Plaintiff Domenick Marrara, Jr. has been the trustee of said trust.

3. Defendant Firebird was formed for the purpose of owning all outstanding shares of Defendant D & R Distributors, Inc. and all outstanding shares of Defendant Pure Land, Inc.

4. That at all times relevant hereto, Defendant D & R Distributors, Inc. and Defendant Pure Land, Inc. were wholly-owned subsidiaries of Defendant Firebird.

5. That from the time of its formation on March 3, 1989 until November 4, 2011, Plaintiff Domenick Marrara served as an officer of Defendant Firebird and, in that capacity, conducted business on behalf of Defendant Firebird.

6. That since the formation of Defendant Firebird and until November 4, 2011, Plaintiff Domenick Marrara was an officer of Defendant D & R Distributors, Inc. and Defendant Pure Land, Inc. and transacted business on behalf of said entities.

COUNT I BREACH OF FIDUCIARY DUTY

7. Defendant Firebird restates the averments contained in Paragraphs 1 through 6 of the Complaint.

8. That as an officer of Defendant Firebird, Plaintiff Domenick Marrara owed a fiduciary duty to Firebird and to Firebird's shareholders.

9. That while acting in his capacity as an officer of Defendant Firebird, Plaintiff Domenick Marrara used the funds and resources of Defendant Firebird to pay personal debts and the debts of persons and businesses unrelated to the operation of Defendant Firebird, thereby breaching Plaintiff Domenick Marrara Jr.'s fiduciary duty to Defendant Firebird and to Firebird's shareholders.

10. That as a direct and proximate result of said breach of fiduciary duty, Defendant Firebird suffered damages including, but not limited to, the value of the improperly diverted funds and resources of the corporation, annoyance and inconvenience.

Wherefore, Defendant Firebird Company prays that judgment be entered in its favor and against Plaintiff Domenick Marrara, Jr. and that it be awarded an amount sufficient to compensate it for the damages proximately caused by Plaintiff Domenick Marrara Jr.'s breach of fiduciary duty and in an amount in excess of any applicable jurisdictional limit; that it be awarded its costs, attorney fees and prejudgment interest; and such other relief as the Court deems appropriate.

COUNT II

FAILURE TO PROPERLY DISCHARGE OFFICIAL DUTIES

11. Defendant Firebird restates the averments contained in Paragraph 1 through 6 of the Complaint.

12. Because of changes in the business and economic environment in which it was operating, beginning in 1995, Defendant D & R became consistently unprofitable.

13. That in an apparent effort to keep D & R in business, Plaintiff Domenick Marrara, Jr.'s acting in his capacity as officer of Defendant Firebird, and without the approval of Defendant Firebird's directors and shareholders, thereafter caused funds owned or controlled by Defendant Firebird to be loaned or otherwise transferred to Defendant D & R Distributors, Inc.

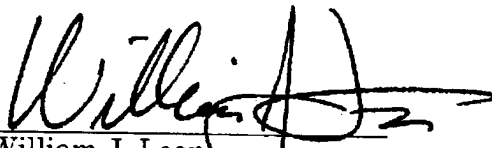
14. That Plaintiff Domenick Marrara Jr.'s actions in transferring the funds and resources of Defendant Firebird, and of its wholly-owned subsidiary, Pure Land, to Defendant D & R were not in the furtherance of any reasonable business objective but rather were grossly negligent.

15. That as a direct and proximate result the grossly negligent conduct of Plaintiff Domenick Marrara, Jr., in his capacity as an officer of Defendant Firebird, Defendant Firebird suffered damages including, but not limited to, the dissipation of the assets of Defendant Firebird, annoyance and inconvenience.

Wherefore, Defendant Firebird Company prays that judgment be entered in its favor and against Plaintiff Domenick Marrara, Jr. and that it be awarded an amount sufficient to compensate it for the damages proximately resulting from Plaintiff Domenick Marrara Jr.'s grossly negligent discharge of his duties as an officer of Defendant Firebird Company and in an amount in excess of any applicable jurisdictional limit; that it be awarded its costs, attorney fees and prejudgment interest; and such other relief as the Court deems appropriate.

DEFENDANT FIREBIRD REQUESTS A TRIAL BY JURY

Defendants, by counsel,

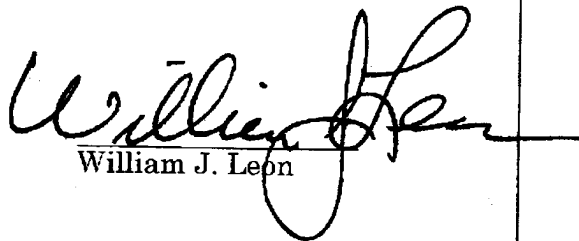

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CERTIFICATE OF SERVICE

I certify that I served the attached Answer and Counterclaim via facsimile transmission and by placing the same in the United States Mail, first class and postage prepaid, upon counsel for Plaintiffs at the address listed below this 11th of October, 2013.

William Brewer
Brewer & Giggenbach PLLC
P.O. Box 4206
Morgantown, WV 26504


William J. Leon