

## IN THE CIRCUIT COURT OF LINCOLN, WEST VIRGINIA

FILED SCANNED

2013 DEC 12 PM 3:25

CATHY S. GATSON, CLERK  
KANAWHA COUNTY CIRCUIT COURT

JAMES SCOTT PAULEY,

PLAINTIFF,

VS.

CIVIL ACTION NO. 13-C-2301

APPALACHIAN STREAM  
RESTORATION, LLC, a West  
Virginia limited liability corporation,  
CHRISTOPHER J. WHITE and  
ANTHONY J. WHITE,

DEFENDANTS.

COMPLAINT

Now comes Plaintiff, James Scott Pauley, by counsel, Timothy J. LaFon, and for his Complaint against the Defendants, Appalachian Stream Restoration, LLC, Christopher J. White and Anthony J. White, states as follows:

PARTIES

1. Plaintiff, James Scott Pauley, is and at all times relevant to this Complaint has been a resident of Lincoln County, West Virginia.
2. Defendant, Appalachian Stream Restoration, LLC (hereinafter referred to as "Appalachian"), is and at all times relevant to this Complaint has been a West Virginia limited liability company doing business in Lincoln County, West Virginia.
3. Defendants, Christopher J. White and Anthony J. White (hereinafter referred to as "Defendants White"), are and at all times relevant to this Complaint have been residents of Lincoln County, West Virginia and were

members/shareholders of the above-mentioned limited liability company.

4. Plaintiff is also a member/shareholder of Defendant Appalachian.

### **JURISDICTION AND VENUE**

5. Defendant Appalachian did business in Lincoln County, West Virginia, the events revolving around this lawsuit occurred in Lincoln County, West Virginia and the claims in this matter exceed the jurisdictional limits and therefore jurisdiction and venue is proper in Lincoln County, West Virginia.

### **STATEMENT OF FACTS**

6. In or around November, 2009, Plaintiff was, and presently is, a member of Defendant Appalachian.

7. The other members of Defendant Appalachian were Defendants White.

8. At said time, Defendants White along with a third unnamed individual conspired together to deny Plaintiff his ownership interest in the above limited liability company.

9. In order to accomplish said conspiracy and the goals of said conspiracy, Defendants White along with said unidentified individual represented to Plaintiff that it was necessary temporarily to transfer his ownership interest out of said limited liability company because it was necessary to obtain a bond and the same could not be accomplished with Plaintiff owning a portion of said limited liability company.

10. Defendants White along with the unidentified individual represented to Plaintiff that as a result of an individual bankruptcy he filed in the past, the limited liability company would be prevented from obtaining a bond.

11. As a result thereof, Defendants White prepared a Stock Purchase Agreement which is attached hereto and incorporated herein by this reference as Exhibit A.

12. Said Stock Purchase Agreement was prepared in conjunction with Defendants White and the unidentified individual.

13. Based upon false representations of Defendants White and representations of Defendants White that after the bond was obtained the Plaintiff would be restored to his ownership interests, Plaintiff signed said Stock Purchase Agreement.

14. Said Stock Purchase Agreement contemplated a closing in which a certain purchase price was to be paid and Plaintiff transfer his membership units/stock over to Defendant Appalachian.

15. Upon information and belief, no such closing ever occurred nor were any membership units/stock ever transferred over to Defendant Appalachian.

16. The above-mentioned Stock Purchase Agreement defined a purchase price in Paragraph 2 therein that is impossible to interpret.

17. Said Stock Purchase Agreement amount was intentionally designed to be impossible to understand by Defendants White in furtherance of their

conspiracy.

18. Over the years, Plaintiff continued to receive his distributions from Defendant Appalachian just as he had prior to the execution of said Stock Purchase Agreement.

19. Periodically, Plaintiff would inquire of Defendants White and they assured him along with the unidentified individual that he was a full member of the limited liability company, but could not be recognized as the same because of the above-mentioned bond issue.

20. Not until January, 2012 after Plaintiff became stricken with cancer did the Defendants White advise Plaintiff they were not going to allow him to be part of the limited liability company nor continue in the share of the profits.

21. This is all despite the fact that Plaintiff's individual shares had never been transferred to Defendant Appalachian and in despite of the fact that there was substantial assets of Defendant Appalachian that were contributed by Plaintiff.

22. The payments Plaintiff received from the date of the execution of the Stock Purchase Agreement bore no resemblance to an amount necessary to purchase him out of the fair market value of his share of Defendant Appalachian.

23. The distributions to Plaintiff only equaled periodic payments made to members of Defendant Appalachian.

24. At the time of the filing of this Complaint, Defendants White refuse to

communicate with Plaintiff and are now withholding payment from Defendant Appalachian despite the fact Plaintiff still owns one-third of Defendant Appalachian.

### **COUNT I**

#### **(Fraud)**

25. Plaintiff realleges, reasserts and incorporates by reference each and every allegation set forth in Paragraphs 1 through 24 of Plaintiff's Complaint.

26. The false representations made by Defendants White and the unidentified individual to Plaintiff in order to induce him to transfer his ownership interest in the above-mentioned limited liability company without being paid the fair value of the same constitutes fraud.

27. The above-mentioned acts of Defendants White were done with the intent to defraud the Plaintiff.

28. As a proximate cause of Defendants White actions, Plaintiff has been damaged.

### **COUNT II**

#### **(Civil Conspiracy)**

29. Plaintiff realleges, reasserts and incorporates by reference each and every allegation set forth in Paragraphs 1 through 28 of Plaintiff's Complaint.

30. Defendants White and the unidentified individual conspired to defraud Plaintiff out of his rightful ownership share of Defendant Appalachian.

31. As a result of this civil conspiracy, Plaintiff has not been paid for his rights of shared profits of Defendant Appalachian nor for his rightful share of the value of Defendant Appalachian.

32. The above-mentioned damages are proximately caused by civil conspiracy on behalf of Defendants White.

### **COUNT III**

33. Plaintiff realleges, reasserts and incorporates by reference each and every allegation set forth in Paragraphs 1 through 32 of Plaintiff's Complaint.

33. Plaintiff is a member of Defendant Appalachian as he never transferred his stock or membership units to Defendant Appalachian.

34. As a limited liability company member, he has a right to a full accounting of all financial activity of Defendant Appalachian since 2009.

35. Therefore, Plaintiff seeks a full accounting from the membership from Defendants White and Defendant Appalachian.

### **COUNT IV**

#### **(Declaratory Judgment)**

36. Plaintiff realleges, reasserts and incorporates by references each and ever allegations set forth in Paragraphs 1 through 36 of Plaintiff's Complaint.

37. The attached Stock Purchase Agreement was entered into by the parties.

38. Plaintiff seeks a declaration that the transaction contemplated

therein never closed.

39. Plaintiff seeks a declaration by this Court that the attached Stock Purchase Agreement was entered into as a result of fraud invoked upon Plaintiff and therefore has no legal effect.

40. In the alternative, Plaintiff seeks an interpretation of the purchase price in Paragraph 2 and an accounting from Defendant Appalachian to properly establish whether Plaintiff received fair and reasonable value for his limited liability company interest and all profits flowing therefrom.

### **COUNT V**

#### **(Dissolution)**

41. Plaintiff reallages, reasserts and incorporates by reference each and every allegation set forth in Paragraphs 1 through 41 of Plaintiff's Complaint.

42. Plaintiff, to the extent allowed by law, seeks dissolution of Defendant Appalachian and that Plaintiff receive a judgment for all profits not properly paid to him the full value of his interest of Defendant Appalachian as of November 23, 2009.

### **PRAYER**

Plaintiff demands judgment against Defendants for all damages suffered as a result of the above-mentioned causes of actions, including consequential damages, pre and post-judgment interest and punitive damages. Plaintiff demands Trial by jury on issues so triable.

**VERIFICATION**

STATE OF WEST VIRGINIA,

COUNTY OF KANAWHA, to-wit:

I, **James Scott Pauley**, named in the foregoing "**Complaint**" being first duly sworn, says that the facts and allegations contained therein are true, except insofar as they are therein stated to be upon information and belief, and that insofar as they are therein stated, he believes them to be true.

  
**JAMES SCOTT PAULEY**

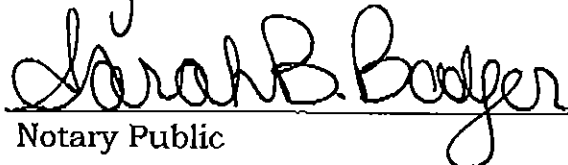
STATE OF WEST VIRGINIA,

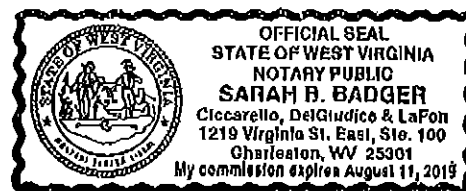
COUNTY OF KANAWHA

I, Sarah B. Badger, do hereby certify that JASON SPERRY, whose name is signed above, has this day acknowledged the same before me.

Given under my hand this 19th day of November, 2013.

My commission expires this 11th day of August, 2019

  
Notary Public





**CIVIL CASE INFORMATION STATEMENT  
CIVIL CASES**

**FILED**  
AB

**IN THE CIRCUIT COURT, KANAWHA COUNTY, WEST VIRGINIA**  
2013 DEC 12 PM 3:25

CATHY S. GATSON, CLERK  
KANAWHA COUNTY CIRCUIT COURT

**I. CASE STYLE:**

**In Re:**

 **SCANNED**

**JAMES SCOTT PAULEY,**

**PLAINTIFF(S),**

**VS.**

**CIVIL ACTION NO. 13-C-2301**

**APPALACHIAN STREAM  
RESTORATION, LLC, a West  
Virginia limited liability corporation,  
CHRISTOPHER J. WHITE and  
ANTHONY J. WHITE,**

*Webster*  
*14-C-7*

**DEFENDANT(S).**

	<u>Days to</u>	<u>Service</u> <u>Answer</u>
<b>APPALACHIAN STREAM RESTORATION, LLC c/o Anthony J. White 48 Wandling Road Sumerco, West Virginia 25567</b>	<b>30</b>	<b>Secretary of State</b>
<b>CHRISTOPHER J. WHITE 48 Wandling Road Sumerco, West Virginia 25567</b>	<b>20</b>	<b>Personal</b>
<b>ANTHONY J. WHITE 48 Wandling Road Sumerco, West Virginia 25567</b>	<b>20</b>	<b>Personal</b>

PYMT Type Y  
 Rept # 51003 \$155 \$135  
 Iss. Sum. + Yc No Sum. Iss  
 Ret. to Atty.        \$20cm X  
 Mailed CM/RM        \$5 clk X  
 Mailed to sos w/ck#         
 Sent to        w/ck#       

**Original of Complaint and 6 copies furnished herewith.**

17-C-7

**PLAINTIFF(S): JAMES SCOTT PAULEY****CASE NO.****DEFENDANT(S): APPALACHIAN STREAM RESTORATION, LLC, a West Virginia limited liability corporation, CHRISTOPHER J. WHITE and ANTHONY J. WHITE,****II. TYPE OF CASE:**

<input type="checkbox"/> ASBESTOS	<input type="checkbox"/> ADOPTION	<input type="checkbox"/> APPEAL FROM MAGISTRATE COURT
<input type="checkbox"/> PROFESSIONAL MALPRACTICE	<input type="checkbox"/> CONTRACT	<input type="checkbox"/> PETITION FOR MODIFI- CATION OF MAGISTRATE SENTENCE
<input type="checkbox"/> PERSONAL INJURY	<input type="checkbox"/> REAL PROPERTY	<input type="checkbox"/> MISCELLANEOUS CIVIL
<input type="checkbox"/> PRODUCT LIABILITY	<input type="checkbox"/> MENTAL HEALTH	<input checked="" type="checkbox"/> OTHER
<input type="checkbox"/> OTHER TORT	<input type="checkbox"/> APPEAL OF ADMINISTRATIVE AGENCY	

**III. JURY DEMAND** ☒ YES ☐ NO

CASE WILL BE READY FOR TRIAL BY (MONTH/YEAR): \_\_\_\_\_

**IV. DO YOU OR ANY OF YOUR CLIENTS OR WITNESSES IN THIS CASE REQUIRE SPECIAL ACCOMMODATIONS DUE TO A DISABILITY OR AGE?**☐ YES ☒ NO

IF YES, PLEASE SPECIFY;

- ☐ Wheelchair accessible hearing room and other facilities.
- ☐ Interpreter or other auxiliary aid for the hearing impaired.
- ☐ Reader or other auxiliary aid for the visually impaired.
- ☐ Spokesperson or other auxiliary aid for the speech impaired.
- ☐ Other: UNKNOWN

**Attorney Name:** Timothy J. LaFon, #2123**Representing:****Firm:** CICCARELLO, DEL GIUDICE & LaFON☒ Plaintiff ☐ Defendant**Address:** 1219 Virginia Street, East, Suite 100  
Charleston, West Virginia 25301**Telephone:** (304) 343-4440**Dated:** \_\_\_\_\_  
**Signature****Pro Se**