

**IN THE CIRCUIT COURT OF LINCOLN COUNTY, WEST VIRGINIA**

**JAMES SCOTT PAULEY,**

**Plaintiff,**

**v.**

**Civil Action No.: 14-C-7**

**Judge: Honorable Hoke**

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

**Defendants.**

**MOTION TO REFER CASE TO THE BUSINESS COURT DIVISION**

Pursuant to Rule 29.06 of the West Virginia Trial Court Rules, Appalachian Stream Restoration, LLC ("ASR"), Christopher J. White, and Anthony J. White (herein after jointly referred to as "Defendants") by counsel W. Howard Sammons II, of The Law Office of W. Howard Sammons II, Esq., PLLC, and Harry G. Shaffer III, of Shaffer & Shaffer, PLLC, respectfully move this Court to refer the above-styled case to the Business Court Division because: (1) Defendant ASR is a business entity with its principal place of business in Lincoln County; (2) Defendant, Christopher J. White, is a West Virginia resident and was sued in the capacity of being a member of ASR; (3) Defendant, Anthony J. White, is a West Virginia resident and was sued in the capacity of being a member of ASR; (4) the Complaint was filed on February 10, 2014; (5) this matter involves a dispute over a business transaction which consists of Defendant, ASR, purchasing the Plaintiff's shares in ASR; (6) the West Virginia laws regarding the relationship between a member and a Limited Liability Company are complex in nature and the issues would be best resolved in the WV Business Court Division; and (7) the

nature of this action involves a Sale or Purchase of Commercial Entity, Commercial Torts, Liability of Shareholders, Directors, Officers, Partners, etc. The arguments and authority in support of the foregoing motion are set forth in the attached Memorandum of Law.

Respectfully submitted,

**APPALACHIAN STREAM RESTORATION, LLC,  
CHRISTOPHER J. WHITE and ANTHONY J. WHITE**

**By Counsel**



**W. Howard Sammons II (WVSB 9714)**

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*Counsel for Appalachian Stream Restoration, LLC, Christopher J. White and Anthony J. White.*

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a West Virginia limited liability company, and

**CHRISTOPHER J. WHITE, and**

**ANTHONY J. WHITE,**

**Defendants.**

**MEMORANDUM OF LAW IN SUPPORT OF  
MOTION TO REFER CASE TO THE BUSINESS COURT DIVISION**

NOW comes Defendants, Appalachian Stream Restoration, LLC ("ASR"), Christopher J. White, and Anthony J. White (herein after jointly referred to as "Defendants") by counsel W. Howard Sammons II, of The Law Office of W. Howard Sammons II, Esq., PLLC, and Harry G. Shaffer III, of Shaffer & Shaffer, PLLC, and respectfully submits their Memorandum of Law in Support of their Motion to Refer Case to the Business Court Division pursuant to Rule 29.06 of the West Virginia Trial Court Rules.

**STATEMENT OF FACTS**

On February 10, 2014, Plaintiff, James Scott Pauley (hereinafter referred to as "Plaintiff") filed the foregoing action in the Circuit Court of Lincoln County, West Virginia, against ASR, Christopher J. White ("C. White"), an individual and member of ASR, and Anthony J. White ("A. White"), an individual and member of ASR. The underlying transaction in dispute consists of Defendant, ASR, purchasing the Plaintiff's shares in ASR. The Plaintiff's

Complaint alleges five causes of actions: (I) Fraud, (II) Civil Conspiracy, (III) Count III<sup>1</sup>, (IV) Declaratory Judgment, and (V) Dissolution.

ASR was incorporated in 2005. The Plaintiff was a member of ASR from 2006 to 2009. On or around November 23, 2009, Plaintiff and ASR entered into a Stock Purchase Agreement (**Exhibit A**). The transaction consisted of ASR purchasing the Plaintiff's shares.

### **ARGUMENT**

West Virginia Trial Court Rule 29.06 provides that "[a]ny party or judge may seek referral of Business Litigation to the Division by filing a Motion to Refer to the Business Court Division in the circuit court where the matter is pending." W. Va. Trial Ct. R., 29.06(a)(1). Business Litigation is defined to encompass actions where "the principal claim or claims involve matter of significance to the transactions, operations, or governance between entities; and the dispute presents commercial and/or technology issues in which specialized treatment is likely to improve the expectation of a fair and reasonable resolution of the controversy; and the principal claim or claims do not involve. . ." the type of claims excluded from the Business Litigation Definition. *Id.* at 29.04(a). Motions to refer to the Business Court Division must be filed within three (3) months after the filing date of the action. *Id.* at 20.06(a)(2).

As stated above, this case involves a dispute over a business transaction which consists of Defendant, ASR, purchasing the Plaintiff's shares in ASR and is not the type of claims excluded from the Business Litigation Definition. The Defendant, ASR, is a West Virginia Limited Liability Company, and the Plaintiff is a former member of the West Virginia Limited Liability Company. The nature of this action involves a Sale or Purchase of Commercial Entity, Commercial Torts, and Liability of Shareholders, Directors, Officers, Partners, etc.

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<sup>1</sup> Plaintiff's Complaint Count III is unnamed. However, Count III includes, but is not limited to, Plaintiff seeking a full accounting of Defendants' financial activity since 2009.

This action clearly fits the definition of Business Litigation under the rules because it involves transactions, operations, and governance of a business entity and presents commercial issues which require special treatment. *See, Keith W. Atkinson v. General Glass Company, Inc., et al.* Civil Action No.: 12-C-2133, Circuit Court of Kanawha County, WV; Notice of Motion, Motion to Refer to the Business Court Division, Memorandum of Law in Support of Motion to Refer to the Business Court Division, and Administrative Order *granting* Motion to Refer to Business Court (WV Supreme Court of Appeals 2013) (the Atkinson case involved matters of significance to the management, operations, control, and governance of General Glass) (**Exhibit B**). The business court would be better suited to this action and would provide a fair and reasonable resolution to this business dispute. The West Virginia laws regarding the relationship between a member and a Limited Liability Company are complex in nature and the issues would be best resolved in the WV Business Court Division. Moreover, this action was filed on February 10, 2014, and therefore, this motion is timely. Lastly, the Defendants are not aware of any additional related actions pending at this time that would prevent the transfer of this action to the Business Division.

#### **Conclusion**

For the foregoing reasons, Defendants, respectfully request that this Court grant the foregoing motion and refer this matter to the Business Court Division in Lincoln County, West Virginia.

Respectfully submitted,

**APPALACHIAN STREAM RESTORATION, LLC,  
CHRISTOPHER J. WHITE and ANTHONY J. WHITE**

**By Counsel**



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**W. Howard Sammons II (WVSB 9714)**

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*Counsel for Appalachian Stream Restoration, LLC, Christopher J. White and Anthony J. White*

**IN THE CIRCUIT COURT OF LINCOLN COUNTY, WEST VIRGINIA**

**JAMES SCOTT PAULEY,**

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**Civil Action No.: 14-C-7**

**Judge: Honorable Hoke**

**APPALACHIAN STREAM RESTORATION, LLC,**

**a West Virginia limited liability company, and**

**CHRISTOPHER J. WHITE, and**

**ANTHONY J. WHITE,**

**Defendants.**


**CERTIFICATE OF SERVICE**

The undersigned counsel for Defendants, Appalachian Stream Restoration, LLC, Christopher J. White, and Anthony J. White, hereby certifies that service of the forgoing **NOTICE OF MOTION, MOTION TO REFER CASE TO THE BUSINESS COURT DIVISION, and MEMORANDUM OF LAW IN SUPPORT OF MOTION TO REFER CASE TO THE BUSINESS COURT DIVISION** was made via U.S. Mail, postage prepaid, this 4<sup>th</sup> day of April, 2014, by mailing true copies hereof to:

Timothy J. LaFon, Esq.  
**CICCARELLO, DEL GIUDICE &  
LAFON**  
1219 Virginia Street, East, Suite 100  
Charleston, WV 25301

**Business Court Division**  
Berkeley County Judicial Center  
380 W. South Street, Suite 2100  
Martinsburg, West Virginia 25401

**Lincoln County Circuit Clerk**  
Charles Brumfield, Clerk  
P.O. Box 338  
Hamlin, WV 25523

  
**W. Howard Sammons II (WVSB 9714)**  
The Law Office of W. Howard Sammons II, PLLC  
206 Capitol Street, Suite 1  
Charleston, WV 25301  
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[howard@sammonsllawfirmwv.com](mailto:howard@sammonsllawfirmwv.com)

## STOCK PURCHASE AGREEMENT

This Stock Purchase Agreement ("Agreement") is entered into as of November 23, 2009 by and between James Scott Pauley ("Seller") and Appalachian Stream Restoration, LLC ("Purchaser and/or ASR").

Purchaser and Seller may collectively be referred to as the "Parties."

**WHEREAS**, Seller is the record owner and holder of shares of the capital stock of Appalachian Stream Restoration, LLC (the "Company"), a West Virginia Limited Liability Company; and

**WHEREAS**, the Parties desire to enter into this Agreement pursuant to which Purchaser will purchase from Seller shares of capital stock of the Company.

**NOW, THEREFORE**, in consideration for the promises set forth in this Agreement, the Parties agree as follows:

1. **PURCHASE AND SALE:** Subject to the terms and conditions set forth in this Agreement, Purchaser hereby agrees to purchase from Seller, and Seller hereby agrees to sell, transfer and convey to the Purchaser Appalachian Stream Restoration, LLC (33 & 1/3) (all) shares of the Company (the "Stock") any and/or all distributed interest in Appalachian Stream Restoration, LLC.
2. **PURCHASE PRICE:** On November 23, 2009, the Seller transferred any and/or all interest in ASR. The sale price will be contingent upon the member's net income tax basis in the ASR as of November 23, 2009. The terms call for payments to be made if and when distributions are made to existing members and in proportion to their distributions. This agreement calls for a zero interest rate on the loan. Management is unable to determine the amount owed on this transaction because it will be contingent upon the company's income for the entire year and allocated on a per day basis for the holding period of the member's interest.
3. **CLOSING:** The closing contemplated by this Agreement for the transfer of the Stock and the payment of the Purchase Prices shall take place at 206 Capitol Street: Suite 1, Charleston, WV 25301, on December 23, 2009 ("Closing").
4. **REPRESENTATIONS AND WARRANTIES OF SELLER:** Seller hereby warrants and represents that:
  - (a) **Restrictions on Stock.** The Seller is not a party to any agreements that create rights or obligations in the Stock relating to any third party including voting or

Exhibit A



stockholder agreements. The Seller is the lawful owner of the Stock, free and clear of any encumbrances, security interests or liens of any kind and has full power and authority to sell and transfer the Stock as contemplated in this Agreement.

**(b) Organization and Standing.** To the Seller's knowledge, the Company is duly organized, validly existing and in good standing under the laws of the State of West Virginia and has full power and authority to own and operate its property and assets and to carry on its business as presently conducted.

5. **SEVERABILITY:** If any part or parts of this Agreement shall be held unenforceable for any reason, the remainder of this Agreement shall continue in full force and effect. If any provision of this Agreement is deemed invalid or unenforceable by any court of competent jurisdiction, and if limiting such provision would make the provision valid, then such provision shall be deemed to be construed as so limited.
6. **BINDING EFFECT:** The covenants and conditions contained in this Agreement shall apply to and bind the parties and the heirs, legal representatives, successors and permitted assigns of the Parties.
7. **BROKER'S FEES:** The Parties represent that there has been no act in connection with the transactions contemplated in this Agreement that would give rise to a valid claim against either party for a broker's fee, finder's fee or other similar payment.
8. **ENTIRE AGREEMENT:** This Agreement constitutes the entire agreement between the Parties and supersedes any prior understanding or representation of any kind preceding the date of this Agreement. There are no other promises, conditions, understandings or other agreements, whether oral or written, relating to the subject matter of this Agreement. This Agreement may be modified in writing and must be signed by both the Seller and Purchaser.
9. **RIGHT TO CONSULT WITH COUNSEL:** The Seller hereto hereby acknowledge that they have been advised to and have been provided ample opportunity to consult an attorney in connection with any term and/or condition of this Stock Purchase Agreement. The Seller further acknowledge that they have been provided with reasonable time in which to consider this Stock Purchase Agreement and that they have read this Stock Purchase Agreement and fully understand its provisions.
10. **GOVERNING LAW:** This Agreement shall be governed by and construed in accordance with the laws of the State of West Virginia.
11. **NOTICE:** Any notice required or otherwise given pursuant to this Agreement shall be in writing and mailed certified return receipt requested, postage prepaid, or delivered by overnight delivery service:

**(a) If to Purchaser:**

Appalachian Stream Restoration, LLC  
18 Maple Glen Trail  
Summerco, WV 25567

**(b) If to Seller:**

James Pauley

*James S. Pauley*  
Rt. 1 Box 631, ~~Summerco~~ 50d, W.V. 25564

**12. WAIVER:** The failure of either party to enforce any provisions of this Agreement shall not be deemed a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed the day and year first above written.

**PURCHASER:**

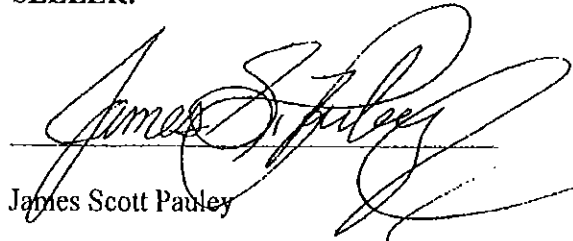


*Christopher J. White*  
~~Anthony Jason White~~

Appalachian Stream Restoration, LLC

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**SELLER:**



James Scott Pauley

**Appalachian Stream Restoration LLC**  
**Detailed Listing of Asset FMV and Liability Payoffs**  
**December 22, 2009**

Description	Amount
Cash - Checking account	\$ 6,000.00
Cash - savings account	5.91
Cash - BB & T general acct	821.40
Accounts receivable - F & N	33,675.00
Accounts receivable - Frasure RT85	116,694.50
Accounts receivable - PREMIUM ENER	54,000.00
Accounts receivable - TRINTY COAL	105,000.00
Accounts receivable - INR RESOURCES	50,000.00
Accounts receivable - MAPLE COAL	72,825.00
ACCOUNTS RECEIVABLE-LONG FOR	40,000.00
Accounts receivable - ATLANTIC LEAS	30,000.00
Receivable - Chris White	13,878.00
Receivable - Jason White	20,292.32
Receivable - Jamie Pauley	21,482.55
314 Cat Excavator	40,000.00
Equipment trailer	1,500.00
Trailer Tag	8,000.00
1981 Mack Dump Truck	5,000.00
Trailer dump	2,000.00
Fuel tank	1,500.00
Cat 320 CL Excavator	105,000.00
2000 Mack CH 613 Truck	20,000.00
Cat 303 Excavator	18,000.00
Fuel tank for tandem truck	500.00
2007 Trail King Trailer	35,000.00
718 JCB Articulating Truck	70,000.00
1994 MACK DUMP TRUCK	50,000.00
Cat D5G LGP Dozer	75,000.00
2005 Clements 40ft. Rack Trailer	16,000.00
Accounts payable - Chris White	(24,042.41)
Accounts payable -BRIAN CYRUS	(23,500.00)
Accounts payable- MH EQUIPMENT	(34,000.00)
Accounts payable- DONALD CARTER	(12,000.00)
Accounts payable- BEAVER CREEK	(7,500.00)
Accounts payable- CHRYSLER FINANC	(12,087.52)
Accounts payable- WV FCU	(20,000.00)
Accounts payable- COMMUNITY TRUST	(10,699.57)
Accounts payable- COMMUNITY TRUST	(33,066.77)
Accounts payable- COMMUNITY TRUST	(15,000.00)
Accounts payable- CNH CAPITAL	(24,063.95)
Accounts payable- BB&T	(226,535.68)
Accounts payable- ALLTELL	(600.00)
Accounts payable- WILDBLUE	(54.95)
Accounts payable- 941	(12,000.00)
Assets less liabilities	<u>\$ 557,023.83</u>

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APPALACHIAN STREAM RESTORATION, LLC,  
a West Virginia limited liability company, and  
CHRISTOPER J. WHITE, and  
ANTHONY J. WHITE,

Defendants.

NOTICE OF MOTION

Please take notice the undersigned will bring the attached *Motion to Refer Case to the Business Court Division* for hearing before Honorable Judge Jay M. Hoke at such time and place as the Court shall hereinafter designate.

APPALACHIAN STREAM RESTORATION, LLC,  
CHRISTOPHER J. WHITE and ANTHONY J. WHITE,

By Counsel,



W. Howard Sammons II (WVSB 9714)

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*Counsel for Appalachian Stream Restoration, LLC, Christopher J. White and Anthony J. White*

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**THE LAW OFFICE OF W. HOWARD SAMMONS II, PLLC**

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*Email: [hsammons@frontier.com](mailto:hsammons@frontier.com)*

*WV Bar No.: 9714*

April 4, 2014

Lincoln County Circuit Clerk  
Charles Brumfield, Clerk  
P.O. Box 338  
Hamlin, WV 25523

**Re: James Scott Pauley v. Appalachian Stream Restoration, LLC, et. al.**  
**Civil Action No.: 14-C-7; Circuit Court of Lincoln County, WV**

Dear Clerk,

Enclosed please find **NOTICE OF MOTION, MOTION TO REFER CASE TO THE BUSINESS COURT DIVISION, and MEMORANDUM OF LAW IN SUPPORT OF MOTION TO REFER CASE TO THE BUSINESS COURT DIVISION** for filing in the above referenced matter. A copy of the same has been forwarded to counsel and parties of record as reflected by the Certificate of Service.

Thank you for your attention in this matter. If you should have any questions or concerns regarding this matter please contact my office at 304-345-7500.

Sincerely,

  
W. Howard Sammons II, Esq.

WHS/ram  
Enclosures

cc: Tim LaFon, Esq. (w/enclosures)  
Business Court Division (w/enclosures)  
Harry G. Shaffer, III, Esq. (w/enclosures)