

**IN THE CIRCUIT COURT OF PRESTON COUNTY, WEST VIRGINIA  
BUSINESS COURT DIVISION**

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  
Presiding Judge Russell M. Clawges, Jr.  
Resolution Judge Christopher C. Wilkes

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.,  
PURE LAND, CO.,  
RIPLEY ASSOCIATES, LLC,  
MARY LOU MARRARA,  
As Executrix of THE ESTATE OF ROBERT S. MARRARA,  
THE ESTATE OF ROBERT S. MARRARA,  
VICKIE HELSLEY, individually and as  
Trustee of THE ROBERT S. MARRARA REVOCABLE LIVING TRUST, and  
THE ROBERT S. MARRARA REVOCABLE LIVING TRUST,

Defendants.

**SECOND AMENDED 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.

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3. Plaintiff/Petitioner<sup>1</sup>, 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, recently deceased, was a resident of the State of West Virginia.

11. Defendant Mary Lou Marrara is a resident of the State of West Virginia and is the executrix of the Estate of Robert S. Marrara.

12. Defendant, Robert S. Marrara Revocable Living Trust is a trust organized under the laws of the State of West Virginia.

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MORGANTOWN, WV

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



13. Defendant Vickie Helsley, is a resident of the State of West Virginia, and is the trustee of the Robert S. Marrara Revocable Living Trust.

14. Defendant Vickie Helsley was, at all times pertinent herein, the Power of Attorney for Robert Marrara.

15. Defendant/Respondent<sup>2</sup> Firebird Co. (hereinafter "Firebird"), is a West Virginia closely held corporation.

16. Defendant Firebird Co., has one thousand (1,000) outstanding shares.

17. Plaintiff Sandra Jean Marrara Trust possesses three hundred thirty-three and one-third (333 1/3) shares of Defendant Firebird.

18. Upon information and belief, Defendant Mary Jane Marrara Irrevocable Trust possesses three hundred thirty-three and one-third (333 1/3) shares of Defendant Firebird.

19. Previously, Robert Marrara possessed three hundred thirty-two and one-third shares (332 1/3) of Defendant Firebird.

20. Upon information and belief, Robert Marrara's shares in Firebird were either transferred to the Robert S. Marrara Revocable Living Trust, prior to Mr. Marrara's death, or, alternatively, are now a part of the Estate of Robert S. Marrara.

21. Upon information and belief, Mary Lou Marrara possesses one (1) share of Defendant Firebird.

22. Upon information and belief, Defendant Rocco S. Marrara Sr. Credit Shelter Trust and/or Defendant Rocco Marrara, Jr. may also have an interest in

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

Defendant Firebird. Plaintiffs are unsure as to the scope of any such interest, due to the actions of Defendants, as set forth herein.

23. Defendant Firebird is a holding company.

24. Defendant D & R Distributors, Inc., (hereinafter "D&R") is a West Virginia closely held corporation.

25. Defendant D&R is a wholly owned subsidiary of Defendant Firebird.

26. Defendant Pure Land, Co. (hereinafter "Pure Land"), is a West Virginia closely held corporation.

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

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

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

30. 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.

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

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

33. 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.

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

### **Count I- Oppressive Conduct**

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

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

37. 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.

38. 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.

39. 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.

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

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



42. 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.

43. Since November 4, 2011, Robert Marrara did not provide any meaningful services to Firebird or any of its subsidiaries.

44. 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.

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

46. 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.

47. 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.

48. 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.

49. 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**

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

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

52. As a former officer of Firebird, Robert Marrara had a fiduciary duty to act in the interests of the shareholders of Firebird.

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



54. 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 (1/2) interest in certain property situated in Westover, West Virginia, ("Westover Property") from seller Defendant Rocco S. Marrara, Jr.

55. The price paid for said one-half (1/2) interest in the Westover property was well above the fair market value for a one-half interest in said property.

56. 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.

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

58. 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.

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

60. On or about December 2, 2013, when reviewing a blanket "preliminary statement" in Defendants' discovery responses, Plaintiffs first learned that Defendant Pure Land, Co. purportedly sold its entire distributional interest in Ripley Associates, LLC, back to Ripley on or about February 1, 2013.

61. This "preliminary statement" was the first time Plaintiffs had ever been notified that Pure Land's interest in Ripley had been sold.



62. Plaintiff Sandra Jean Marrara Trust, as the shareholder of Firebird, never received any notice from Defendant Firebird regarding Pure Land's sale of its interest in Ripley.

63. Pure Land's sale of its interest in Ripley calls for Ripley to purchase Pure Land's entire ownership interest in Ripley.

64. Pure Land is, and at all times pertinent herein has been, a wholly owned subsidiary of Firebird.

65. Prior to Pure Land's sale of its interest in Ripley, Firebird's most valuable asset was Pure Land's interest in Ripley.

66. Ripley now has a single member: the Rocco S. Marrara, Sr. Trust.

67. The trustee of the Rocco S. Marrara, Sr. Trust is Defendant Rocco S. Marrara, Jr.

68. Defendant Rocco S. Marrara, Jr. is the President of both Firebird and Pure Land.

69. Defendant Rocco S. Marrara, Jr. negotiated Pure Land's sale of its interest in Ripley with himself, as he is the President of Pure Land and the Manager of Ripley.

70. The purported sales price of Ripley purchase of Pure Land's interest in Ripley was one million dollars (\$1,000,000.00).

71. This one million dollar (\$1,000,000.00) sales price was purportedly derived from the final rulings and conclusions Special Judge Larry Starcher made at an evidentiary hearing which determined the value of the Domenick Marrara Jr. Trust's twenty-five percent (25%) distributional interest in Ripley Associates, LLC, as of November 4, 2011.

72. Pure Land did not actually receive one million dollars (\$1,000,000.00) in benefits from the sale of its interest in Ripley.

73. Pure Land's sale of its interest in Ripley called for an offset of the purchase price of two hundred thousand dollars (\$200,000.00) in debt and future interest allegedly owed to Ripley by Pure Land and D&R Distributors, Inc. (a company unrelated to the transaction). The remaining eight hundred thousand dollars (\$800,000.00) is to be financed by Pure Land itself and paid pursuant to the terms of an unsecured promissory note (the "Promissory Note") from Ripley Associates, to Pure Land at a fixed interest rate of 2.49% for twenty-five (25) years.

74. Pure Land received no cash as a result of the sale of its interest in Ripley.

75. The 2.49% fixed interest rate set forth in the Promissory Note for financing of the eight hundred thousand dollar (\$800,000.00) loan is the lowest interest rate allowed by the Internal Revenue Service (IRS) for such transactions.

76. The 2.49% interest rate is not intended to reflect the market rate for arm's length transactions.

77. Had any lower interest rate (2.48% or below) been utilized then the terms of the transaction would be rewritten by the IRS and a portion of the purchase price would have been deemed a gift.

78. Pure Land could have easily received a higher interest rate from a private, unrelated, disinterested bona fide purchaser.

79. No reasonable business manager, president, or executive would lend eight hundred thousand dollars (\$800,000.00) at an interest rate of 2.49% on a twenty-five (25) year fixed loan.



80. The 2.49% interest rate Pure Land received in the Promissory Note is not commercially reasonable and was a breach of the fiduciary duty that Defendant Rocco Marrara, Jr., owed to Plaintiff Sandra Jean Marrara Trust.

81. Pursuant to the Promissory Note, Ripley can only default on said Promissory Note after "twelve (12) consecutively missed payments."

82. No reasonable business manager, president, or executive would lend eight hundred thousand dollars (\$800,000.00) pursuant to a promissory note where default does not occur unless the obligor misses twelve (12) consecutive payments.

83. The default provision in the Promissory Note is commercially unreasonable and was a breach of the fiduciary duty that Defendant Rocco Marrara, Jr., owed to Plaintiff Sandra Jean Marrara Trust.

84. The Promissory Note provides that Ripley is required to pay "interest only" to Pure Land for a full year.

85. No reasonable business manager, president, or commercial lender would ever lend eight hundred thousand dollars (\$800,000.00), at a fixed interest rate of 2.49% for a twenty-five (25) year period, under the terms of the Note.

86. It was commercially unreasonable for Pure Land to accept interest-only payments on such a large sum, at such a low interest rate, especially when Ripley had cash flow available which would have enabled it to make full monthly payments to Pure Land on an eight hundred thousand dollar (\$800,000.00) loan at a commercially reasonable interest rate.

87. Over one hundred thirty-five thousand dollars (\$135,000.00) of the two hundred thousand dollar (\$200,000.00) offset was for debt allegedly owed by D&R Distributors, Inc. to Ripley.

88. D&R Distributors, Inc. was not a party to Pure Land's sale of its interest in Ripley.

89. D&R Distributors, Inc. did not receive any benefit from the sale of Pure Land's interest in Ripley.

90. The above noted offset of over one hundred thirty-five thousand dollars (\$135,000.00) was commercially unreasonable.

91. The above noted offset of over one hundred thirty-five thousand dollars (\$135,000.00) benefitted Defendant Rocco Marrara, Jr., by allowing a company Defendant Rocco Marrara, Jr., now completely owns and controls to collect on an unrelated debt from an unrelated company.

92. The Promissory Note is wholly unsecured.

93. Pure Land and its shareholder, Plaintiff Sandra Jean Marrara Trust, are completely unprotected should Ripley lose assets, go bankrupt, and/or fail to pay the full principal and interest due to Pure Land.

94. Ripley has real property and personal property that could and should have been pledged as security on the Promissory Note.

95. No reasonable business president or manager would lend eight hundred thousand dollars (\$800,000.00) without any security, when such security was readily available.



96. The failure to secure said Promissory Note was commercially unreasonable, and constituted a breach of the fiduciary duty that Defendant Rocco Marrara, Jr., owed to Plaintiff Sandra Jean Marrara Trust.

97. Every facet of Pure Land's sale of its interest in Ripley was a waste and/or misappropriation of corporate assets and was commercially unreasonable.

98. Robert Marrara, or Vickie Helsley acting for and on behalf of Robert Marrara, purportedly signed the Promissory Note from Ripley to Pure Land as a "witness."

99. Robert Marrara, or Vickie Helsley acting for and on behalf of Robert Marrara, purportedly signed the Assignment of Membership Sale Document from Pure Land to Ripley as a "witness."

100. Robert Marrara, and/or Vickie Helsley acting for and on behalf of Robert Marrara, assented to the February 1, 2013 transaction.

101. Robert Marrara, and/or his interests, were being paid by Ripley.

102. Defendant Rocco Marrara, Jr., as President of Pure Land and Firebird, engaged in self-dealing with respect to Pure Land's sale of its interest in Ripley.

103. Defendant Rocco Marrara, Jr., as President of Pure Land and Firebird, was grossly negligent in effectuating Pure Land's sale of its interest in Ripley.

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

105. Defendant Rocco Marrara, Jr. has breached the duty of loyalty he owes to the shareholders of Firebird, including Plaintiff Sandra Jean Marrara Trust.

106. Robert Marrara as an officer of Pure Land and Firebird, engaged in

self-dealing with respect to Pure Land's sale of its interest in Ripley.

107. Robert Marrara, as an officer of Pure Land and Firebird, was grossly negligent in assenting to Pure Land's sale of its interest in Ripley.

108. Robert Marrara acted in bad faith.

109. Robert Marrara breached the duty of loyalty he owed to the shareholders of Firebird, including Plaintiff Sandra Jean Marrara Trust.

110. 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, for much of the applicable time period, Pure Land, a wholly owned subsidiary of Firebird, owned a portion of Ripley. 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.

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

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

113. Robert Marrara wasted corporate assets.

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

115. Robert Marrara breached the duty of care he owed to the shareholders of Firebird.

116. Defendant Rocco Marrara, Jr. has breached the fiduciary duty he owes to the shareholders of Firebird, including Plaintiff Sandra Jean Marrara Trust.

117. Robert Marrara breached the fiduciary duty he owed to the shareholders of Firebird, including Plaintiff Sandra Jean Marrara Trust.

118. Defendant Rocco Marrara, Jr., is liable to Plaintiffs for all damages incurred as a result of Defendant Rocco Marrara, Jr.'s breaches of the fiduciary duties he owes to Plaintiffs.

119. The Estate of Robert S. Marrara and/or the Robert S. Marrara Revocable Living Trust, as successor(s) in interest to Robert S. Marrara, is/are liable to Plaintiffs for all damages incurred as a result of Robert Marrara's breaches of the fiduciary duties he owed to Plaintiffs.

### **Count III- Unjust Enrichment**

120. Plaintiffs hereby incorporate and re-allege all of the allegations made in

the preceding paragraphs.

121. 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.

122. 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.

123. 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.

124. 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**

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

126. 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).

127. 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.

128. 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; use of corporate and/or its subsidiaries funds for purchasing property above market value; and selling corporate assets pursuant to completely unreasonable terms.

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

130. 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**

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

132. 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.

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

134. 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.

135. 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).

**Count VI- Declaratory Judgment Action: Failure to Obtain Shareholder Approval**

136. The Plaintiffs repeat and re-allege all of the allegations as heretofore made and hereby makes the same a part hereof.

137. This Court has jurisdiction to resolve a declaratory judgment action pursuant to the Uniform Declaratory Judgments Act, W. Va. Code § 55-13-1 et. seq.

138. The purpose of a declaratory judgment proceeding is to resolve legal questions. See Cox v. Amick, 195 W. Va. 608, 612, 466 S.E.2d 459, 463 (1995); Collins v. City of Bridgeport, 206 W. Va. 467, 525 S.E.2d 658 (1999).



139. Under West Virginia Code § 31D-12-1202(a) a sale, lease, exchange, or other disposition of assets that leaves a corporation without a significant business activity requires approval of the corporation's shareholders.

140. Under West Virginia Code § 31D-12-1202(a), a sale, lease, exchange, or other disposition of assets that leaves a corporation without a significant business activity requires the corporation to notify each shareholder of the transaction and submit the proposed disposition for the shareholders for their approval.

141. On or about December 2, 2013, when reviewing a blanket "preliminary statement" in Defendants' discovery responses, Plaintiffs first learned that Defendant Pure Land, Co. purportedly sold its entire distributional interest in Ripley Associates, LLC back to Ripley on or about February 1, 2013.

142. This "preliminary statement" was the first time Plaintiffs had ever been notified that Pure Land's interest in Ripley had been sold.

143. Plaintiff Sandra Jean Marrara Trust, as the shareholder of Firebird, never received any notice from Defendant Firebird of Pure Land's sale of its interest in Ripley.

144. Pure Land's only regular source of revenue was through its interest in Ripley.

145. Firebird's only regular source of revenue was through Pure Land's interest in Ripley.

146. Without any interest in Ripley, following Pure Land's sale of its interest in Ripley, Firebird and its subsidiaries no longer have any significant, continuing

business activity.

147. Accordingly, Plaintiffs hereby respectfully request that the court answer the following legal question: Whether Pure Land Co.'s sale of its interest in Ripley Associates, LLC, on or about February 1, 2013 left Firebird Co., without any continuing significant business activity?

### **Count VII-Appraisal Rights**

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

149. Under West Virginia Code § 31D-13-1302(a)(3), a disposition of assets that leaves a corporation without any significant business activity entitles that corporation's shareholders to a right of appraisal of their shares.

150. Plaintiff Sandra Jean Marrara Trust is entitled to appraisal rights of its shares in Defendant Firebird.

151. Plaintiff Sandra Jean Marrara Trust hereby asserts its appraisal rights regarding all of its shares in Defendant Firebird.

152. Defendant Firebird violated West Virginia law by failing to notify Plaintiff Sandra Jean Marrara Trust of its appraisal rights in Defendant Firebird.

153. Plaintiff Sandra Jean Marrara Trust demands payment for its fair value of its shares in Firebird, Co., as of February 1, 2013, the date when Plaintiff Sandra Jean Marrara Trust should have been entitled to assert its appraisal rights.



### **Count VIII-Inducement of Breach of Fiduciary Duty**

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

155. Defendant Ripley Associates, LLC, knew of the fiduciary relationship between Defendant Rocco Marrara, Jr., Robert Marrara, and Plaintiff Sandra Jean Marrara Trust on February 1, 2013.

156. Defendant Ripley Associates, LLC, substantially assisted Rocco Marrara, Jr., and Robert Marrara in breaching their fiduciary duties to Plaintiff Sandra Jean Marrara Trust.

157. Defendant Ripley Associates, LLC, could not have reasonably believed that the February 1, 2013 transaction was not a breach of fiduciary duty to Plaintiff Sandra Jean Marrara Trust.

158. Defendant Ripley Associates, LLC, wrongfully effectuated the February 1, 2013 transaction.

159. Defendant Ripley Associates, LLC, induced Defendants Rocco Marrara, Jr. and Robert Marrara to breach the fiduciary duties they owed to Plaintiff Sandra Jean Marrara Trust.

160. As a result of Defendant Ripley Associates, LLC's inducement, Plaintiff Sandra Jean Marrara Trust has been damaged.

161. Defendant Ripley Associates, LLC, is liable to Plaintiff Sandra Jean Marrara Trust for said damages.

### **Count IX-Civil Conspiracy**

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

163. Rocco Marrara, Jr., Robert Marrara, Ripley Associates, LLC, and Vickie Helsley engaged in concerted action with respect to the February 1, 2013 transaction.

164. The February 1, 2013 transaction constituted an unlawful breach of fiduciary duties owed by Rocco Marrara, Jr., and Robert Marrara to shareholder Plaintiff Sandra Jean Marrara Trust.

165. The February 1, 2013 transaction, or its rights thereunder, was effectuated through unlawful means, as Plaintiff Sandra Jean Marrara Trust was not informed of the transaction or its rights thereunder as required by West Virginia law.

166. Defendant Rocco Marrara, Jr., knew or should have known that the February 1, 2013 transaction was unlawful and/or effectuated through unlawful means.

167. Defendant Robert Marrara knew or should have known that the February 1, 2013 transaction was unlawful and/or effectuated through unlawful means.

168. Defendant Ripley Associates, LLC, knew or should have known that the February 1, 2013 transaction was unlawful and/or effectuated through unlawful means.

169. Defendant Vickie Helsley, knew or should have known that the February



1, 2013 transaction was unlawful and/or effectuated through unlawful means.

170. The actions of Rocco Marrara, Jr., Robert Marrara, Ripley Associates, LLC, and Vickie Helsley amounted to a civil conspiracy.

171. In addition to the February 1, 2013, transaction, Rocco Marrara, Jr., Robert Marrara, Ripley Associates, LLC, and Vickie Helsley have conspired with each other and with Firebird Co., on multiple occasions, to breach fiduciary duties owed to Plaintiffs and/or to commit other unlawful acts.

172. As a result of said conspiracies, Plaintiffs have been damaged.

173. Defendant Rocco Marrara, Jr., is liable to Plaintiffs for said damages.

174. Robert Marrara is liable to Plaintiffs for said damages.

175. Defendant Ripley Associates, LLC is liable to Plaintiffs for said damages.

176. Defendant Vickie Helsley is liable to Plaintiffs for said damages.

177. The Estate of Robert S. Marrara and/or the Robert S. Marrara Revocable Living Trust, as successor(s) in interest to Robert S. Marrara, is/are liable to Plaintiffs for all damages incurred as a result of Robert S. Marrara's actions.

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

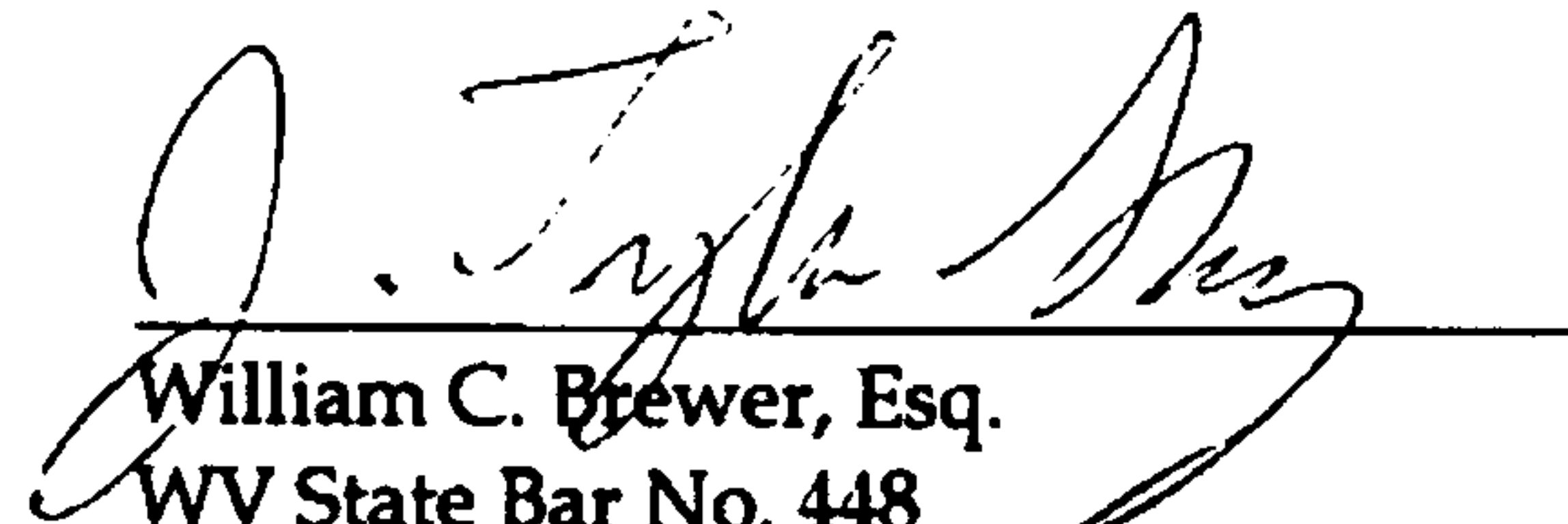
- a) Order that Firebird Co. be dissolved and that all assets owned by Firebird Co., or any of its wholly owned subsidiaries, be distributed and/or transferred to the shareholders of Firebird, Co. in proportion to their respective ownership interests.

- 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 Plaintiffs.
- d) Find that Defendant Rocco Marrara, Jr. has been unjustly enriched by his actions.
- e) Find that Rocco Marrara, Jr., is liable to Plaintiffs.
- f) Find that the Estate of Robert S. Marrara and/or the Robert S. Marrara Revocable Living Trust are liable to Plaintiffs.
- g) Find that Vickie Helsley is liable to Plaintiffs.
- h) Find that Ripley Associates, LLC, is liable to Plaintiffs.
- i) Award compensatory and punitive damages to Plaintiffs to compensate Plaintiffs for all damages which they have sustained.
- j) Award Plaintiffs' attorney's fees, costs, or any other reasonable expenses incurred by Plaintiffs in this proceeding.
- k) Rule on Plaintiffs' Declaratory Judgment Action.
- l) Order that Plaintiffs are entitled to appraisal rights, and Order that the value of Plaintiffs' shares in Firebird be appraised, and that Plaintiffs be paid the fair value for its shares in Firebird, Co., as of February 1, 2013.
- m) 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  
&  
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Attorneys at Law  
Of Counsel**



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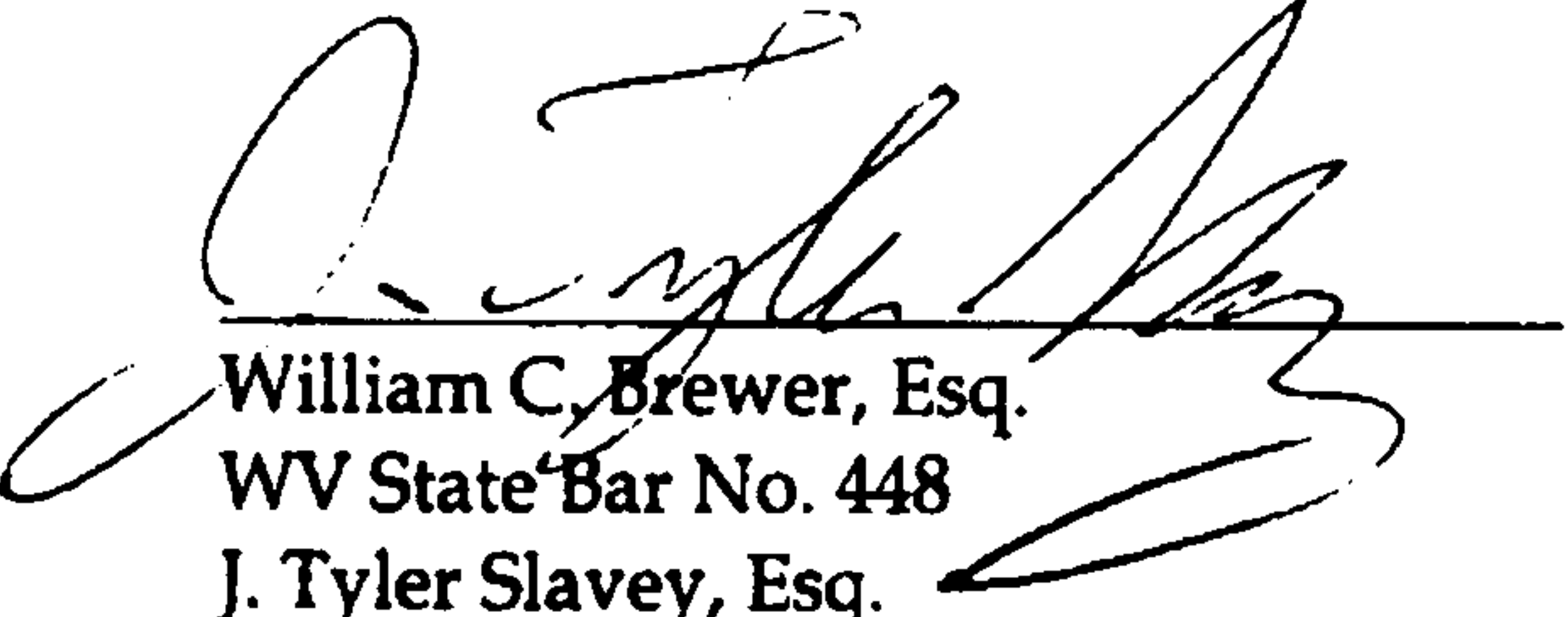
**BREWER  
&  
GIGGENBACH, PLLC  
ATTORNEYS AT LAW  
MORGANTOWN, WV**

**CERTIFICATE OF SERVICE**

The undersigned does hereby certify that he served a true copy of the within  
**SECOND AMENDED COMPLAINT AND PETITION FOR CORPORATE  
DISSOLUTION**, via United States mail, postage prepaid, on the 19<sup>th</sup> day of September,  
2014, upon the following:

William J. Leon  
William J. Leon, LC  
1200 Dorsey Avenue  
Suite III  
Morgantown, WV 26501  
(888) 640-4782 - fax

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&  
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