

IN THE CIRCUIT COURT OF MARION COUNTY, WEST VIRGINIA

JOHN J. MENTUS,

Petitioner,

v.

PETITION NO. 15-P-63

FRANK WASHENITZ and  
R & W CABLE CO., INC.,  
a West Virginia corporation,

Respondents,

and

FRANK WASHENITZ,

Respondent and  
Third-Party Plaintiff,

v.

J&J MINE SERVICE LLC,

Third-Party Defendant.

**PETITIONER'S ANSWER TO COUNTERCLAIM**

**FIRST DEFENSE**

The counterclaim of respondent and third-party plaintiff is barred by the equitable doctrine of waiver, laches and unclean hands.

**SECOND DEFENSE**

Petitioner gives notice that he intends to rely on other defenses, including, without limitation, those defenses available under Rules 8(c) and 12(b) of the West Virginia Rules of Civil Procedure as may become available or apparent during the course of discovery, and reserves the right to amend this response to assert any such defense.

**THIRD DEFENSE**

Petitioner, during the times set forth in respondent's counterclaim, has acted in good faith with regard to the business interests of R&W Cable and toward the other shareholder, respondent Frank Washenitz.

**FOURTH DEFENSE**

Respondent Frank Washenitz, as an owner of R&W Cable Co., Inc., has not exercised good faith and fair dealing toward R&W Cable Co., Inc. and the petitioner and has breached his fiduciary duty owed to R&W Cable Co. and the petitioner to the detriment of both.

**FIFTH DEFENSE**

1. J&J Mine Service LLC no longer has a legal existence, but petitioner admits it was organized by him and Joyce Gandy under the laws of the State of West Virginia.

2. Petitioner admits that J&J Mine Service LLC was terminated on March 25, 2015, and denies the remainder of that paragraph.

3, 4. Petitioner admits the allegations contained in Paragraphs 3 and 4 of the counterclaim.

5. Petitioner denies that any interest in R&W Cable was gifted to him by anyone and denies that he had any interest in R&W Cable during the 1980s.

6. Petitioner admits that he operated another business while employed by R&W Cable and states that he and the respondent, Frank Washenitz, profited from that business.

7. Petitioner denies the allegations contained in Paragraph 7 of the counterclaim.

8. Petitioner admits the allegations contained in Paragraph 8 of the counterclaim.

9. Petitioner denies the allegations contained in Paragraph 9 of the counterclaim.

10. Petitioner admits the allegations contained in Paragraph 10 of the counterclaim.

11. Petitioner denies the allegations contained in Paragraph 11 of the counterclaim. Respondent Washenitz not only was informed but approved the formation of J&J Mine Service LLC.

12. Petitioner admits the allegations contained in Paragraph 12 of the counterclaim.

13. Petitioner admits that Murray Energy was R&W Cable's primary client but denies it was its largest source of revenue.

14, 15, 16. Petitioner denies the allegations contained in Paragraphs 14, 15 and 16 of the counterclaim.

17. Petitioner admits the allegations contained in Paragraph 17 of the counterclaim.

18. Petitioner denies the allegations contained in Paragraph 18 of the counterclaim.

19, 20. Petitioner is without sufficient knowledge or information to either admit or deny the allegations contained in Paragraphs 19 and 20 of the counterclaim.

21, 22. Petitioner denies the allegations contained in Paragraphs 21 and 22 of the counterclaim.

23, 24. Petitioner is without sufficient knowledge or information to either admit or deny the allegations contained in Paragraphs 23 and 24 of the counterclaim.

25, 26, 27. Petitioner denies the allegations contained in Paragraphs 25, 26 and 27 of the counterclaim.

28. Petitioner adopts and reincorporates his answers to Paragraphs 1 through 27 of the counterclaim as if fully restated herein.

29. Petitioner admits the allegations contained in Paragraph 29 of the counterclaim, as did respondent Washenitz.

30, 31, 32, 33, 34. Petitioner denies the allegations contained in Paragraphs 30, 31, 32, 33 and 34 of the counterclaim.

35. Petitioner adopts and reincorporates his answers to Paragraphs 1 through 27 and Paragraphs 29 through 34 of the counterclaim as if fully restated herein.

36, 37, 38, 39, 40. Petitioner denies the allegations contained in Paragraphs 36, 37, 38, 39 and 40 of the counterclaim.

41. Petitioner adopts and reincorporates his answers to Paragraphs 1 through 27, Paragraphs 29 through 34 and Paragraphs 36 through 40 of the counterclaim as if fully restated herein.

42. The allegations of this paragraph are an incomplete summation of the law and to the extent that it is incomplete the allegations are denied.

43, 44, 45, 46. Petitioner denies the allegations contained in Paragraphs 43, 44, 45 and 46 of the counterclaim.

47. Petitioner adopts and reincorporates his answers to Paragraphs 1 through 27, Paragraphs 29 through 34, Paragraphs 36 through 40 and Paragraphs 42 through 46 of the counterclaim as if fully restated herein.

48, 49, 50, 51. Petitioner denies the allegations contained in Paragraphs 48, 49, 50 and 51 of the counterclaim.

52. Petitioner adopts and reincorporates his answers to Paragraphs 1 through 27, Paragraphs 29 through 34, Paragraphs 36 through 40, Paragraphs 42 through 46 and Paragraphs 48 through 51 of the counterclaim as if fully restated herein.

53, 54, 55, 56, 57. The allegations in these paragraphs are not asserted against petitioner, but to the extent that they might be interpreted against the petitioner, they are denied.

58. Petitioner adopts and reincorporates his answers to Paragraphs 1 through 27, Paragraphs 29 through 34, Paragraphs 36 through 40, Paragraphs 42 through 46, Paragraphs 48 through 51 and Paragraphs 53 through 57 of the counterclaim as if fully restated herein.

59. Petitioner admits the allegations contained in Paragraph 59 of the counterclaim.

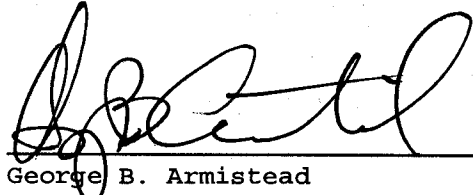
60, 61, 62, 63. Petitioner denies the allegations contained in Paragraphs 60, 61, 62 and 63 of the counterclaim.

WHEREFORE, inasmuch as all the shareholders of R&W Cable Co., Inc. (being the individuals who are also party to this action, John J. Mentus and Frank Washenitz) have moved for this Court to appoint a receiver in this

matter, petitioner demands that this Court set a hearing to appoint a receiver and delineate any and all powers he may exercise.

JOHN J. MENTUS,  
Petitioner

BY COUNSEL

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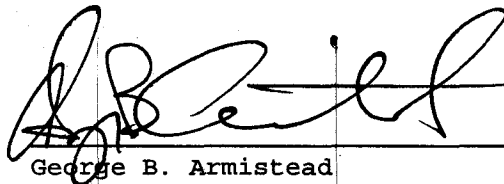
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COUNSEL FOR PETITIONER

**CERTIFICATE OF SERVICE**

The undersigned does hereby certify that the foregoing  
**PETITIONER'S ANSWER TO COUNTERCLAIM** was this day electronically filed with the  
Clerk of the Court which will send notification of such filing to counsel of  
record.

DATED: July 13, 2015

A handwritten signature in black ink, appearing to read 'G. B. Armistead', is written over a horizontal line.

George B. Armistead  
Counsel for Petitioner