

**BUSINESS COURT DIVISION – WEST VIRGINIA SUPREME COURT OF APPEALS
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,

vs.

**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.,
and PURE LAND COMPANY, 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.

**ORDER FOLLOWING OCTOBER 12, 2016 HEARING REGARDING PLAINTIFFS'
MOTION TO APPOINT A CUSTODIAN**

This matter came before the Court pursuant to the Plaintiffs' Motion to Appoint a Custodian. Plaintiffs appeared in person and by counsel, Tyler Slavey, Esq., and William Brewer, Esq. The Defendants appeared by counsel, Jay Leon, Esq. Defendants Rocco Marrara, Vicki Helsley, and perhaps other defendants, appeared in person as well.

During the hearing, counsel for the Plaintiffs explained that the original motion to appoint a custodian was filed in 2014, but was tabled due to the filing of bankruptcy for D & R Distributors' and Pure Land. Plaintiffs argued that the motion was ripe for renewal due to recent

events in the bankruptcy proceeding wherein it appeared that a substantial quantity might be paid to Firebird corporation, an entity not in bankruptcy and not a party to the above captioned case, but a parent company to D & R and Pure Land. Plaintiffs argued, based on prior actions, that the Defendants would not properly distribute those monies to the shareholders.

The Defendants countered that an appointment was premature and unnecessary. Defendants argued that before Defendants would have access to any such monies, the bankruptcy court would have to approve the settlement, which may also include some determination of the *res judicata* effect or the extent to which state court claims are resolved.

The Court opined that it would not appoint itself as a custodian of assets and that it would not direct the bankruptcy trustee, as each action would be beyond the function or jurisdiction of the Court. Furthermore, the Court explained that it would take the motion under advisement and, if the parties later notify it that a distribution of funds is imminent, the Court would then determine whether to appoint a custodian. The Court also noted that it would consider entering a proposed agreed order that provided for holding the funds in escrow between the parties' attorneys.

Accordingly, the Court HELD the Plaintiffs' Motion to Appoint a Custodian IN ABEYANCE. The Clerk of the Circuit Court of Preston County, West Virginia, is directed to forward an attested copy of this Order to the Resolution Judge, the Honorable Christopher C. Wilkes and the Business Court Division Central Office at the Berkeley County Judicial Center, 380 W. South Street, Suite 2100, Martinsburg, West Virginia, 25401; and all counsel of record.

William C. Brewer, Esquire
J. Tyler Slavey, Esquire
Brewer & Gigenbach PLLC
P.O. Box 4206
Morgantown, WV 26504

Ripley Associates, LLC
c/o Rocco Marrara, Jr.
105 Kingwood Avenue
Kingwood, WV 26537

William J. Leon
William J. Leon, LC
1200 Dorsey Avenue, Ste. III
Morgantown, WV 26501

Mary Lou Marrara, as Executrix of
The Estate of Robert S. Marrara
P.O. Box 172
Arthurdale, WV 26520

Vickie Helsley, individually and as
Trustee of the Robert S. Marrara
Revocable Living Trust and the
Robert S. Marrara Revocable Trust
285 Helsley Lane
Great Cacapon, WV 25422

ENTER this 6th day of Dec, 2016.


RUSSELL M. CLAWGES, JUDGE
BUSINESS COURT DIVISION

Entered: December 9, 2016

Betsy Castle, Clerk

By: Lisa Leashman, Deputy

6 Copies

5/12-9-16

Honorable Ec. Writter

WCB

Ripley Assoc.

WJL

V. Helsley

M. L. MARRARA

A TRUE COPY:

ATTEST: S/BETSY CASTLE
CLERK OF THE CIRCUIT COURT

By:  Deputy