

**IN THE CIRCUIT COURT OF MCDOWELL COUNTY, WEST VIRGINIA**  
**STOLLINGS TRUCKING COMPANY, INC.**

**Plaintiff,**

**v.**

**CIVIL ACTION NO: 17-C-55**  
**Honorable Judge Rudolph J.**  
**Murensky, II**

**CONTINUUM COAL, LLC, a West Virginia  
Limited Liability Corporation, GS ENERGY, LLC,  
A West Virginia Limited Liability Corporation,  
IAN GANZER, Individually and in his capacity  
as member of Continuum Coal, LLC, and  
GARY GANZER, Individually and in his capacity  
as member of Continuum Coal, LLC**

**Defendants.**

**ANSWER OF PLAINTIFF TO COUNTERCLAIM**

COMES NOW, the Plaintiff, Stollings Trucking Company, Inc. ("Stollings"), by  
Counsel, Scott H. Kaminski and Kaminski Law, PLLC, and for its Answer to the Counterclaim  
by the Defendants, states as follows:

**FIRST DEFENSE**

Defendants' Counterclaim fails to state a claim upon which relief may be granted and,  
therefore, requires dismissal pursuant to W.V.R.C.P. 12(b)(6).

**SECOND DEFENSE**

In response to the allegations contained in Defendants' Counterclaim, Stollings avers as follows:

1. Plaintiff admits the allegations contained in Paragraphs 1, 3, 6, 7 and 13 of the  
Counterclaim.
2. Plaintiff lacks knowledge to admit or deny the allegations contained in Paragraphs  
2 and 5 of the Counterclaim.

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3. The documents referenced in Paragraph 4, 11 and 25 of the Counterclaim speaks for itself.

4. Plaintiff denies the allegations contained in Paragraphs 8, 9, 10, 14, 15, 16, 17, 19, 20, 21, 22, 23, 26, 27 and 28 of the Counterclaim.

5. Plaintiff incorporates herein by reference those response to those Paragraphs incorporated into Paragraphs 12, 18 and 24 of the Counterclaim.

6. Paragraph 29 of the Counterclaim states a legal conclusion to which no response is required but to the extent a response may be required, Plaintiff denies the allegations contained in Paragraph 29 of the Counterclaim.

#### THIRD DEFENSE

Any allegations contained in the defendants' Counterclaim not specifically admitted herein are hereby expressly denied.

#### FOURTH DEFENSE

Plaintiff denies that it was guilty of any act or omission proximately causing or contributing to the injury or damage complained of in the Defendants' Counterclaim and specifically denies that it is responsible for any of the losses set forth in the Defendants' Counterclaim.

#### FIFTH DEFENSE

Plaintiff expressly denies that it breached any contract or duty owed to the Defendants.

#### SIXTH DEFENSE

The damages complained of by the Defendants were the result of their own acts or omissions.

#### SEVENTH DEFENSE

Not being fully advised of all of the facts and circumstances surrounding the Defendants' Counterclaim, Plaintiff affirmatively asserts any matter which may constitute an avoidance or affirmative defense pursuant to W.V.R.C.P. 8 or 12 which may prove applicable through the course of discovery in this matter.

#### EIGHTH DEFENSE

Plaintiff denies that the Defendants are entitled to judgment against it, and further denies that Defendants are entitled to recover pre-judgment interest, post judgment interest, attorney's fees, costs or litigation expenses associated with this litigation.

#### NINTH DEFENSE

Plaintiff affirmatively raises and asserts the defenses of laches, estoppel, statute of limitations and any other affirmative defense, the basis for which may come to light through the discovery process.

WHEREFORE, Stollings Trucking Company, Inc., respectfully requests entry of an Order dismissing the Defendant's Counterclaim with prejudice, awarding its costs and attorney's fees expended in connection with the defense of this Counterclaim, as well as any and all such other relief that this Court deems just and proper.

Plaintiff demands a trial by jury on all issues so triable.

STOLLINGS TRUCKING COMPANY, INC.,

By Counsel,



Scott H. Kaminski (WVSB # 6338)

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**Defendants.**

**CERTIFICATE OF SERVICE**

I, Scott H. Kaminski, counsel for plaintiff, Stollings Trucking Company, Inc., do hereby certify that on this 31st day of July 2017, I have placed a true and exact copy of the foregoing "Answer of Plaintiff to Counterclaim" in the United States Mail, postage properly paid, in envelopes addressed as follows:

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