

IN THE CIRCUIT COURT OF MARSHALL COUNTY, WEST VIRGINIA
BUSINESS COURT DIVISION

AXIALL CORPORATION and
WESTLAKE CHEMICAL CORPORATION,

Plaintiffs,

vs.

NATIONAL UNION FIRE INSURANCE
COMPANY OF PITTSBURGH, PA.; ALLIANZ
GLOBAL RISKS US INSURANCE COMPANY;
ACE AMERICAN INSURANCE COMPANY;
ZURICH AMERICAN INSURANCE COMPANY;
GREAT LAKES INSURANCE SE; XL
INSURANCE AMERICA, INC.; GENERAL
SECURITY INDEMNITY COMPANY OF
ARIZONA; ASPEN INSURANCE UK LIMITED;
NAVIGATORS MANAGEMENT
COMPANY, INC.; IRONSHORE SPECIALTY
INSURANCE COMPANY; VALIDUS
SPECIALTY UNDERWRITING SERVICES,
INC.; and HDI-GERLING AMERICA
INSURANCE COMPANY,

Defendants.

Civil Action No. 19-C-59

Judge Christopher C. Wilkes

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**STIPULATED ORDER CONCERNING DOCUMENT PRODUCTION AND
INSPECTION PROTOCOL**

Whereas, Defendants National Union Fire Insurance Company of Pittsburgh, Pa.; Allianz Global Risks US Insurance Company; ACE American Insurance Company; Zurich American Insurance Company; Great Lakes Insurance SE; XL Insurance America, Inc.; General Security Indemnity Company of Arizona; Aspen Insurance UK Limited; Navigators Management Company, Inc.; Ironshore Specialty Insurance Company; Validus Specialty Underwriting Services, Inc.; and HDI-Gerling America Insurance Company; and Plaintiffs Axiall Corporation and Westlake Chemical Corporation (individually, "Party"; collectively, the "Parties"), by and

through their respective counsel, have stipulated and agreed as follows with respect to this action, it is ORDERED as follows:

I. General Considerations Regarding Document Production

A. Nothing in this Order is intended to waive any privileges or, except as specifically provided herein, to impose obligations different than those contained in the Rules Governing Practice in the Circuit Court of West Virginia Business Court Division and the West Virginia Rules of Civil Procedure (collectively the "Rules").

B. To the extent that this Order imposes requirements or limitations regarding hard-copy document and electronic discovery that differ from what is provided in the Rules, the Parties have agreed to such requirements or limitations.

C. The fact that the Parties have agreed to the terms of this Order should not be deemed an admission or acknowledgment that any information hereby excluded from discovery would or would not be discoverable in the absence of this Order. This Order does not address, limit, or determine the relevance, discoverability, or admissibility of documents and information, including without limitation electronically stored information ("ESI"). All objections to the admissibility of any document or data are preserved.

D. The Parties agree to meet and confer regarding any disagreements that arise as a result of the implementation of this Order.

E. The terms of the Stipulated Protective Order to be entered in this action, including with respect to the designation of any electronic documents or information as "CONFIDENTIAL" and with respect to any inadvertently produced privileged or attorney work product documents or documents protected by any other applicable immunity, shall apply to electronic documents and information to the same extent they apply to any hard-copy documents and information.

II. Preservation of Documents

A. The Parties are expected to use reasonable, good faith, and proportional efforts to preserve, identify, and produce relevant information in accordance with their common law obligations and the requirements of the Rules. The Parties confirm that they have taken reasonable steps to preserve ESI and hard-copy documents relevant to the claims and defenses in this action.

B. Absent a showing of good cause by the requesting Party, the Parties shall not be required to modify, on a going-forward basis, the procedures used by them in the ordinary course of business to back up and archive documents or data; provided, however, that the Parties shall preserve relevant, non-duplicative, and discoverable information currently in their possession, custody, or control.

III. Identification and Production of Potentially Discoverable Information

A. The Parties agree to identify, collect, and produce responsive documents and ESI in accordance with the Rules and/or this Order.

B. Producing Parties may redact protected personal identifying information ("PII") from responsive documents prior to production. If PII is redacted, the producing Party will label the redactions as "Redacted PII."

C. Any receiving Party who received documents including PII shall treat such documents as Confidential pursuant to the terms of the Stipulated Protective Order entered in this matter.

D. Producing Parties may produce documents on a rolling basis.

IV. Form and Scope of Document Production and Discovery

A. *Hard-Copy Documents*

To the extent that a Party produces any hard-copy (*i.e.*, paper) documents, they (i) shall be produced in the format of single-page Group IV TIFFs of at least 300 dpi resolution (delivered on appropriate media, such as CDs, DVDs, external hard drives, or via FTP upload), with document level multi-page OCR text in the same folder with the images, in a folder called "IMAGES". The OCR text files shall be named to match the first tiff image of the document they correspond to. The Parties will include either Concordance or Summation load files with their productions – *i.e.*, for Concordance a ".dat" file for data and an ".opt" file for images and for Summation, a ".dii" file for images, and a delimited text file for data, in a folder called "DATA". Load files will provide document boundaries and parent-child relationships for all produced data and will use the following standard delimiters:

Comma	(020)	▼
Quote	" (254)	▼
Newline	␣ (174)	▼

Nothing in this Order is intended to waive the right of either Party to make documents available for inspection as they are kept in the usual course of business in accordance with Rule 34 of the West Virginia Rules of Civil Procedure, and nothing in this Order is intended to waive the right of either Party to challenge the producing Party's production by inspection. Should either Party choose to make documents available for inspection, the Parties agree that the act of making documents available for inspection does not operate as a waiver of the attorney-client privilege or

any other protection from disclosure for any privileged or otherwise-protected documents that may be contained in the documents made available for inspection.

B. Form and Scope of ESI Production

Unless otherwise agreed between the Parties, all documents, including any ESI, shall be produced in native-file format or as TIFF images as follows:

1. Except as provided below, ESI (or non-ESI) shall be produced as single-page TIFF Group IV images, black and white, at 300 x 300 dpi resolution with a standard delimited concordance format .DAT file and either IPRO (LFP file) or Opticon (OPT file) format load file, including document breaks and page counts. The .DAT file should contain all metadata associated with the document as stored in its native format, but no Party is under any obligation to create or manually code metadata fields that are not automatically generated by the processing of the ESI or that do not exist as part of the original metadata of the document. The format of the file shall be industry standard Concordance DAT file format or a delimited text file that uses ASCII character delimiters as follows: Field Delimiter = ""ASCII (020), Text Quote = "p" ASCII (254), Multi-Entry = ";" ASCII (059). As used herein, "metadata" refers to information embedded in or associated with a file that is not ordinarily viewable or printable from the application that generated, edited, or modified such native file which describes the characteristics, origins, custody, usage, and/or validity of the electronic file; and/or information generated automatically by the operation of a computer or other information technology system when a native file is created, modified, transmitted, deleted, or otherwise manipulated by a user of such system.

2. The producing Party may, at any time, reproduce any document in color in JPG format or at a higher resolution, and any Party may request the reproduction of any originally-produced black-and-white document in color as set forth in Paragraph IV(B)(15) below. Documents reproduced in color or at a higher resolution shall bear the same production number(s) as the originally produced document where practicable. A commercially-acceptable technology for optical character recognition ("OCR") shall be used for all scanned, hard-copy documents written in English or other Latin-character language. When possible, the text of native files should be extracted directly from the native file. Text files will not contain the redacted portions of the documents, and OCR text files will be substituted instead of extracted text files for redacted documents.
3. Certain file formats of ESI shall be produced in their native format. Specifically, non-redacted Microsoft Access or other databases, Microsoft Excel or other spreadsheet files, Microsoft Project, Oracle Primavera or other project management application files, or other similar file formats where an image file does not adequately represent the files as maintained in the ordinary course, shall be produced in their native format, including the formulae imbedded in the spreadsheet and any metadata contained in the file. Files produced in native format shall be named with a sequential file name and slip-sheet consistent with Paragraph IV(B)(4) below. To the extent native files, including electronic spreadsheets, are redacted, production shall be made in TIFF format consistent with the requirements of Paragraph IV(B)(1) above.

4. Images shall be produced using a unique file name that will be the production number of that page (e.g., ABC000001.TIFF). The production number shall appear on the face of the image. For documents that are produced as native files, the producing Party should include in the set of TIFF images a slip-sheet where the native file would otherwise have been produced indicating the production number of the native file or other document and the confidentiality designation. In addition, native files shall be produced using a name that bears the production number, for example: ABC000002.xls. The .DAT file shall also include a path to the native file.
5. Parent-child relationships (association between an attachment and its parent document) shall be preserved to the extent such relationships are maintained in the normal course of business in the source repository. Any attachment(s) shall be produced adjacent to the parent document in terms of production numbers, with the first attachment being named with the next sequential number after the parent, and any additional attachment(s) sequentially numbered after that first attachment. Any parent-child relationship will be reflected in the .DAT file.
6. Productions that contain foreign language documents shall be Unicode compliant.
7. To the extent possible, unitization of a produced electronically stored document and any attachments or affixed notes shall be maintained as it existed in the original file or computer. Scanned/paper documents should be logically unitized (*i.e.*, page breaks between documents should be preserved and otherwise separate documents should be able to be identified).

8. If unitization cannot be maintained, the original unitization shall be documented in the associated load file or otherwise electronically tracked if possible.
9. Document-level text files with a .txt extension will be provided where available. The text file name will correspond to the beginning production number of the image or native file. A field will be included in the .DAT file with the path to the corresponding text file.
10. Every Party will use reasonable efforts to filter out common system files and application executable files.
11. A Party shall endeavor to remove duplicate ESI, including without limitation electronic mail, and is required to produce only a single copy of a responsive document and a Party may de-duplicate responsive ESI (based on MD5 or SHA-1 hash values at the document level noting that every Party shall disclose the hash algorithm utilized) within a custodian's file/documents. However duplicates shall be removed from ESI productions in a manner that does not break-up document families – in other words, emails shall be treated as duplicates only if they are identical both in their bodies and in all their attachments, and an email attachment shall not be treated as a duplicate merely because an identical copy of the document exists as a separate file. To the extent that de-duplication through MD5 or SHA-1 hash values is not possible, the Parties shall meet and confer to discuss any other proposed method of de-duplication.
12. Consistent with the Stipulated Protective Order, and to facilitate production of ESI, a producing Party may designate ESI produced pursuant to this Order as "CONFIDENTIAL" without justifying the confidentiality of the ESI on a

document-by-document basis at the time of production. Upon reasonable request by a receiving Party, however, the producing Party shall explain the basis for a “CONFIDENTIAL” designation applied to ESI. If the Parties cannot agree on the designation, they will meet and confer to attempt a reasonable resolution, failing which the objecting Party may seek resolution by the Court as provided in the Stipulated Protective Order.

13. ESI productions should include the following fields reflecting metadata associated with a native file document, commensurate with the requirements of Paragraph (IV)(B)(1) above:

<u>Field Name (fields may be named slightly differently)</u>	<u>Field Description</u>
BEGBATES	Number stamped on first image page of document (mandatory field, generated for the production).
ENDBATES	Number stamped on last image page of document (mandatory).
BEGATTACH	Number stamped on first image page of attachment(s) (mandatory information for each attachment) (attachment field can also indicate range and be multi-value).
ENDATTACH	Number stamped on last image page of attachment(s) (mandatory).
CUSTODIAN	Where applicable and available, it is then mandatory and identifies the individual (custodian) from whom the document originated (can be a multi-value field).
FILENAME	The pre-existing file name of electronic document or attachment.
NATIVEFILELINK	For documents produced as native file in addition, or in lieu of image file, this field contains a link to that file.

TEXTFILELINK	If reasonably possible, image files must contain OCR text files. This field includes a link to the text file produced with the document or attachment. (Alternatively, the field can contain the OCR text itself).
HASH	If reasonably possible, this field must contain value of an electronic record that can be used for deduplication and authentication generated using a hash algorithm such as MD5 or SHA-512. The Parties shall disclose the hash algorithm utilized.
CONFIDENTIALITY	Identifies the confidentiality designation for the document.
PARENT_DATE:TIME	The date and time of a parent document. For attachments to emails, this field will be populated with the date sent of its parent email transmitting the attachment.
SENT_DATE:TIME	The date and time an email was sent.
RECVD_DATE:TIME	The date and time an email was received.
AUTHOR	Author Display Name
FROM	Sender
TO	Recipient
CC	CC
BCC	BCC
SUBJECT	Email Subject
ATTACH_COUNT	Number of attachments
CREATE_DATE:TIME	The date and time an email or e-file was created.
LASTMOD_DATE:TIME	The date and time an e-file was last modified.

To the extent that good cause may exist for providing field information in substantively different field formats, the Parties will meet and confer and attempt to reach a reasonable agreement on the format change, failing which the objecting Party may seek resolution by the Court.

14. A producing Party shall respond to reasonable requests that documents produced in TIFF format that are unintelligible or not readily usable be produced in another format, such as native format.

15. The Parties also shall respond to reasonable requests for the production of higher resolution or color images. The producing Party shall not object to reasonable requests for color images and also shall not object to reasonable requests for higher resolution images if the document as originally produced is illegible or difficult to read. The producing Party shall have the option of producing the native-file version of the documents in response to such requests.

B. *Asserting a Claim of Privilege, Redactions, and Form of Privilege or Document Production Log*

1. The Parties may redact documents subject to any other Party's right to object to the asserted basis for redaction. If the receiving Party finds a document to be incomprehensible or unintelligible because of a redaction, the Parties will meet and confer to try to reasonably resolve the dispute. The basis for any redactions shall be included in the producing Party's privilege log. Redacted ESI and other documents shall be produced in accordance with the format requirements of Paragraph IV(B)(1) above.

2. Privilege logs shall be served within ninety (90) days after documents are withheld based on any claim of privilege or other protection. If a Party produces document volumes on a rolling basis, then this ninety (90) day deadline shall apply on a volume-by-volume basis – *i.e.*, a Party will have ninety (90) days in which to produce a log that identifies the documents that were withheld from each separate production volume. If additional time for service is necessary under the circumstances, the Parties will meet and confer in an effort to reach a reasonable accommodation of the time for service.

3. The Parties shall use document-by-document entries in a privilege log, and each entry shall include the following information: date, author(s), custodian(s), sender(s), recipient(s), cc's, and bcc's, subject, document type, description, and type of privilege(s) and/or protection(s) asserted.

4. Privileged information dated, created, or communicated on or after April 9, 2019, does not need to be included on any privilege log.

5. The Parties may meet and confer to address whether categories of information should be excluded from any logging requirements or that alternatives to the logs described above should be exchanged. Activities undertaken in compliance with the duty to preserve information are protected from disclosure and discovery under Rule 26 of the West Virginia Rules of Civil Procedure.

C. Service and Delivery of Documents

1. The Parties agree that documents shall be served on each other by email and that such email service will constitute effective service equivalent to hand delivery if directed to the designated email addresses:

Party	Designated Email Address
National Union Fire Insurance Company of Pittsburgh, Pa., et al.	mparker@cwplaw.com amarkov@cwplaw.com jsumrall@cwplaw.com blewis@cwplaw.com eguyton@cwplaw.com dtvarner@vv-wvlaw.com javarner@vv-wvlaw.com

Party	Designated Email Address
Axiall Corporation Westlake Chemical Corporation	thomas.ryan@klgates.com travis.brannon@klgates.com john.sylvester@klgates.com paul.fuener@klgates.com david.osipovich@klgates.com sarah.czypinski@klgates.com jkessler@bkctg.com

2. Delivery of documents may be made by zipped file, secure file transfer site (e.g., over FTP), or by overnight delivery of a CD, hard drive, or other device, as appropriate.

3. Discovery requests and discovery responses shall be served in text-searchable .PDF format, and both discovery requests and discovery responses shall be served via electronic service.

4. For discovery requests, responses to discovery requests and other documents not filed with the Court, the Parties agree to accept service by email.

5. Documents that are filed with the Court shall be served by email (or if too large, by FedEx next day delivery) on counsel for the other Parties on the same day the filing with the Court is made.

D. Method for Asserting or Preserving Claims of Privilege or of Protection as Trial-Preparation Material After Production

The Parties hereby incorporate as if fully set forth herein Sections 15-19 of the Stipulated Protective Order.

E. Allocation of Expense of Production

Every Party will bear its own costs for the preservation, production, and restoration (if necessary) of any digital discovery in its possession.

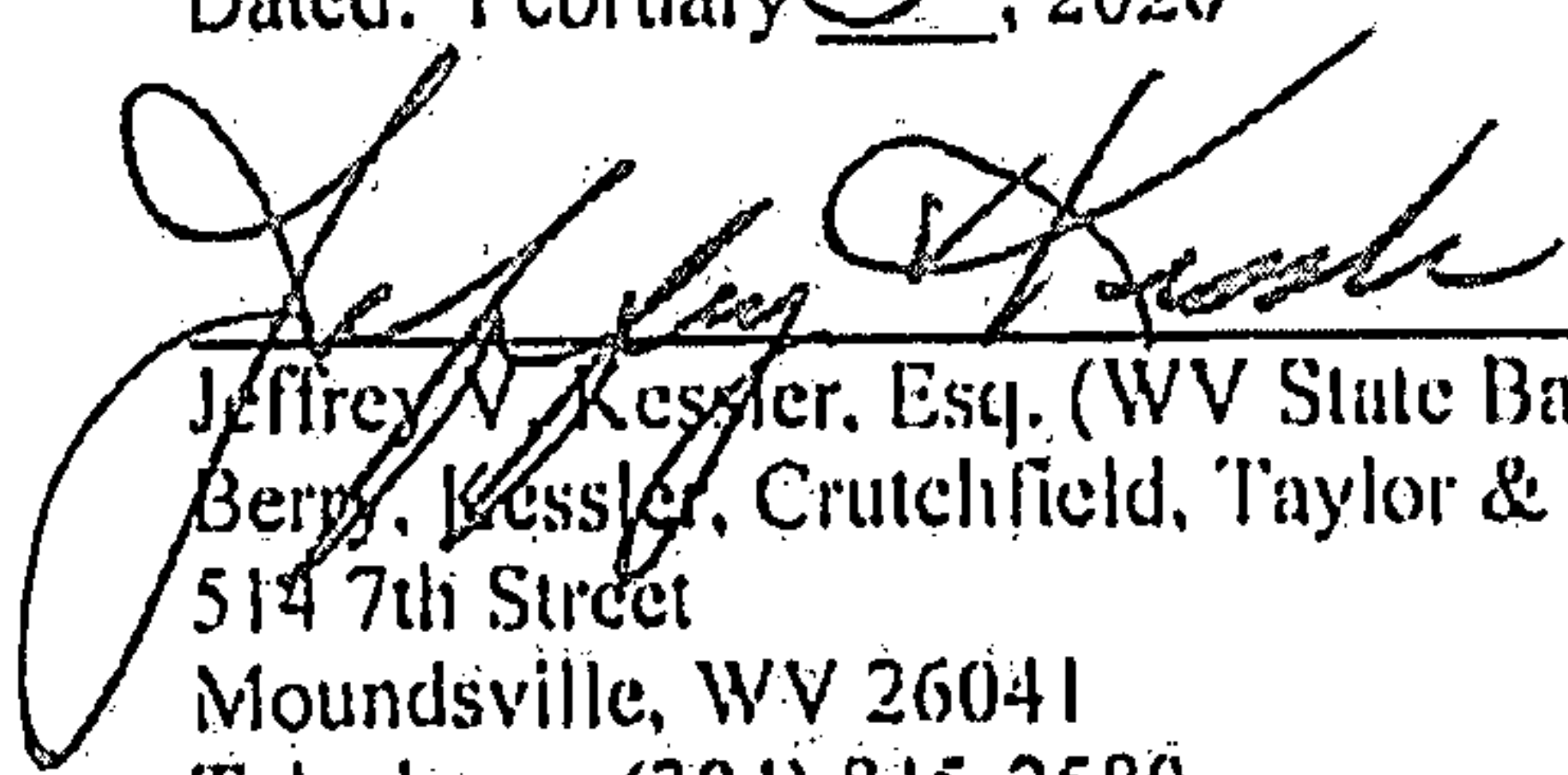
IV. Conclusion

The Parties may execute their stipulation to this Order in counterparts.

This Order may be modified by further order of the Court or by the Parties' written agreement.

The Case Management Order to be entered in this matter shall not be affected or modified by this Order.

Dated: February 5, 2020

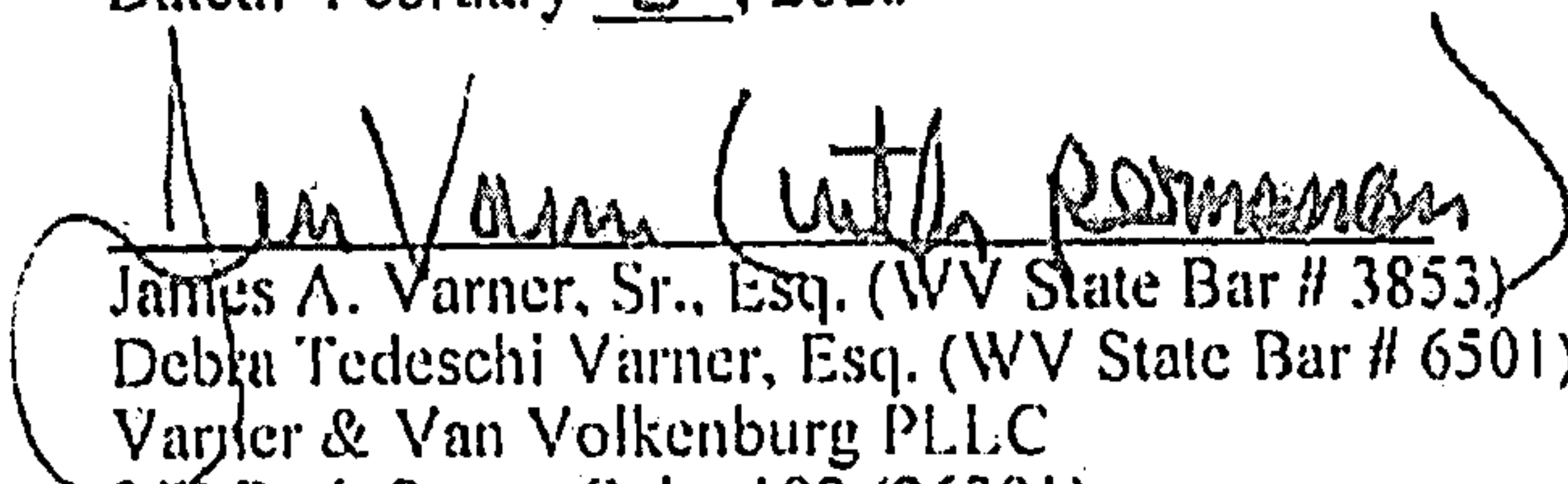

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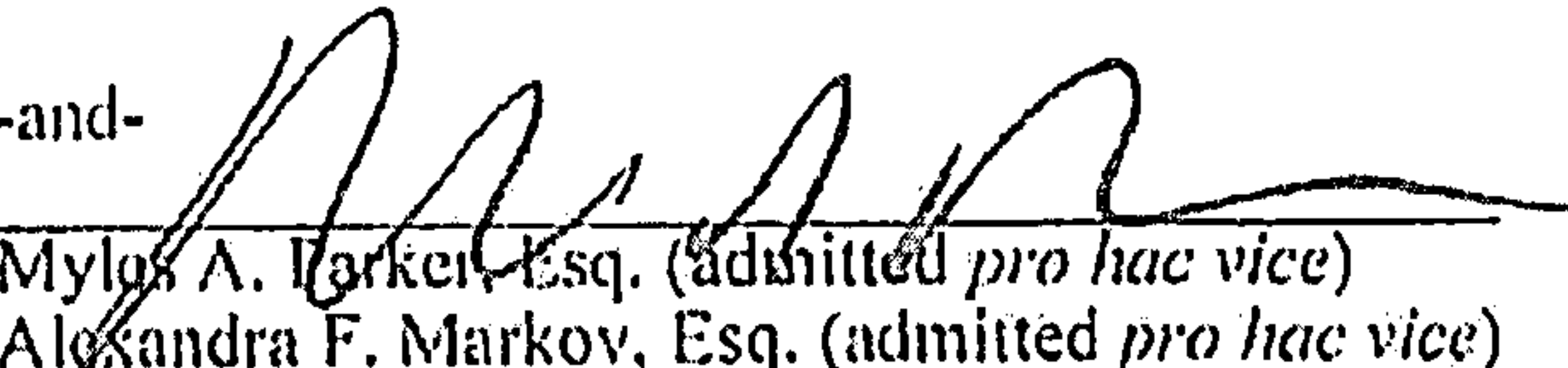
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IT IS SO ORDERED this 6 day of February, 2020.



The Honorable Christopher C. Wilkes