

IN THE CIRCUIT COURT OF TAYLOR COUNTY, WEST VIRGINIA

WILLIAM SAGER,
Plaintiff,

vs.

CASE NO. 20-C-35
Judge: Alan D. Moats

ENTERED OF RECORD

DR. JOSEPH DUVERT,
TYGART VALLEY TOTAL CARE CLINIC,
And GRAFTON CITY HOSPITAL, INC.,
A West Virginia Corporation,
Defendants.

JAN 27 2022

Civil ORDER BOOK
NO. 45 PAGE 1080-1

ORDER DENYING MOTION TO ALTER OR AMEND JUDGMENT

By Order entered November 19, 2021, the Court granted the Defendants' Motion to Dismiss/Motion for Summary Judgment, and dismissed the Complaint with prejudice. On December 3, 2021, the Plaintiff filed a Rule 59(e) Motion to Alter or Amend Judgment. The Defendants filed their Brief in Opposition on December 13, 2021. The Plaintiff filed a Response to the Brief in Opposition on December 27, 2021.

The Court has now reviewed the Motion to Alter or Amend Judgment, the Brief in Opposition, and the Response. The Plaintiff, in his Motion, has reasserted his position on the issues decided in the Order entered on November 19, 2021, regarding the Statute of Limitations and compliance with the Medical Professional Liability Act.

The Court is not persuaded by the Plaintiff's arguments regarding these issues and **FINDS** that the November 19, 2021 appropriately granted the Defendants' Motions and dismissed the Complaint in this matter. The previously entered Order is hereby incorporated by reference into this Order.

The Plaintiff's Motion to Alter or Amend Judgment is hereby **DENIED**.

The Clerk is directed to send certified copies of this order to all parties or their counsel
of record.

ENTER:

1/27/22

JUDGE

Alan D. Mordt

A TRUE COPY FROM THE RECORD

ATTEST: VONDA M. RENEMAN

CLERK OF THE CIRCUIT COURT OF TAYLOR
COUNTY, WEST VIRGINIA

BY:

Jabitha Weaver Deputy

IN THE CIRCUIT COURT OF TAYLOR COUNTY, WEST VIRGINIA

WILLIAM SAGER,

Plaintiff,

v.

Civil Action No. 20-C-35

Hon. Alan D. Moats

ENTERED OF RECORD

DR. JOSEPH DUVERT,
TYGART VALLEY TOTAL CARE CLINIC,
and GRAFTON CITY HOSPITAL, INC.,
a West Virginia corporation,

NOV 19 2021

Civil ORDER BOOK
NO. 45 PAGE 1639-51

Defendants.

ORDER GRANTING DEFENDANTS'
MOTIONS TO DISMISS/MOTIONS FOR SUMMARY JUDGMENT

On September 2, 2021, this matter came on for hearing before the Court as to (1) the Motion to Dismiss Plaintiff's Complaint Against Defendants Tygart Valley Total Care Clinic and Grafton City Hospital, Inc., and (2) the Motion to Dismiss Plaintiff's Complaint Against Defendant Dr. Joseph Duvert. Defendants Joseph Duvert, M.D., Tygart Valley Total Care Clinic and Grafton City Hospital, Inc., appeared by their counsel, Brent P. Copenhaver of Linkous Law, PLLC, and Plaintiff appeared by counsel Joseph H. Spano, Jr. of Pritt and Spano, PLLC. The Court notes that the motions are essentially the same and are based on the argument that the statute of limitations under W.Va. Code §55-7B-2(i) expired before Plaintiff filed this lawsuit on October 13, 2020. During argument for the motion by the Defendants and against the motion by Plaintiff, counsel for Plaintiff requested an opportunity to provide additional documentation to support Plaintiff's opposition to the motion on the question of when Plaintiff discovered or with reasonable diligence should have discovered the injury that is the subject of the cause of action. The Court obliged Plaintiff's request, and took the motion under advisement, allowing a period of ten days for all parties to supplement the record as to matters raised during the hearing. The

Court received and reviewed the supplemental responses that included numerous additional exhibits and records from both the Plaintiff and the Defendants. The Court is now prepared to rule on Defendants' motions based on the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Plaintiff William Sager filed this lawsuit on October 13, 2020, in the Circuit Court of Taylor County, alleging negligence in the provision of medical care to him by Defendants Joseph Duvert, M.D., Tygart Valley Total Care Clinic and Grafton City Hospital, Inc. Plaintiff's complaint alleges that the Dr. Duvert, an employee of Grafton City Hospital, Inc. (working at its clinic Tygart Valley Total Care Clinic) was negligent in the prescription of controlled substances to Plaintiff by the Defendants from December 2003 to February 2, 2018, the last date that Plaintiff received treatment from the Defendants. Plaintiff further alleges that the negligent prescription of controlled substances was the proximate cause of Plaintiff's addiction to controlled substances. All three defendants are health care providers that provided health care to Plaintiff that is at issue in this case, and there is no dispute among the parties that the Medical Professional Act of West Virginia, §55-7B-1 et seq. ("MPLA") applies to Plaintiff's cause of action. All three defendants filed Motions to Dismiss Plaintiff's Complaint on the grounds that the statute of limitations expired prior to the filing of the Plaintiff's Complaint on October 13, 2020.

2. William Sager entered a detoxification and drug rehab program on or about February 2, 2018 to treat his drug addiction that he attributes to the negligence of Defendants Joseph Duvert, M.D., Tygart Valley Total Care Clinic and Grafton City Hospital, Inc. When Mr. Sager voluntarily detoxification and drug rehab, he was aware of his addiction which is the injury that he blames on the Defendants in this case. At that time, he knew that Dr. Duvert had prescribed

controlled substances during his treatment at the Tygart Valley Total Care Clinic at Grafton City Hospital, Inc.

3. Plaintiff has argued in his briefs on this issue that the “discovery rule” should spare his case from the running of the statute of limitations because he had no reason to have known or discovered that he was addicted to pain medications until August 2018. The following is a sampling of some of the numerous passages in Plaintiff’s Omnibus Response to Defendants’ Motions to Dismiss:

“Due to the excessive overprescribing of pain medications by these Defendants, Plaintiff became dependent upon the medications and lived in a drug-induced stupor for 14 years. After Plaintiff completed the drug treatment program in August 2018, he discovered the negligence and malpractice of these Defendants and the fact that these Defendants had actually caused the injuries he had been suffering from.”¹

“Plaintiff discovered the negligence and medical malpractice of these Defendants at such time that he completed his rehabilitation at the John B. Good Center in cooperation with the Cranberry Medical Center. This occurred in August 2018.”²

“23. Mr. Sager became aware of Defendants’ negligent actions at the point when he completed his rehabilitation and treatment program in August of 2018 and discovered that the Defendants’ malpractice was the cause of his injuries.”³

(emphasis added). During the hearing on September 2, 2020, the Court reviewed its records for Mr. Sager’s criminal cases in Taylor County (18-F-33 and 18-F-75) and confirmed that it was Mr. Sager’s initial indictment in January 2018 that set the wheels in motion for his treatment for substance abuse addiction in February 2018, beginning with detoxification at United Hospital Center was followed by admission to the John B. Good Recovery Center for drug rehab. As

¹ See “Plaintiff’s Omnibus Response to Defendants’ Motions to Dismiss,” page 3.

² See “Plaintiff’s Omnibus Response to Defendants’ Motions to Dismiss,” page 7.

³ See “Plaintiff’s Omnibus Response to Defendants’ Motions to Dismiss,” page 17.

noted by this Court in the hearing in this case on September 2, 2020, it was previously represented to the Court at a hearing in Mr. Sager's criminal cases on May 7, 2018, that Mr. Sager had successfully completed his drug rehabilitation program by the date of that hearing. Therefore, the assertions of Plaintiff's counsel in his argument to the Court and in "Plaintiff's Omnibus Response to Defendants' Motion to Dismiss" were not accurate and prove that the Plaintiff was indeed aware of his substance abuse addiction (the basis for his Complaint) no later than May 7, 2018, the date that it was disclosed to this Court in the criminal cases against William Sager that he had successfully completed the drug rehabilitation program to address the addiction that is the subject of this civil lawsuit.

4. During the hearing in this case on September 2, 2021, counsel for Plaintiff also told the Court that Mr. Sager could not have had knowledge of injury prior to the commencement of his representation of Mr. Sager, which did not begin until a point in time after August 2018. However, this statement has also been proven to be incorrect based on a letter dated May 11, 2018 that was sent by Mr. Spano on behalf William Sager to Grafton City Hospital, Inc. to request his medical records. This records request letter was signed by Mr. Spano and was sent on behalf of William Sager (to whom Mr. Spano referred as his "client") to the medical records department of Defendant Grafton City Hospital, Inc., which operates Tygart Valley Total Care Clinic and employs Dr. Duvert. This letter was identified as Exhibit K and attached to "Defendants' Supplement to Brief in Reply to Plaintiff's Omnibus Response to Defendants' Motions to Dismiss." Mr. Spano signed and sent another records request letter dated July 12, 2018 to Dr. Duvert (using the same address for Grafton City Hospital used in Exhibit K) which was identified as Exhibit L to "Defendants' Supplement to Brief in Reply to Plaintiff's Omnibus Response to Defendants' Motions to Dismiss." On the first page of this letter, handwritten notes

by an employee in the records department of Grafton City Hospital, Inc. indicate that the records of Dr. Duvert's treatment of William Sager were included in the records that had already been sent to Mr. Spano on May 21, 2018 (in response to the letter identified as Exhibit K). This clearly reflects that (1) Mr. Spano was representing William Sager in this matter on or before May 11, 2018 and (2) William Sager had made discovery of his cause of action against the Defendants prior to May 11, 2018. This supports the Court's finding that William Sager had discovered his injury (his addiction) upon completion of drug rehab prior to May 7, 2018, if not before when he entered drug rehab in February 2018.

5. A records release form entitled "Authorization to Disclose Health Information" that was signed by William Sager and was included in Mr. Spano's letter dated May 11, 2018, clearly states in Paragraph 4 that the purpose of disclosing the requested records to the law firm of Pritt and Spano, PLLC was "*for the purpose of litigation or potential litigation.*" This serves as additional evidence that William Sager had made discovery of his alleged injury (his addiction) prior to May 11, 2018.

6. Mr. Spano's records request letter dated May 11, 2018, and the "Authorization to Disclose Health Information" signed by William Sager clearly show that Plaintiff discovered his potential cause of action no later than May 11, 2018 and was investigating the cause of action for that injury through his attorney's request for records of the treatment that is the subject of Plaintiff's Complaint.

7. On January 22, 2020, Mr. Spano sent a Notice of Claim pursuant to the MPLA (W.Va. Code §55-7B-6) concerning the allegedly negligent treatment of William Sager by Grafton City Hospital, Inc., Tygart Valley Total Care Clinic, and Joseph Duvert, M.D., with a statement of intent to provide a Certificate of Merit within 60 days.

8. William Sager did not provide a Certificate of Merit within 60 days of January 22, 2020, as required by §55-7B-6 and as promised in his Notice of Claim dated January 22, 2020. In fact, William Sager did not provide a Certificate of Merit until July 2, 2020, when his attorney Joseph H. Spano, Jr. mailed a second Notice of Claim which contained a Certificate of Merit signed by Joseph N. Ranieri, D.O. dated June 29, 2020.

7. The Defendants did not respond to either of the Notices of Claim from William Sager dated January 22, 2020 and July 2, 2020. The Defendants did not request pre-litigation mediation under the MPLA and did not take any action that would extend or toll the statute of limitations for Mr. Spano's claims.

8. Plaintiff filed this lawsuit against these Defendants on October 13, 2020.

CONCLUSIONS OF LAW

1. West Virginia Rule of Civil Procedure 12(b)(6) provides for dismissal of a Complaint for the "failure to state a claim upon which relief can be granted." *Randall v. Fairmont City Police Dept.*, 186 W.Va. 336, 412 S.E.2d 737, fn. 14 (1991). When ruling on a motion to dismiss made pursuant to Rule 12(b)(6) of the West Virginia Rules of Civil Procedure, the complaint should be construed in the light most favorable to the plaintiff, and the allegations in the complaint should be taken as true. *Lodge Distrib. Co., Inc. v. Texaco, Inc.* 161 W.Va. 603, 605, 245 S.E.2d 157, 158 (1978).

2. "When a statute is clear and unambiguous and the legislative intent is plain, the statute should not be interpreted by the courts, and in such case it is the duty of the courts not to construe but to apply the statute." *State ex rel. Miller v. Stone*, 216 W.Va. 379, 383, 607 S.E.2d 485, 489 (2004) (citing Syl. Pt. 5, *State v. General Daniel Morgan Post No. 5* 548, *V.F.W.* 144 W.Va. 137, 107 S.E.2d 353 (1959)).

3. A trial court may consider exhibits attached to or referenced in the complaint without converting a Motion to Dismiss under W.Va. R. Civ. P. Rule 12 into a Motion for Summary Judgment under Rule 56. *See* Syl. Pt. 1, *Forshey v. Jackson*, 222 W.Va. 743, 671 S.E.2d 758 (2008). A court may also consider, without conversion, those matters susceptible to judicial notice. *Id.* at 748, 671 S.E.2d at 753; *see also*, *Sturm v. Bd. Of Educ. Of Kanawha County*, 223 W.Va. 277, 283, n. 9, 672 S.E.2d 606, 61, n.9 (2008); *see also* W.Va. R. Evid. 201(b)(noting that a court may take judicial notice of a fact that is not subject to reasonable dispute because it “can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.”)

4. When there exists no genuine issue of material fact on an issue for trial, summary judgment is appropriate under Rule 56 of the W. Va. R. Civ. P. *See Painter v. Peavy*, 192 W.Va. 189, 451 S.E.2d 755 (1994); *Aetna Casualty and Surety Co. v. Federal Insurance Company of New York*, 149 W.Va. 160, 133 S.E.2d 770 (1963); and *Andrick v. Town of Buckhannon*, 187 W.Va. 706, 421 S.E.2d 247 (1992). If the Court determines that no genuine issue of material fact exists, summary judgment is appropriate and should be granted.

5. The MPLA defines “medical professional liability” as “any liability resulting from the death or injury of person for any tort or breach of contract based on health care services rendered, or which should have been rendered, by a health care provider or health care facility to a patient.” W.Va. Code § 55-7B-2(i). Complaints pursuant to the MPLA are subject to a two-year statute of limitation. The applicable statute states in relevant part:

[a] cause of action for injury to a person alleging liability against a healthcare provider, ... arises as of the date of injury, except as provided in subsection (c) of this section, and **must be commenced within two years of the date of such injury, or within two years of the date the person discovers, or with**

reasonable diligence, should have discovered such injury,
whichever last occurs[.]

W.Va. Code §55-7B-4 (emphasis added).

6. The MPLA also has specific pre-suit requirements that must be satisfied prior to filing any Complaint:

At least 30 days prior to the filing of a medical professional liability action against a health care provider, the claimant shall serve by certified mail, return receipt requested, a notice of claim on each health care provider the claimant will join in litigation. For the purposes of this section, where the medical professional liability claim against a health care facility is premised upon the act or failure to act of agents, servants, employees, or officers of the health care facility, such agents, servants, employees, or officers shall be identified by area of professional practice or role in the health care at issue. The notice of claim shall include a statement of the theory or theories of liability upon which a cause of action may be based, and a list of all health care providers and health care facilities to whom notices of claim are being sent, together with a screening certificate of merit.

W. Va. Code § 55-7B-6(b).

7. In the event a plaintiff does not have time prior to the expiration of the statute of limitations to obtain and serve the required Certificate of Merit with the Notice of Claim, the MPLA affords Plaintiff an additional sixty (60) days to obtain and serve the Certificate of Merit:

Except for medical professional liability actions against a nursing home, assisted living facility, their related entities or employees, or a distinct part of an acute care hospital providing intermediate care or skilled nursing care or its employees, if a claimant or his or her counsel has insufficient time to obtain a screening certificate of merit prior to the expiration of the applicable statute of limitations, the claimant shall comply with the provisions of subsection (b) of this section except that the claimant or his or her counsel shall furnish the health care provider with a statement of intent to provide a screening certificate of merit within 60 days of the date the health care provider receives the notice of claim. The screening certificate of merit shall be accompanied by a list of the medical records otherwise required to be provided pursuant to subsection (b) of this section.

W. Va. Code § 55-7B-6(d) (emphasis added). To permit compliance with the pre-suit notice requirements, the MPLA briefly tolls the applicable statute of limitations against a health care provider who is served with a Notice of Claim and Certificate of Merit:

...any statute of limitations applicable to a cause of action against a health care provider upon whom notice was served for alleged medical professional liability shall be tolled from the date of mail of a notice of claim to 30 days following receipt of a response to the notice of claim, 30 days from the date a response to the notice of claim would be due, or 30 days from the receipt by the claimant of written notice from the mediator that the mediation has not resulted in a settlement of the alleged claim and that mediation is concluded, whichever last occurs.

W. Va. Code §55-7B-6(i)(1) (emphasis added).

8. Plaintiff's Complaint is governed by the MPLA, and Plaintiff is required to comply with the statute of limitation and prerequisites of the MPLA before filing the instant medical malpractice action. W.Va. Code § 55-7B-6(a).

9. Plaintiff timely filed and served his first Notice of Claim on the Defendants dated January 22, 2020, upon the Defendants, and properly included a statement of intent to provide a Certificate of Merit within 60 days.

10. On March 22, 2020 (the 60th day after William Sager's Notice of Claim was sent by Mr. Spano to Grafton City Hospital, Inc., Tygart Valley Total Care Clinic, and Joseph Duvert, M.D.) the Supreme Court of Appeals issued the first of four Administrative Orders regarding the COVID-19 Judicial Emergency and the extension of deadlines, statutes of limitations and statutes of repose that were set to expire during the period March 23, 2020 to April 10, 2020. Subsequent Administrative Orders were issued on April 2, 2020, April 22, 2020, and May 6, 2020 which further extended these deadlines. The fourth Administrative Order dated May 6, 2020 set an endpoint for the extension of deadlines, statutes of limitation, and statutes of repose, as set forth in the following passage of the order:

. . . Statutes of limitations and statutes of repose that would otherwise expire during the period of judicial emergency between March 23, 2020, and May 15, 2020, shall expire on May 18, 2020. . .

. . . Deadlines set forth in court rules, statutes (excluding statutes of limitation and repose), ordinances, administrative rules, scheduling orders, or otherwise that expired between March 23, 2020, and April 17, 2020, are hereby extended to May 29, 2020, unless otherwise ordered by the presiding judicial office. . .

. . . Deadlines, statutes of limitations, and statutes of repose that do not expire during the period of judicial emergency between March 23, 2020, and May 15, 2020, are not extended or tolled by this or prior orders.

(emphasis added).

11. Despite the Administrative Order dated May 6, 2020, Plaintiff did not provide a Certificate of Merit to Grafton City Hospital, Inc., Tygart Valley Total Care Clinic, and Joseph Duvert, M.D. within 60 days of the Notice of Claim dated January 22, 2020, which clearly would have fallen within the stated time frame of March 23, 2020, to April 17, 2020. Therefore, William Sager was obligated to serve his Certificate of Merit on Grafton City Hospital, Inc., Tygart Valley Total Care Clinic, and Joseph Duvert, M.D. no later than May 29, 2020, based on the Administrative Order dated May 6, 2020. Therefore, the statutory deadline for Plaintiff to file his Certificate of Merit in support of the Notice of Claim dated January 22, 2020, expired well before July 2, 2020, the date that Mr. Spano ultimately served his Certificate of Merit upon Grafton City Hospital, Inc., Tygart Valley Total Care Clinic, and Joseph Duvert, M.D. This was served over one month after the deadline that had been extended to May 29, 2020 in the Supreme Court's Administrative Order of May 6, 2020. Therefore, the Certificate of Merit was filed William Sager more than one month after the deadline for providing the Certificate of Merit had expired.

12. Even if the Certificate of Merit by Dr. Ranieri had been timely filed, which it was not,

the Plaintiff failed to file the Complaint until October 13, 2020, more than three months after the Certificate of Merit of Dr. Ranieri was sent by Plaintiff's counsel to the Defendants on July 2, 2020.

13. The Defendants did not request pre-litigation mediation and did not take any action that extended the deadline for William Sager to serve the Certificate of Merit beyond May 29, 2020. In the absence of a response or request by any of the Defendants for pre-litigation mediation within 30 days of receipt of a timely filed Certificate of Merit, the Plaintiff only had an additional 30 days from May 29, 2020 to file suit, counting from the date that the response was due. In other words, if the Certificate of Merit of Dr. Ranieri had been sent on May 29, 2020, the Defendants would have had 30 days to respond if they wished to do so - by July 1, 2020, at the latest. Assuming no response from the Defendants, the statute of limitations for filing the Plaintiff's Complaint would have been tolled for only 30 more days to July 31, 2020, pursuant to §55-7B-6(i)(1).

14. Under the facts presented, this Court concludes that the Plaintiff clearly failed to file the Certificate of Merit prior to the judicially extended deadline of May 29, 2021, based on the above referenced sections of the MPLA and as extended by the above referenced Administrative Orders of the Supreme Court of Appeals of West Virginia. Additionally, Plaintiff clearly failed to file his Complaint prior to the running of the applicable statute of limitations, which expired at least two months before Plaintiff filed his Complaint on October 13, 2020.

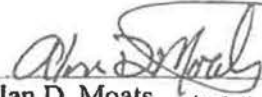
15. In light of the Plaintiff's submission of multiple documents and medical records with "Plaintiff's Omnibus Response to Defendants' Motions to Dismiss" and "Plaintiff's Supplemental Omnibus Response to Defendants' Motions to Dismiss," Plaintiff has failed to create a genuine issue of material fact as to the timing of Plaintiff's discovery of his addiction,

the injury that is the basis of Plaintiff's Complaint. William Sager clearly discovered his addiction to controlled substances no later than May 11, 2018, based on (1) his admission to detox and drug rehab for that addiction in early February 2018, (2) his completion of the drug rehab program for that addiction no later than May 7, 2018, and (3) his retention of attorney Joseph H. Spano, Jr. to investigate this potential cause of action on or before May 11, 2018. Therefore, the Court concludes that it is appropriate to grant Defendants' request to convert their motion to dismiss to a motion for summary judgment under Rule 56 of the West Virginia Rules of Civil Procedure. The Court further finds that no genuine issue of material fact exists as to when Plaintiff discovered his injury, as outlined above. Based on that conclusion, the Court finds that even with application of the discovery rule as urged by the Plaintiff, the statute of limitations had clearly expired when Plaintiff filed his Complaint on October 13, 2018, and summary judgment for the Defendants is appropriate.

WHEREFORE, the Court GRANTS Defendants' request to convert their Motions to Dismiss to Motions for Summary Judgment. The Court further GRANTS summary judgment for the Defendants based on the filing of Plaintiff's Complaint after the expiration of the statute of limitations. Plaintiff's Complaint should be and hereby is dismissed WITH PREJUDICE.

The Clerk of the Circuit Court of Taylor County is directed to send certified copies of this order to counsel for the parties at their addresses set forth below.

Entered this 19th day of November 2021.


Hon. Alan D. Moats

TRUE COPY FROM THE RECORD

ATTEST: VONDA M. RENEMAN

CLERK OF THE CIRCUIT COURT OF TAYLOR
COUNTY, WEST VIRGINIA

BY: Jabitha W. Weaver, Deputy

Send copies of this attested order to:

Counsel for Plaintiff:

Joseph H. Spano, Jr., Esq.
Pritt & Spano PLLC
714 ½ Lee Street, E., Suite 204
Charleston, WV 25301

Counsel for Defendants:

Brent P. Copenhaver, Esq.
Linkous Law PLLC
10 Cheat Landing, Suite 200
Morgantown, WV 26508

IN THE CIRCUIT COURT OF TAYLOR COUNTY, WEST VIRGINIA

WILLIAM SAGER,
Plaintiff,

vs.

DR. JOSEPH DUVERT,
TYGART VALLEY TOTAL CARE CLINIC,
And GRAFTON CITY HOSPITAL, INC.,
A West Virginia Corporation,
Defendants.

CASE NO. 20-C-35

Judge: Alan D. Moats

ENTERED OF RECORD

SEP 16 2021

Civil ORDER BOOK
NO. 45 PAGE 551-2

**ORDER GRANTING MOTION TO DISMISS/MOTION FOR SUMMARY
JUDGMENT AND DIRECTING ATTORNEY TO PREPARE ORDER**

This matter came before the Court for a hearing on September 2, 2021. At that time, the Court heard arguments of counsel regarding the Motion to Dismiss filed by the Defendants. At the conclusion of the hearing, the Court took the Motion under advisement, and allowed both parties to submit supplemental responses.

The Court has now reviewed the Plaintiff's supplemental response and the Defendants' supplemental reply and is now of the opinion that the Motion to Dismiss is properly considered as a Motion for Summary Judgment due to the additional exhibits provided, and that said motion should be granted.

The Court hereby **GRANTS** the Defendants' Motion for the reasons set forth by the Defendants in their Motion and replies.

Counsel for the Defendants is **DIRECTED** to submit a proposed order, including findings of fact and conclusions of law, reflecting the Court's ruling granting the above-mentioned Motion to Dismiss/Motion for Summary Judgment. Counsel for the Defendant is to submit the proposed order to the Court and to the Plaintiff, who may have ten (10) days to respond.

The Clerk is directed to send certified copies of this order to all parties or their counsel
of record.

ENTER:

9/14/21

JUDGE

A TRUE COPY FROM THE RECORD

ATTEST: VONDA M. RENEMAN

CLERK OF THE CIRCUIT COURT OF TAYLOR
COUNTY, WEST VIRGINIA

BY:

Tabitha Weaver Deputy