IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

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Case No.

STATE OF WEST VIRGINIA, *ex rel.* PACHIRA ENERGY, LLC,
***Petitioner*,**

v.

THE HONORABLE CINDY SCOTT, NORTHEAST NATURAL ENERGY LLC and NNE WATER SYSTEMS LLC,
***Respondents*.**

PACHIRA ENERGY LLC'S PETITION FOR WRIT OF PROHIBITION

Civil Action No. 18-C-369
In the Circuit Court of Pleasants County, West Virginia
(Honorable Cindy Scott)

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INTRODUCTION

This petition addresses Respondent Northeast Natural Energy LLC's ongoing and latest efforts to use the "Water System" owned in partnership with Petitioner Pachira Energy LLC for its personal profit. This Court previously confronted NNE's efforts to use the Water System partnership to develop its own gas wells and sell water to third parties for its own pecuniary gain. The Court held NNE's conduct violated its partnership duties to Pachira, would cause Pachira irreparable harm if it were to continue, and warranted entry of a preliminary injunction. *Ne Nat. Energy LLC v. Pachira Energy LLC*, 243 W. Va. 362, 844 S.E.2d 133 (2020) (Hutchinson, J.).

Despite these clear holdings, the lower court has since permitted NNE to do exactly what this Court prohibited: squeeze Pachira out of the partnership and continue to use the Water System partnership for personal gain and to the detriment of both the partnership and its partner. Pachira petitioned the court for judicial dissolution to protect its interests and wind up the partnership affairs. Instead of honoring Pachira's request for dissolution, the lower court erroneously construed it as notice of an intent to withdraw from the partnership, and then "dissociated" Pachira *without* dissolution. Indeed, the court erred twice here. Even if Pachira had given its notice to withdraw, that would have necessarily triggered dissolution because this was a partnership at will between only two partners. Under W. Va. Code § 47B-8-1(1), a partnership at will is *automatically* dissolved when one partner gives notice of its intent to leave the partnership.

Those holdings alone amount to reversible error. While "dissociation" and "dissolution" may sound similar, the results are not. Under West Virginia Code § 47B-8-1, partners in a dissolving partnership "may participate in winding up the partnership's business." Dissociation without dissolution, on the other hand, deprives the dissociated partner of any meaningful opportunity to wind up a partnership's business, account for its assets, and ensure that it receives maximum value for its share. Dissolution is what Pachira sought because it would have protected its rights and wound up the partnership, while dissociation *without* dissolution effectively blesses the very squeeze-out Pachira challenged and this Court enjoined.

Put simply, the lower court's order endorses an intentional squeeze-out of a business partner, leaving that partner with no control over how the partnership assets are used—or, as here, *mis*used—while the court below proceeds towards the unlawful buy-out of Pachira's interest in the partnership. And it does so based on a clear misapplication of West Virginia law.

None of this can be adequately addressed on direct appeal. Pachira has properly sought dissolution, moved for clarification of the trial court's initial erroneous ruling, and sought a stay below, all to no avail. This has allowed NNE to continue to exploit the Water System for its own personal gain. Relying on the lower court's orders, NNE moved aggressively to freeze Pachira out of the Water System partnership. It has operated the Water System as an extension of itself, without input from Pachira. Dissociation without dissolution also deprives the parties of

market forces naturally driving the value of the partnership and its property. Instead, NNE is using the court's order to foist an artificially low dissociation buyout on Pachira—only a quarter of the $10 million Pachira has already invested—for its share of the Water System. Meanwhile, wholly unnecessary depositions, expert reports, and hearings regarding the value of Pachira's wrongfully dissociated interest are now scheduled for this spring. These events are moving so quickly that, absent intervention by this Court, Pachira will be damaged in a way that is not correctable on appeal after final judgment.

Accordingly, this Court should grant Pachira's Petition to prevent the injustice worked by the lower court's manifest error and clarify that the West Virginia Uniform Partnership Act requires dissolution and a winding up of the partnership in these circumstances.

QUESTIONS PRESENTED

I. Whether a circuit court exceeds its legitimate powers by ordering dissociation as an equitable remedy when the Plaintiff requested, and the applicable statute requires, dissolution.

II. Whether a partner may be dissociated and divested of its right to dissolution and winding up of the partnership business absent a request for dissociation and without a required finding under W. Va. Code §47B-6-1(2)–(10).

III. Whether the court erred by concluding the partnership was for a particular undertaking when the partnership was not reduced to writing, the court made no finding that the parties agreed as to the scope and purpose of the partnership, and the court's own findings conflict with the purported particular undertaking.

IV. Whether the court erred by concluding that NNE's assignment of its transferable partnership interest to a holding company automatically created a third partner in the Water System partnership where W. Va.

Code 47B-5-3(a)(3) does not permit the assignee of partner's transferable interest "to participate in the management or conduct of the partnership business," and the partners never agreed to create a third partner.

STATEMENT OF THE CASE

I. Factual Background

A. Pachira and NNE form the Water System partnership.

Pachira and NNE entered into business relationships to acquire and develop gas interests in West Virginia. Two of these relationships are governed by written agreements; the one at issue here is not. On January 20, 2011, Pachira and NNE entered an Area of Mutual Interest and Exploration Agreement ("AMI Agreement") to jointly acquire leases and property rights in an area known as the Blacksville Area of Mutual Interest ("AMI"). *See, e.g.*, AR000935-001000; AR001002-1020.

According to the AMI Agreement, NNE received a 75% working interest, and Pachira a 25% working interest, in oil and gas leases in the AMI. *Id.* Later, in April 2013, Pachira and NNE amended the AMI Agreement to allow the parties to acquire and own rights-of-way, easements, and surface use agreements using the same 75/25 split in the initial AMI. *Id.*; AR001022-1026. Pachira and NNE also entered a Joint Operating Agreement ("JOA"). Under the JOA, the parties agreed to acquire surface rights to help them develop wells in the AMI. AR001028-1080.

Consistent with the AMI and the JOA, Pachira contributed 25% to all the costs and acquisitions under those agreements, and similarly shared in the income from them. All told, Pachira contributed $180 million to the AMI and JOA. AR000705.

Around the same time in 2013, "Pachira and NNE entered into an oral agreement to acquire, develop, own, and operate" the Water System partnership.[1] AR001324-1332 at ¶7 (the "Dissociation Order"). As the lower court recognized, the development of the gas interests the parties acquired "requires a lot of water." *Id.* at ¶6. To supply that water, the parties created a partnership to construct water transfer facilities inside the Blacksville AMI using their jointly-owned lease rights and jointly-acquired easements and rights of way. *Id.* at ¶7. These facilities were designed to draw water from Dunkard Creek, a stream in the area, and transmit it to wells in the AMI to assist in hydraulic fracturing. *Id.* at ¶9. Despite Pachira's attempts to reduce the terms of the Water System partnership to writing, "the parties were unable to agree to the terms." *Id.* at ¶10. Both, however, agree that the JOA and AMI do not govern the Water System partnership. *Id.* at ¶11.

The parties agreed to construct and jointly own the Water System on the same 75/25 ratio used in the AMI and JOA. *Id.* at ¶12. Much like the AMI and JOA, Pachira spent considerable funds on the Water System partnership, contributing $10 million to capital and operations costs. AR000557-558.

Unbeknownst to Pachira at the time, NNE eventually transferred some of its interests in the Water System to its wholly-owned subsidiary NNE Water Systems LLC ("NNE WS"), an entity formed in 2017 that appears to have no purpose beyond

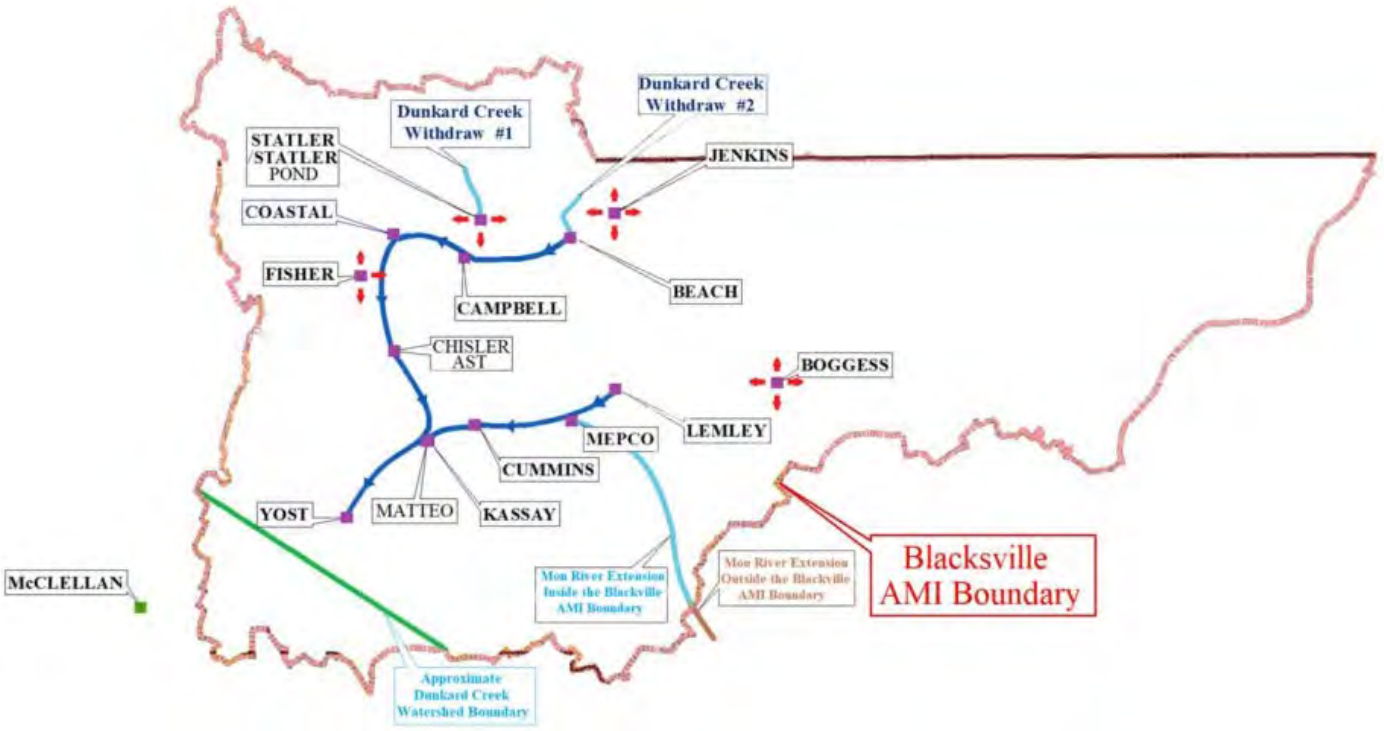
[1] NNE contended below that the parties did not create a partnership as it relates to the water system. *See, e.g.*, AR001476. This Court disagreed and clearly stated during the last appeal that "[t]he evidence presented below indicates that Pachira and Northeast are, in fact, partners in a partnership." *Ne. Nat. Energy LLC v. Pachira Energy LLC*, 243 W. Va. 362, 367, 844 S.E.2d 133, 138 (2020).

holding NNE's interests in the Water System partnership's assets. *See* AR001591-1722 at 53:13-17; 75:12-76:13; 97:3-18. NNE admits that NNE WS is "basically a holding company" that "doesn't have any employees." AR001379-1380. "It's Northeast's employees that run the water system." *Id.*

Pachira did not contemplate or agree that NNE WS would be a third partner in the Water System partnership. AR001584 (noting that neither NNE entity claimed there were three parties to the partnership prior to motions practice in 2022—nine years after the Water System partnership was formed on an oral agreement between Pachira and NNE and four years into this litigation). Instead, Pachira believed the Water System partnership extended only to those entities that were party to the agreement and had partnership interests in the Water System—Pachira and NNE, regardless of which entity held the Water System partnership interests. AR001595 at 5:10-19 (noting that the notion that both NNE entities were in the partnership was not raised until late in the underlying case).

Although Dunkard Creek supplied enough water to service the wells within the AMI, AR000717-718**,** NNE built a water line from one well pad in the Blacksville AMI toward the Monongahela River. Like all other Water System partnership property, Pachira contributed 25% of the funds necessary to build this water line to the AMI boundary. *See, e.g.*, AR 000720-721. Pachira participated in the construction of this branch of the water system because it feared being left out of other AMI activities if it did not. *Id.* The portion of the Water System partnership

lines going toward the Monongahela River ("Mon River Extension") is pictured in light blue at the bottom of the map below.



Separately, NNE built the Monongahela Trunk Line (pictured in brown and extending beyond the boundary of the AMI at the bottom of the map). NNE paid for that line in its entirety and owned a 100% interest in it, but it connected to and used the property of the Water System partnership via the Mon River Extension to function and deliver water to wells within the AMI. Pachira thus owned its 25% interest in the Water System Line branching toward the Monongahela; it did not own the line that ultimately withdrew water from the Monongahela. NNE also planned to use water from the Monongahela—piped through the Water System—to

develop wells it owned outside of the AMI in the "Battelle" district and to sell water to third parties for the development of other wells outside the AMI. AR001655.

B. NNE breaches its fiduciary duty.

This Court recognized that, like any partners, NNE and Pachira owe each other "a fiduciary duty of loyalty to the partnership and to other partners." *Pachira Energy LLC*, 243 W. Va. at 369. NNE violated that duty by trying to use the Water System for its own personal gain at the expense of Pachira and the partnership itself. *Id.* at 367. Internal NNE communications obtained during discovery show that, in January 2017, without Pachira's knowledge, NNE worked with a third party to prepare projections for expanding the Water System beyond the AMI for its sole benefit. By 2021, NNE planned to use the partnership property to develop almost 100 wells it owns exclusively in the Battelle district, which is outside of the AMI. *See* AR000679-680.

By 2017, it was clear that the Water System became independently valuable and would only increase in value by orders of magnitude. NNE wanted a larger share of the pie. NNE's own projections valued the Water System at $40 million in 2017. But with planned new developments and uses, NNE projected the Water System would be worth $135 million by 2021. *Id.* The company also intended to "phase out" Pachira from the Water System partnership. *Id.* Because "NNE will have 100% of ownership in line to the Mon River and all lines in Battelle," NNE and its agents planned—in their own words—to "'drop' in the [B]attelle network for

equity and phase out Ben [Statler]," the owner of Pachira. *Id.* That would grow NNE's ownership interest in the water system "from 75% to 94.4% by 2021." *Id.*

NNE did not share either its plans to phase Pachira out of the Water System or the meteoric valuation projections with Pachira. Indeed, NNE refused to share even more basic information regarding the Water System partnership with Pachira despite its obligations to provide that information. *See* W. Va. Code § 47B-4-3 (mandating that all partners have access to the Partnership's books and records regarding the business and affairs). For example, NNE refused to provide Pachira with as-built diagrams of the Water System despite repeatedly being asked to do so. AR001369. It also withheld critical seismic data and accounting information. *Id.* NNE also cut out Pachira from decision-making regarding the Water System partnership. *Id.* And it began charging Pachira an additional fifty cents per barrel for water that originated from the Monongahela, despite Pachira's insistence that it use water from Dunkard Creek to service wells in the AMI. *See* AR000723-724. This overcharge alone amounted to $1.3 million. *Id.* at AR000726.

In addition to misusing partnership property within the AMI, NNE intended to use the Water System partnership property to transport water from the Monongahela River to wells located outside the AMI in which Pachira holds no interest. *See, e.g.*, AR000174 at ¶20. Although the lower court enjoined NNE from transporting fresh water through the Water System partnership property to wells outside the AMI, NNE continued using water from the Water System partnership property to its exclusive benefit. Specifically, it transported produced wastewater

from the AMI wells through the Water System to help fracture wells outside of the AMI in which Pachira had no interest, all without any benefit to the Water System partnership. *See* AR000727-736.

In sum, NNE privately planned to dilute Pachira's interest in the Water System partnership, assessed additional charges against Pachira to use the Water System partnership property, and abused partnership property to develop NNE's private interests and enrich itself without providing a benefit to the partnership or Pachira.

II. Procedural History

A. The lower court enjoins the breach, and this Court affirms.

On September 11, 2018, Pachira filed suit against NNE, alleging NNE violated its duties to Pachira and their partnership and joint ventures in various ways. The next day, Pachira learned that NNE would soon commence hydraulic fracturing operations on wells within the AMI using water from the Monongahela River, begin transferring water through the Water System to develop its own individually owned wells outside the AMI, and begin using the Water System to sell water to third parties. Pachira filed an emergency motion for temporary restraining order and preliminary injunction to enjoin NNE from, among other things, using the Water System partnership property to transport water outside of the AMI and sell water to third parties. On September 19, 2018, the parties appeared before the

lower court on that motion.[2] On October 25, the lower court ruled that Pachira would be irreparably harmed if NNE used the Water System partnership property to develop its own interests in wells outside the AMI and transport water to interests outside of the AMI. The court thus enjoined NNE from doing so during the pendency of the case. *See* AR000171-AR000178. NNE appealed.

In its appeal, NNE argued that the lower court improperly enjoined the conduct because (1) the Water System partnership was a tenancy-in-common and, thus, it had no fiduciary duties to Pachira or the partnership, and (2) Pachira failed to present evidence of irreparable harm. This Court rejected both arguments. First, this Court stated: "The evidence presented below indicates that Pachira and NNE are, in fact, partners in a partnership, and that the Blacksville AMI water system is partnership property." *Pachira Energy LLC*, 243 W. Va. at 367. The Court also noted that, because the water system was partnership property, its use was governed by West Virginia's Revised Uniform Partnership Act ("RUPA") and subject to limitations. W. Va. Code § 47B-1-1 *et seq.* Specifically, "[a] partner may use or possess partnership property only on behalf of the partnership." *Pachira Energy LLC*, 243 W. Va. at 369.

Second, and relatedly, this Court held that NNE's threat to use the property to benefit its individual interests outside of the AMI amounted to irreparable harm by virtue of "future, threatened misuse of partnership property." *Id.* The misuse of

[2] At the time, Judge Clawges presided over the case. Upon his retirement, the case went to Judge Scudiere. After Judge Scudiere left the bench, Judge Scott took the case over. She is currently presiding over it.

partnership property, this Court held, amounted to irreparable harm because "when a partner intends to misuse partnership property in the future" it amounts to a "breach of the duty of loyalty." *Id.*

As such, this Court posited that "the question the trial court was being asked was, does NNE have the right to continue causing damages to the partnership and to Pachira in the future?" *Id.* at 371. It determined that the lower court correctly answered the question: "obviously, no." *Id.* Accordingly, this Court affirmed the lower court's entry of a preliminary injunction and remanded.

B. The lower court misapplies West Virginia law and dissociates Pachira from the Water System partnership.

While the appeal worked its way through this Court, the case proceeded below. On December 17, 2019, prior to this Court's conclusion that the water system was partnership property, NNE again took the position that the parties were tenants in common with respect to the water system in the AMI. Although Pachira disputed that position, as an alternative form of relief, it moved the lower court to order partition if—*but only if*—it determined that NNE was correct that the parties were tenants in common with respect to the water system in the AMI, as opposed to partners. *See* AR000535-AR000562. The purpose of this motion was to ensure that parties were given the opportunity to buy one another out once a value was attached by independent appraisers appointed by the Court. *Id.*

On June 30, 2020, Pachira filed a Notice of Supplemental Authority apprising the lower court of this Court's ruling upholding the determination that the parties were partners, not tenants in common. AR000649-000682. In light of that

determination, Pachira argued that the Uniform Partnership Act of West Virginia obligated the lower court to dissolve the partnership and wind up its business because NNE breached the covenant of good faith and fair dealing by converting partnership assets to his own use. *Id.* Specifically, Pachira argued that it was "entitled to a judicial dissolution of the joint venture pursuant to West Virginia Code § 47B-8-1(5)" because "NNE planned to substantially devalue, and thus dilute, Pachira's interest in the Water Line and Handling Facilities." *Id.* The lower court never addressed this argument or made any findings of fact on whether NNE's conduct devalued the partnership or diluted Pachira's interest.

On October 26, 2020, the parties appeared before the lower court and argued the motion to compel partition (which had been converted into a motion to dissolve the partnership based on this Court's ruling). *See* AR000683-934. During that hearing, Pachira presented evidence showing the breaches noted above.

On November 12, 2021, the lower court issued an Order refusing to dissolve the partnership under West Virginia Code § 47B-8-1(5). AR001324-1332. Instead, the court did something *neither* party requested, addressed, or discussed: It dissociated Pachira from the partnership under W.Va. Code § 47B-7-1(a). *Id.* It expressly noted, however, that Pachira asked for dissolution. *Id.* But the court "disagree[d] and decline[d] to Order the partnership to be dissolved." *Id.* Instead, it *sua sponte* decided to "treat Pachira's Motion as its notice of its desire to withdraw from the partnership and deem[ed] Pachira to be dissociated." *Id.*

On December 10, 2021, Pachira asked the lower court to modify or clarify its order on the Motion for Partition because neither party requested dissociation and there was no authority for the Court to treat the Motion for Partition as a request for dissociation. AR001333-1349. It also noted that even under the court's dissociation order the Water System partnership still must be dissolved because it was a partnership at will and had only two partners—dissociation necessarily results in dissolution under W. Va. Code § 47B-8-1. *Id.*

On December 30, 2021, Pachira moved to stay the dissociation pending the lower court's ruling on the motion to modify or clarify. AR001350-1357. It specifically noted that NNE was assessing a $2.50-per-barrel charge against Pachira for work on wells in the AMI, and that NNE was freezing Pachira out of all decision-making related to the Water System. And NNE was doing so based on its view that, per the trial court's dissociation order, Pachira was "no longer an owner of any interest in the water system." AR001356-1357. NNE's actions underscore the critical difference between dissociation (being divested of rights to continue managing the partnership) and dissolution (remaining a partner through the end).

On January 19, 2022, the parties argued the motion to stay. AR001374-1403. To avoid the automatic dissolution of a partnership with only two partners where one is dissociated, NNE asserted, for the first time in this case, that there were actually *three* partners in the Water System partnership: Pachira, NNE, and NNE WS. As explained above, NNE admitted at the time that NNE WS was a wholly-owned subsidiary holding company and did not have employees.

On February 22, 2022, NNE responded in writing to the motion to modify or clarify, and again made the novel arguments that, even though no party sought dissociation, (1) dissociation was proper because there were actually three partners (NNE, NNE Water Systems, and Pachira); (2) dissociation was proper because courts have general equitable power to fashion relief; and (3) dissociation did not trigger dissolution because the Water System partnership was not a partnership at will but was instead a partnership for a particular undertaking. AR001476-1498.

On January 11, 2023, the lower court denied Pachira's Motion.[3] In its Order, the court determined that (1) its general power to fashion equitable relief allowed it to construe the request for dissolution as one for dissociation; (2) the partnership had three partners; and (3) dissolution was inappropriate because the partnership was one for a particular undertaking. AR001746-1757 ("Order Denying Modification"). On February 13, 2023, Pachira filed the notice required by Syllabus Point 6 of *State ex rel. Allstate Ins. Co. v. Gaughan*, 203 W. Va. 358, 508 S.E.2d 75 (1998), informing the lower court that it intended to file this petition for an extraordinary writ in March. AR001782-1785. At the time of this filing, the court has made no additional findings of fact or conclusions of law.

[3] Both parties submitted proposed orders to the lower court. Despite previously stating that it "was not [the court's] intent to cut Pachira out prior to their exit," and it "never [intended] . . . to cut Pachira out of any decision making prior to their actual dissociation" or "stop their ability to participate until such time as they were bought out," AR001377 at 4:13–14, the court ultimately did just that when it simply signed NNE's proposed order without changing a word. *Compare* AR001746-1757 *with* AR001759-1771.

C. NNE weaponizes the lower court's dissociation orders and freezes Pachira out of all of the parties' various business activities.

NNE moved aggressively to freeze Pachira out of the Water System partnership. Once the lower court's orders were entered, NNE stopped providing Pachira revenue credits for water transported through the Water System partnership property. NNE also refused to allow Pachira the opportunity to participate in the acquisition of right-of-way and easements in the AMI near well pads. *See* AR001802-1803. In essence, NNE is now extending the court's orders on the Water System partnership to stymie Pachira's participation in the AMI and JOA agreements—agreements that *were not subject to* the lower court's order.

Finally, NNE is trying to use the lower court's orders to foist an artificially low dissociation buyout on Pachira. Despite estimating that the water system's value would reach approximately $135 million by 2021, NNE estimated that the Water System partnership property was now worth only $10.911 million. In March 2022, NNE offered a lowball dissociation buyout of $2.728 million to Pachira for its 25% interest in the Water System, in which Pachira has already invested more than $10 million. AR001786-1801. Pachira, of course, challenged that artificially low buyout value. Without this Court's intervention, the lower court is barreling towards wholly unnecessary and unlawful hearings on the value of Pachira's wrongfully dissociated interest this spring. AR001779-1781.

SUMMARY OF ARGUMENT

This appeal is about whether one partner in an at-will partnership should be allowed to exploit partnership property for its own personal gain and then, when its injured partner tries to dissolve the partnership to stop the bleeding, freeze the injured partner out of the business and continue to use the property for its personal gain pending the buyout of the injured partner's share of the business. West Virginia law does not permit this result—but the lower court did through its November 12, 2021 Dissociation Order and its January 11, 2023 Order Denying Modification of the Dissociation Order.

First, as a threshold matter, the lower court clearly "exceed[ed] its legitimate powers," W. Va. Code § 53-1-2, when it *sua sponte* decided to "treat Pachira's Motion [for dissolution] as its notice of its desire to withdraw from the partnership" and erroneously cobbled together "equitable relief" that directly contravenes binding statutory authority and the actual dissolution relief sought by Pachira. *See* Dissociation Order at 8.

The lower court's orders also clearly contravene the governing statutes. The Water System, owned by Pachira and NNE, was an at-will partnership to build a water system to service gas wells. Under W. Va. Code § 47B-8-1(1), subject to certain exceptions not applicable here, an at-will partnership is automatically dissolved when one partner gives notice of its intent to leave the partnership. When that happens, all partners can participate in the winding up of the partnership's business to ensure that their interests are protected and that the funds are

distributed fairly. That's what Pachira asked for and what it was entitled to receive under the law even after the court's Dissociation Order.

But in this case, the court ordered dissociation rather than dissolution. It did so *sua sponte*—no one asked for dissociation—and then justified its mistake by concluding this was a partnership for a particular undertaking, rather than a partnership at will. That was clear error, because this partnership was created to operate for an undefined, indefinite period of time—there was no clear end. But, even if this was a partnership for a particular undertaking, it *still* must be dissolved upon Pachira's dissociation because the only "partner" left would be NNE—and a partnership cannot consist of only one entity.

By misapplying the law and ordering dissociation, the court allowed NNE to continue to exploit the partnership for its own personal gain until Pachira is bought out, the result Pachira sought to prevent when it brought this suit.

Finally, this Writ is the only way to prevent ongoing and future irreparable harm to Pachira, will enable this Court to correct a manifest error of law below, and will clarify important and previously unaddressed questions of West Virginia law.

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Pursuant to West Virginia Rules of Appellate Procedure 18(a), Petitioner respectfully requests a Rule 19 oral argument. This Petition is appropriate for oral argument pursuant to Rule of Appellate Procedure 19(a)(2) because it addresses an unlawful exercise of the trial court's equitable powers to grant relief that was not requested by the parties and is contrary to plain statutory language and settled

West Virginia law. Specifically, the Petition seeks to resolve a misapplication of the West Virginia Revised Uniform Partnership Act and clarify the distinctions between dissociation and dissolution, which are issues of first impression for this Court. Because this Petition satisfies Rule 19 of the West Virginia Rules of Appellate Procedure, oral argument is both necessary and appropriate.

ARGUMENT

The West Virginia Constitution confers original jurisdiction upon the Supreme Court of Appeals regarding extraordinary remedies, such as Writs of Prohibition. *See* W. Va. Const. art. VIII, § 3. A Writ of Prohibition "shall lie as a matter of right in all cases of usurpation and abuse of power, when the inferior court . . . exceeds its legitimate powers." W. Va. Code § 53-1-2. This power extends to interlocutory orders. *See* W. Va. Code § 53-5-8. Although the issuance of a Writ of Prohibition "under the original jurisdiction of the Supreme Court . . . is not a matter of right, but of discretion sparingly exercised," that discretion is properly exercised where the underlying ruling is contrary to established law. W. Va. R. App. P. 20.

Generally, the Supreme Court of Appeals discourages parties from invoking its original jurisdiction in cases "involving merely factual disputes." *State ex ref. Suriano v. Gaughan*, 198 W. Va. 339,480 S.E.2d 548 (1996). However, where—like here—"the issues are largely ones of law and clearly erroneous actions of the court below are asserted, prohibition may be a more appropriate method to seek review of an interlocutory determination regarding . . . relief." *State ex rel. McGraw v.*

Telecheck Serv., 213 W. Va. 438, 582 S.E.2d 885, n. 11 (2003); *see also E.1. DuPont de Nemours and Co. v. Hill*, 214 W. Va. 760,591 S.E.2d 318 (2003).

In determining whether to enter a writ of prohibition, this Court considers the following:

> (1) whether the party seeking the writ has no other adequate means, such as direct appeal, to obtain the desired relief; (2) whether the petitioner will be damaged or prejudiced in a way that is not correctable on appeal; (3) whether the lower tribunal's order is clearly erroneous as a matter of law; (4) whether the lower tribunal's order is an oft repeated error or manifests persistent disregard for either procedural or substantive law; and (5) whether the lower tribunal's order raises new and important problems or issues of law of first impression.

Syl. Pt. 1, 214 W. Va. 760, 591 S.E.2d 318 (2003) (quoting Syl. Pt. 4, *State ex ref. Hoover v. Berger*, 199 W. Va. 12, 483 S.E.2d 12 (1996)). Although the factors are just "general guidelines," none of which are dispositive, "the existence of clear error as a matter of law, should be given substantial weight." *Id.* In this case, all five factors—especially the crucial third factor—weigh overwhelmingly in favor of granting the Petition for Writ of Prohibition. We begin with the clear error of law.

I. The lower court's orders are clearly erroneous as a matter of law.

The lower court's orders contain three clear errors. As such, the Court could—and should—issue a writ of prohibition on the third *Hill* factor alone.

A. The court exceeded its legitimate powers by fashioning "equitable relief" that no party requested and is contrary to a clear legislative command.

The lower court clearly "exceed[ed] its legitimate powers," W. Va. Code § 53-1-2, when it *sua sponte* decided to "treat Pachira's Motion [for dissolution] as its notice of its desire to withdraw from the partnership" and cobbled together

"equitable relief" that directly contravenes binding statutory authority and the actual dissolution relief sought by Pachira. *See* Dissociation Order at 8.

A court outstrips its legitimate powers when it *sua sponte* concocts a claim or grants relief that was not specifically requested by a party. *State ex rel. Nat'l Union Fire Ins. Co. of Pittsburgh, Pa. v. Hummel*, 243 W. Va. 681, 685, 850 S.E.2d 680, 684 (2020) (granting a writ of prohibition where the "circuit court committed clear error as a matter of law by *sua sponte* dismissing Count III" of the complaint when "[n]o party asked the circuit court to dismiss Count III of the complaint"). Similarly, "in the absence of a written motion for summary judgment by one of the parties, the court is not authorized *sua sponte* to grant a summary judgment." Syl. Pt. 2, *Gavitt v. Swiger*, 162 W. Va. 238, 248 S.E.2d 849 (1978).

It is also "well established that a plaintiff is the master of the complaint, and . . . [courts] will not ascribe to a plaintiff a potential claim for relief which it has not pled." *CUMIS Ins. Soc., Inc. v. Raines*, No. 3:12-cv-6277, 2013 WL 500305, at *2 (S.D.W. Va. Feb. 11, 2013) (citing *United States v. Jones*, 125 F.3d 1418, 1428 (11th Cir. 1997) (providing that, as master of the complaint, "plaintiff selects the claims that will be alleged"); *Samovsky v. Macy's*, No. 12-cv-4261, 2013 WL 139880, *3 (N.D. Ill. Jan 10, 2013) (explaining that the plaintiff controls the complaint and selects the claims that will be alleged in the complaint)). This bedrock principle—that a party seeks relief by the actual requests in its pleadings—undergirds the rules of civil procedure and protects the interests of all parties to a lawsuit.

The court's order of dissociation divests the Plaintiff of this right to be the master of its complaint and to petition the court for specific relief. Pachira sought dissolution under W. Va. Code § 47B-8-1(5). AR 000958; 000965–980 ¶¶145, 198–225 (Count II), ¶¶242–292 (Count V). It did not seek dissociation or request equitable relief. The difference between dissolution and dissociation without dissolution cannot be overstated. Dissolution would allow Pachira to have a seat at the table in the partnership through its termination, as is its right. Dissociation without dissolution divests Pachira of that right, despite no finding whatsoever that Pachira gave notice of its express will to dissociate or engaged in any conduct that would trigger such a result. Disregarding its obligation to address the claim and relief sought by the Plaintiff, the court made the complaint into a request for diametrically opposite relief that it thought "maybe" would be "easier" to handle.

But pleadings are not meaningless moving targets for the courts to construe at their convenience. A request for dissolution cannot be "treat[ed] . . . as its notice of its desire to withdraw from the partnership," as the court did in its Dissociation Order. Rather, it is established in this context that "a request for judicial dissolution is not tantamount to withdrawal by the requesting partner." *See Bertolla v. Bill*, 774 So. 2d 497, 504 (Ala. 1999) (citing *Cooper v. Isaacs*. 448 F.2d 1202, 1205 n. 7 (D.C. Cir. 1971), and *Imperial Litho/Graphics v. M.J. Enters.*, 730 P.2d 245, 251-53 (Ariz. Ct. App. 1986)).

That squares with the plain language of the statute, which states that dissociation requires notice of a "partner's *express* will to withdraw." W. Va. Code §

47B-6-1(1) (emphasis added). Because a request for dissolution necessarily maintains a partner's role in the partnership through winding up, such a request cannot be considered, by any measure, a notice of Pachira's "*express* will to withdraw." Indeed, there was not even an *implied* will to withdraw. Quite the contrary. Pachira's request demonstrated its express will to remain a partner through the winding up.

What is more, the Partnership Act directly limits the court's equitable powers when issues are, as here, "displaced by particular provisions of this chapter." W. Va. Code § 47B-1-4(a); *see also Hechler v. Casey*, 175 W. Va. 434, 440, 333 S.E.2d 799, 805 (1985) (explaining that "equitable or extraordinary relief [] is inappropriate when there is an adequate remedy at law."). Not only did the court fashion "equitable" relief *no party requested*, it shirked its duty to address the particular statutory provision—Section 47B-8-1(5)—under which Pachira's actual claim arises. The court thus exceeded its legitimate powers when it treated Pachira's motion for dissolution as one for dissociation, despite the court's well-intentioned but mistaken view that dissociation "would be a little quicker and, maybe, easier." AR001377.

The only explanation the court offered on this front is that "Pachira sought partition by allotment pursuant to W. Va. Code § 37-4-3," and "dissociation is substantially similar." AR001763 at ¶24. But that holding is plainly wrong. First, Plaintiff's Complaint asked for judicial dissolution. *See, e.g.*, AR000958 at ¶145. Then, only "[i]n the alternative, *if the Court determines that Pachira and Defendants are tenants in common*," Pachira asked for the court to "appoint a

representative to partition [the Water System] through sale pursuant to W. Va. Code § 37-4-1." AR000969. Such a determination became impossible once the court determined that Pachira and NNE are partners. That finding necessarily mooted Pachira's alternative request for partition.

Second, dissociation and a buyout of partnership property is not substantially similar to an allotment or sale of property held in joint tenancy. In particular, the former allows for a separate action and court determination of buyout price, which necessarily includes a battle of the experts. *See* W. Va. Code § 47B-7-1. In an allotment, on the other hand, absent the agreement of parties, valuation is determined by three court appointed appraisers. *Id.* § 37-4-3. But both allotment and dissociation results in the very freeze-out that Pachira sought to avoid when it filed this action in the first place.

In short, by ordering "equitable" relief that no party requested and that finds no support in West Virginia law, the lower court effectively punished Pachira for seeking protection from NNE's misconduct and its use of "partnership property for personal gain, to the future detriment of both the partnership and its partner, Pachira." *Pachira Energy LLC*, 243 W. Va. at 367. This manifest abuse of the court's power is reason enough to grant the Writ sought here.

B. West Virginia law requires dissolution and a winding up of the Water System partnership affairs because this was a partnership at will, not a partnership for a particular undertaking.

The lower court's order also clearly runs afoul of the statutory scheme enacted by the West Virginia Legislature to address circumstances like this. It is

undisputed that this case involves a partnership governed by West Virginia's Revised Uniform Partnership Act. *Pachira Energy LLC*, 243 W. Va. at 367 ("Pachira and Northeast are, in fact, partners in a partnership, and [] the Blacksville AMI water system is partnership property. The evidence also supports the conclusion that Northeast is using that partnership property for personal gain, to the future detriment of both the partnership and its partner, Pachira."). Under the Partnership Act, a partnership at will is immediately dissolved when one partner gives notice of its intent to leave. Because, according to the court's first ruling, that happened here, dissolution and a winding up of partnership business was the only appropriate remedy.

1. Dissociation and dissolution are distinct statutory processes triggered by specific conduct set forth in the Partnership Act.

As a threshold matter, it is important to understand the statutory context governing the partnership at issue here, particularly the distinction between dissociation and dissolution.

Dissociation is another way of saying that a partner is leaving the partnership—whether voluntarily or involuntarily. *See* W. Va. Code § 47B-6-1. *Dissolution* refers to the process of ending the partnership altogether, which involves the partners collectively winding up the partnership's affairs—i.e., settling any outstanding debts or obligations and distributing the remaining assets among the partners. *Id.* § 47B-8-1, *et seq*.

When a partnership is dissolved, even after dissociation, the partnership continues until the partnership is wound up and terminated. *Id.* § 47B-8-2. That is the relief Pachira sought here.

Dissociation without dissolution—i.e., "wrongful dissociation"—terminates the dissociated partner's right to participate in management and the winding up of the partnership's business and requires the partnership to purchase the dissociated partner's interest. *Id.* § 47B-7-1(b). That is the "equitable relief" the lower court ordered here, despite Pachira's request for dissolution.[4]

That distinction matters because "a partner who has not wrongfully dissociated may participate in winding up the partnership's business." *Id.* § 47B-8-3. But a *wrongfully* dissociated partner—which is effectively what Pachira became under the court's order here—has no such right, which means that the lower court's order deprived it of the ability to participate in the valuation and buy out of the Water System partnership property.

Notably, wrongful dissociation is generally a mechanism that comes with the loss of partnership rights; it is punitive (for the dissociated) or protective (for the remaining partners). For example, Section 47B-6-1(2)–(10) sets out the events that lead to a partner's dissociation without the right to dissolution—e.g., illegality,

[4] Because dissociation divests a partner of its partnership rights, a partner seeking the dissolution and winding up of the affairs of the partnership—like Pachira did here—may not wish to be dissociated from the partnership at all. *See Robins v. Roland*, B1916S9, 2008 WL 615865, at *7 (Cal. Ct. App. Mar. 7, 2008) (explaining that the dissociation buyout "does not arise at all when a partnership is wound up" and "the liability of the partners of a dissolved partnership continues").

expulsion, bankruptcy, or death. A "partner who wrongfully dissociates is liable to the partnership and to the other partners for damages caused by the dissociation." *Id.* § 47B-6-2. But "a partner who has not wrongfully dissociated may participate in winding up the partnership's business." *Id.* § 47B-8-3.

Article 8 sets out the events that cause dissolution and allow a partner to participate in the winding up of a partnership's business. *Id.* § 47B-8-1. Importantly, that section specifically explains that a "partnership at will" (as here) will be dissolved and wound up absent a finding that "a partner is dissociated under subdivisions (2) through (10)" of W. Va. Code § 47B-6-1(2)–(10).

And that brings us to the crux of the case. Here, even after the court's Dissociation Order, it made *no* determination that any of the exceptions to dissolution set forth in W. Va. Code § 47B-6-1(2)–(10) apply here. That means dissolution was statutorily *required* under W. Va. Code § 47B-8-1(1).

Instead, the lower court *sua sponte* "decline[d] to Order the partnership to be dissolved," and decided to "treat Pachira's Motion [for dissolution] as its notice of its desire to withdraw from the partnership." Dissociation Order 8. Based on that clearly erroneous presumption, the court made its next reversible error and "deem[ed] Pachira to be dissociated from the partnership . . . without resulting dissolution and winding up of the partnership business." *Id.* In so ruling, the court effectively turned Pachira into a wrongfully dissociated partner, which is the opposite of the relief sought by Pachira when it commenced this action to prevent NNE's wrongful use of partnership assets for its own benefit.

On reconsideration after the Plaintiff's Motion to Modify the Dissociation Order, the court's only justification for this decision was that "the Water System partnership is a partnership for a definite term and a particular undertaking" and thus its order dissociating Pachira did not trigger automatic dissolution. AR001767 at ¶56. As explained below, that was plain error.

2. The Water System is a partnership at will and must be dissolved and wound up.

The court's ruling that dissociation is appropriate because the Water System is a partnership for a particular purpose is deeply flawed for three reasons. First, the court failed to make any finding that the parties agreed to engage in a particular undertaking, which is *the* threshold element. Second, even if there were an agreement between the parties, the Water System partnership is inherently indefinite as a matter of law. Third, the court's own conflicting findings of fact undermine its legal conclusion.

First, fatal to the court's conclusion is the lack of a finding that the parties agreed the Water System partnership has a duration or terminates at the conclusion of a particular venture. "To find that the partnership is formed for a definite term or a particular undertaking, there *must be clear evidence of an agreement among the partners*" as to that term or undertaking. Allan Donn, Rev. *Unif. P'ship Act.* § 101, Official Comments (2022-2023 ed.). As Donn further explains, "[a]ny partnership in which the partners have *not agreed* to remain partners until the expiration of a definite term or the completion of a particular undertaking *is a 'partnership at will*.'" (emphasis added).

The court never made any finding—in either of its orders—that there was an agreement between Pachira and NNE to "remain partners until the expiration of a definite term or the completion of a particular undertaking" as required by law. *See* W. Va. Code § 47B-1-1(9) (establishing that absent such an agreement, the partnership is at will). Nor could it make such a finding.

There is no writing describing a definite term or a particular undertaking, and the court found that "the parties were unable to agree to the terms." Dissociation Order 3. Plus, NNE has insisted from the outset, and continues to assert, that there is no partnership at all. *See, e.g.*, AR001476 ("Defendant's preserve all rights to appeal the finding that the parties formed a partnership"). As explained below, the court's order also recognizes plainly that NNE had other plans for the Water System partnership that do not square with the court's view of the partnership's purported particular undertaking. AR001328 at ¶¶26–27. Indeed, this very dispute is about the intended use (or the particular undertaking) of the Water System.

There is no finding by the lower court that the parties agreed on the scope, duration, or purpose of the Water System partnership. Because *the* critical element—a finding of agreement between the parties as to the particular undertaking—is absent from the court's orders, the Water System partnership is a partnership at will as a matter of law. W. Va. Code § 47B-1-1(9); Donn, Rev. *Unif. P'ship Act.* § 101, Official Comments ("Any partnership in which the partners have

not agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking *is a 'partnership at will*.'") (emphasis added).

Second, the court erred by concluding that something inherently indefinite—servicing natural gas wells in a geographic region—could have a "definitive, identifiable endpoint." AR001767 at ¶¶57–60. The court concluded that the particular undertaking of the Water System partnership was to "service wells within the Blacksville AMI," which would necessarily "cease to exist" once "there is no longer water transported to and from wells located within the Blacksville AMI." *Id*. That is wrong as a matter of law because "[b]usiness activities which may continue indefinitely are not 'particular' in nature and do not constitute particular undertakings." *Tropeano v. Dorman*, 441 F.3d 69, 77–78 (1st Cir. 2006).

Here, the Water System will support the existing and future wells in the Blacksville AMI for the life of those wells, which will continue to produce for decades, if not generations. *See* AR001591-1722 at 79:3–8; 112:8–19. Some wells "even in this area, [] have been producing for 80, 90, maybe even 100 years." *Id.* As the Independent Oil and Gas Association of New York explained in a different context, "Gas wells, in particular, which have no utility buyer, outlet or point of sale cannot (and do not) generate any income for the producer, [and] with no delivery point are shut-in and *can lay dormant for years or indefinitely*." *Nornew, Inc. v. Marsh*, 301 A.D.2d 206, 213, 750 N.Y.S.2d 236, 241 (2002) (emphasis added).

What is more, the Water System is also comprised of assets like leases, pipelines, pumps, storage tanks, rights of way, and the like, all of which will survive

beyond the productive lives of any wells in the Blacksville AMI. Moreover, the Water System has been and may continue to be used to transport produced water from the wells in the Blacksville AMI for disposal or staging and use in other drilling, completion, reworking, or refracturing operations. And technological improvements will allow the existing horizontal wells in the AMI to be refractured to extract additional gas that was left trapped in the Marcellus Shale formations from the first round of drilling. *Id.*

Moreover, the ownership and operation of this unwritten, oral partnership is a perpetual matter, subject only to termination by the will of the partners (or a partner). *See, e.g., Girard Bank v. Haley*, 332 A.2d 443, 447 (Pa. 1975) (holding that "leasing property, like many other trades or businesses, involves entering into a business relationship that may continue indefinitely; there is nothing 'particular' about it"); *Harshman v. Pantaleoni*, 294 A.D.2d 687, 687-88 (N.Y. 3d Dep't 2002) ("[T]he only purposes of the partnership are 'to purchase, hold, operate, improve, lease and rent the real property . . . , and also . . . to engage in lumbering and farming thereof, and to lease fishing, hunting, and sporting rights thereto.' These objectives are perpetual in nature, and place no time limitation on the duration of the partnership."); *Miami Subs Corp. v. Murray Fam. Tr.*, 142 N.H. 501, 509, 703 A.2d 1366, 1371 (1997) (holding partnership was at-will where it was a "joint venture to develop, finance, and operate Miami Subs restaurants" because, "[a]lthough the purpose of entering into the joint venture might have been

accomplished at a particular time, the purposes of development and operation would have been ongoing and could conceivably have continued indefinitely").

In short, there was no basis for the court's conclusion that this partnership had a "definitive, identifiable endpoint." And taken to its logical conclusion, the court's ruling would transform any unwritten partnership with even the vaguest agreement to develop natural resources into one for a particular undertaking. There is no authority to support this result. And it is contrary to the well-settled understanding that the "the most basic and prevalent form of partnership" is "the at-will partnership operating without a partnership agreement." *See* Donn, Rev. *Unif. P'ship Act.* § 801, Author's Comments 2(a).

Third, the court's own findings of fact are inconsistent with its legal conclusion and the purported particular undertaking it ascribed to the Water System partnership. The court held that the particular undertaking of the Water System partnership was to "service wells within the Blacksville AMI," which would necessarily "cease to exist" once "there is no longer water transported to and from wells located within the Blacksville AMI." AR001767-1768 at ¶¶57–60. But the same court found NNE intended to use the Water System to "transport water . . . to wells located outside of the Blacksville AMI in which Pachira holds no interest" and "to sell water to third parties for use outside of the Blacksville AMI." AR001326-1328.

Those are obviously very different undertakings. NNE took steps for the Water System partnership to accomplish those undertakings. And Pachira even

incurred expenses, as a Water System Partner, when it "participated in the cost of NNE's construction of a pipeline . . . at the edge of the Blacksville AMI to bring water sources from the Monongahela River into the Blacksville AMI," which could only further the undertakings to develop NNE's wells and sell water to third parties outside of the Blacksville AMI. *Id.* The fact that the trial court *itself* defined the Water System partnership as having at least two additional different purposes invalidates its conclusion that this was a partnership for a *particular* purpose.[5] It also underscores the fact that the parties did not agree on the particular undertaking for the Water System.

In short, this was a partnership at will, and the trial court's conclusion to the contrary lacks any basis in law or fact.

C. The trial court erred by concluding that the Water System partnership consisted of three partners because a transfer of one partner's interests cannot make a new partner.

Even if there were no error in the court's other conclusions, the partnership *still* must be dissolved as a matter of law because there were and could only be two partners—NNE and Pachira. The dissociation of one partner in a two-partner

[5] The "equitable relief" the court cobbled together is plainly wrong and plainly inequitable. The court's Dissociation Order coupled with its misconception that the Water System was a partnership for a particular undertaking not only divests Pachira of its partnership interest but implies a wrongful dissociation that could, according to the plain statutory language, make Pachira liable to the partnership and the other partners. Under W. Va. Code § 47B-6-2(b)(2)(i), a partner's dissociation is wrongful when the partner withdraws from a partnership for a definite term or particular undertaking by express will before the completion of the undertaking. That perverse result cannot stand. If anything, NNE should be wrongfully dissociated.

partnership necessarily requires dissolution and winding up of the affairs under W. Va. Code §47B-8-1(1) because there cannot be a partnership of one. *See, e.g.*, *Shoemaker v. Shoemaker*, 275 Neb. 112, 127, 745 N. W.2d 299, 311 (2008); *Corrales v. Corrales*, 198 Cal. App. 4th 221, 228, 129 Cal. Rptr. 3d 428, 432 (2011) ("The purpose of dissociation is to allow the partnership to continue with the remaining partners. When a partner withdraws from a two-person partnership, however, the business cannot continue as before. One person cannot carry on a business as a partnership.").[6] Correcting this misapplication of law also counsels in favor of granting Pachira's Petition.

On this point, the court held dissolution is not necessary because "two or more partners will remain in the partnership after [Pachira] is dissociated." AR00 ¶26. The court reasoned that "Pachira, NNE, and NNE WS were all partners in the Water System" "by virtue of [NNE'] Partial Assignment and Bill of Sale" to NNE WS. AR1763-64 at ¶¶28–29.

That conclusion is premised on a legal impossibility. NNE's assignment of its interests cannot, as a matter of law, create a new partner in an existing partnership because a partner "has no interest in partnership property which can be transferred, either voluntarily or involuntarily." W. Va. Code § 47B-5-1. Under RUPA, the "only transferable interest of a partner in the partnership is the partner's share of the profits and losses of the partnership and the partner's right to

[6] "'Partnership' means an association of two or more persons to carry on as co-owners a business for profit." W. Va. Code § 47B-1-1(7).

receive distributions." *Id.* § 47B-5-2. "A partner's management rights are expressly excluded." Donn, Rev. *Unif. P'ship Act.* § 502, Author's Comments. Thus, even where a partner's entire transferable interest is assigned, the assignee is not entitled "to participate in the management or conduct of the partnership business." *Id.*; W. Va. Code § 47B-5-3(a)(3).

That makes good sense because "[p]artnership is a voluntary relation of great interdependence, and partners are not forced to give an outsider a vote in management or a position as their agent." Donn, Rev. *Unif. P'ship Act.* § 502, Author's Comments. It allows partners to knowingly choose their partners and prevents unilateral creation of an unwanted partner through a backdoor transfer.

In short, it simply does not matter how many spin-off entities or holding companies a partner creates or how many of those entities it transfers all or some of its transferable partnership interest to. As a matter of law, NNE cannot unilaterally create a new partner to the Water System. That means that there were never more than two partners in this partnership—and thus, when the court ordered Pachira dissociated from the partnership, it necessarily should have been dissolved.[7]

[7] This is a major change effected by RUPA from prior partnership law. Donn, Rev. *Unif. P'ship Act.* § 501 ("[A] partner is not a co-owner of partnership property and has no interest in partnership property that can be transferred, either voluntarily or involuntarily. Thus, the section abolishes the UPA Section 25(1) concept of tenants in partnership and reflects the adoption of the entity theory. Partnership property is owned by the entity and not by the individual partners. See also Section 203, which provides that property transferred to or otherwise acquired by the partnership is property of the partnership and not of the partners individually.").

II. A Writ of Prohibition is necessary because Pachira is and will continue to be irreparably harmed by the court's clearly erroneous order as NNE misuses Partnership property for personal gain and to the detriment of Pachira.

A Writ of Prohibition is also warranted here because Pachira is suffering the irreparable harm this Court forewarned when it affirmed the lower court's entry of a preliminary injunction. Specifically, the Court noted that Pachira would suffer irreparable harm as a result of NNE "using partnership property for personal gain, to the future detriment of both the partnership and its partner." *Pachira Energy LLC*, 243 W. Va. at 367. In essence, the lower court's order permitted the very "phase out" NNE planned all along.

Indeed, instead of permitting Pachira to use the dissolution and wind-up procedures described in West Virginia Code § 47B-8-1, *et. seq.*, the lower court's order deprived it of the ability to participate in the operation, valuation and buy out of the Water System partnership property. Under West Virginia Code § 47B-8-1, partners in a dissolving partnership "may participate in winding up the partnership's business." Dissociation, on the other, deprives the dissociated partner of any meaningful opportunity to wind up a partnership's business, account for its assets, and ensure that it receives maximum value for its share. That is especially important now because, as the past has shown, it was exceedingly difficult for Pachira to get information regarding the Water System partnership when it was a

partner. Now that NNE no longer considers it a partner, that process promises to be nearly impossible.[8]

Unsurprisingly, NNE's refusal to allow Pachira to participate in winding up the partnership has gone poorly for Pachira. So poorly, in fact, that NNE offered to buy Pachira's stake in the water system for a paltry $2 million despite the fact that NNE estimated the water system's value exceeded $135 million and Pachira itself contributed $10 million to the water system.

Since November 2021, the Dissociation Order has deprived Pachira of the opportunity to protect its interests by participating in winding up partnership business. At the same time, the lower court's order improperly relieved NNE of its partnership duties. *See* W. Va. Code § 47B-8-2 (when a partnership is dissolved, it "continues after dissolution only for the purpose of winding up its business.").

The importance of continuing the partnership cannot be overstated. As this Court recognized, the duty of loyalty prevents a partner from "causing damages to the partnership . . . in the future." *Ne. Nat. Energy LLC*, 844 S.E.2d at 142. Now that it no longer considers Pachira a partner, NNE considers itself free to freeze Pachira out of partnership acquisitions (even though the parties' other ventures demand that NNE offer Pachira a chance to participate) and prevent it from accessing critical information regarding the water system.

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[8] Indeed, during this litigation, NNE took (improper) steps to prevent Pachira from reviewing documents detailing partnership information. It improperly attempted to cloak tens of thousands of documents in "Attorney's Eyes Only" protection—when many of those documents should have been viewable by Pachira outside of the litigation context due to its status as a partner.

For example, NNE has refused to allow Pachira the opportunity to participate in the acquisition of right-of-way and easements in the AMI near jointly-owned well pads. *See* AR001802-1803. In essence, NNE is now free to cause the very harm Pachira brought this suit to prevent. This reality—in conjunction with the Court's previous order affirming the preliminary injunction—shows that Pachira and the Water System will suffer irreparable harm if the lower court's order stands uncorrected. The lower court's order requires reversal so that Pachira is adequately protected through the dissolution process.

For these reasons, Pachira has no other adequate means to obtain the desired relief and will continue to be irreparably harmed in ways that are not correctable on an appeal after final judgment. Thus, the first two *Hill* factors also counsel in favor of granting Pachira's Petition. Syl. Pt. 1, *Hill*, 214 W. Va. 760, 591 S.E.2d 318.

III. The Court should grant Plaintiff's petition to correct the lower court's manifest disregard for substantive law, clarify the scope of equitable relief vis-à-vis the pleadings and statutory authority, and provide guidance on dissolution and dissociation under RUPA.

Finally, the fourth and fifth *Hill* factors support granting Pachira's Petition because the lower court's order "manifests persistent disregard for . . . substantive law" and the misapplication of RUPA "raises new and important problems or issues of law of first impression." Syl. Pt. 1, *Hill*, 214 W. Va. 760, 591 S.E.2d 318.

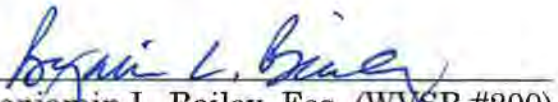
As explained above, the court in two successive orders ignored clear statutory authority in its application of RUPA to the partnership here. This case also presents an issue of first impression for this court, as RUPA has not been written on extensively by this Court and the guidance on its application is limited. RUPA is

complicated, but also precise and important. Although the lower court's legal errors and misapplication of substantive law are clear based on the statute and RUPA commentary, this issue of first impression presents an opportunity to provide judicial guidance on several important issues: (1) whether a court exceeds its legitimate powers and abuses its discretion by fashioning equitable relief that no party requested and that directly contravenes binding statutory authority, (2) whether a court can order dissociation without dissolution without making the requisite findings of fact, (3) whether any partnership related to developing oil and gas is necessarily a partnership for a particular undertaking because the gas or oil might eventually run out, and (4) whether assignment of a partner's transferable interest makes the assignee an additional partner. For these additional reasons, the Court should grant Pachira's Petition and resolve these unsettled issues.

CONCLUSION

For the foregoing reasons, the Court should grant Pachira's Petition for Writ of Prohibition to correct the errors made below.

Respectfully submitted,



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I hereby certify that on the 13th day of March, 2023, I filed ***Pachira Energy LLC's Petition for Writ of Prohibition*** via the File and ServeXpress system upon the following counsel of record:

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