

FILED

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

GREENBRIER HOTEL CORPORATION,
a West Virginia corporation; and THE
GREENBRIER SPORTING CLUB, INC., a
West Virginia corporation,

2015 JUN -5 PM 3:53

CATHY S. GATSON, CLERK
KANAWHA COUNTY CIRCUIT COURT

Plaintiffs,

v.

Civil Action No. 15-C-562
Judge Kaufman

MARSH & MCLENNAN AGENCY LLC, a
limited liability company; THOMAS
RUTHERFOORD, INC., a Virginia corporation;
RUTHERFOORD INTERNATIONAL, INC.,
a Virginia corporation; RUTHERFOORD
FINANCIAL SERVICES, INC., a Virginia
corporation; RUTHERFOORD BENEFIT
SERVICES, INC., a Virginia corporation;
BENEFIT ASSISTANCE CORPORATION,
a West Virginia corporation; ROMEO
CONSULTING, INC.; and RICHARD
ROMEO,

Defendants.

Answer on Behalf of Benefit Assistance Corporation

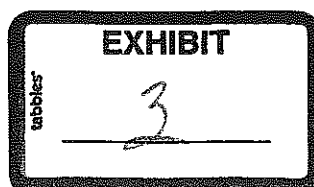
First Defense

Plaintiffs' complaint fails to state a claim upon which relief can be granted pursuant to Rule 12(b)(6) of the West Virginia Rules of Civil Procedure.

Second Defense

In response to the specific allegations set forth in plaintiffs' complaint, defendant Benefit Assistance Corporation answers and states as follows:

1. Benefit Assistance Corporation admits the allegations set forth in paragraph 1 of plaintiffs' complaint upon information and belief.



2. Benefit Assistance Corporation is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 2 of plaintiffs' complaint.

3. Benefit Assistance Corporation is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 3 of plaintiffs' complaint.

4. Benefit Assistance Corporation is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 4 of plaintiffs' complaint.

5. Benefit Assistance Corporation is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 5 of plaintiffs' complaint.

6. Benefit Assistance Corporation is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 6 of plaintiffs' complaint.

7. Benefit Assistance Corporation admits the allegations set forth in paragraph 7 of plaintiffs' complaint.

8. Benefit Assistance Corporation is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 8 of plaintiffs' complaint.

9. Benefit Assistance Corporation is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 9 of plaintiffs' complaint.

10. Benefit Assistance Corporation denies the allegations set forth in paragraph 10 of plaintiffs' complaint.

11. Benefit Assistance Corporation denies the allegations set forth in paragraph 11 of plaintiffs' complaint.

12. Benefit Assistance Corporation is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 12 of plaintiffs' complaint.

13. Benefit Assistance Corporation denies the allegations set forth in paragraph 13 of plaintiffs' complaint.

14. Benefit Assistance Corporation denies the allegations set forth in paragraph 14 of plaintiffs' complaint.

15. Benefit Assistance Corporation denies the allegations set forth in paragraph 15 of plaintiffs' complaint.

16. Benefit Assistance Corporation denies the allegations set forth in paragraph 16 of plaintiffs' complaint.

17. Benefit Assistance Corporation denies the allegations set forth in paragraph 17 of plaintiffs' complaint.

18. Benefit Assistance Corporation denies the allegations set forth in paragraph 18 of plaintiffs' complaint.

19. Benefit Assistance Corporation is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 19 of plaintiffs' complaint.

20. Benefit Assistance Corporation is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 20 of plaintiffs' complaint.

21. Benefit Assistance Corporation denies the allegations set forth in paragraph 21 of plaintiffs' complaint.

22. Benefit Assistance Corporation denies the allegations set forth in paragraph 22 of plaintiffs' complaint.

23. Benefit Assistance Corporation denies the allegations set forth in paragraph 23 of plaintiffs' complaint.

24. Benefit Assistance Corporation denies the allegations set forth in paragraph 24 of plaintiffs' complaint.

25. Benefit Assistance Corporation denies the allegations set forth in paragraph 25 of plaintiffs' complaint.

26. Benefit Assistance Corporation denies the allegations set forth in paragraph 26 of plaintiffs' complaint.

27. Benefit Assistance Corporation denies the allegations set forth in paragraph 27 of plaintiffs' complaint.

28. Benefit Assistance Corporation denies the allegations set forth in paragraph 28 of plaintiffs' complaint.

29. Benefit Assistance Corporation denies the allegations set forth in paragraph 29 of plaintiffs' complaint.

30. Benefit Assistance Corporation denies the allegations set forth in paragraph 30 of plaintiffs' complaint.

COUNT I

31. Benefit Assistance Corporation incorporates by reference its responses to each of the allegations contained in paragraphs 1 through 30 of plaintiffs' complaint as if fully set forth herein.

32.¹ Benefit Assistance Corporation denies the allegations set forth in paragraph 27 of plaintiffs' complaint.

33. Benefit Assistance Corporation denies the allegations set forth in paragraph 28 of plaintiffs' complaint.

¹ Plaintiffs' complaint contains a numbering error.

34. Benefit Assistance Corporation denies the allegations set forth in paragraph 29 of plaintiffs' complaint.

COUNT II

35. Benefit Assistance Corporation incorporates by reference its responses to each of the allegations contained in paragraphs 1 through 29 of plaintiffs' complaint as if fully set forth herein.

36. Benefit Assistance Corporation denies the allegations set forth in paragraph 34 of plaintiffs' complaint.

37. Benefit Assistance Corporation denies the allegations set forth in paragraph 35 of plaintiffs' complaint.

38. Benefit Assistance Corporation denies the allegations set forth in paragraph 36 of plaintiffs' complaint.

39. Benefit Assistance Corporation denies the allegations set forth in paragraph 37 of plaintiffs' complaint.

40. Benefit Assistance Corporation denies the allegations set forth in paragraph 38 of plaintiffs' complaint.

COUNT III

41. Benefit Assistance Corporation incorporates by reference its responses to each of the allegations contained in paragraphs 1 through 38 of plaintiffs' complaint as if fully set forth herein.

42. Benefit Assistance Corporation denies the allegations set forth in paragraph 40 of plaintiffs' complaint.

43. Benefit Assistance Corporation denies the allegations set forth in paragraph 41 of plaintiffs' complaint.

44. Benefit Assistance Corporation denies the allegations set forth in paragraph 42 of plaintiffs' complaint.

45. Benefit Assistance Corporation denies the allegations set forth in paragraph 43 of plaintiffs' complaint.

46. Benefit Assistance Corporation denies the allegations set forth in paragraph 44 of plaintiffs' complaint.

47. Benefit Assistance Corporation denies the allegations set forth in paragraph 45 of plaintiffs' complaint.

48. Benefit Assistance Corporation denies the allegations set forth in paragraph 46 of plaintiffs' complaint.

Third Defense

Plaintiffs' alleged damages, if any, were not proximately caused by any act or omission of Benefit Assistance Corporation but by the intervening acts or omissions of other persons or entities for whose actions Benefit Assistance Corporation is not legally responsible or vicariously liable, inasmuch as Benefit Assistance Corporation did not advise plaintiffs with regard to the expected costs of the health plan(s) sponsored by plaintiffs for the time period(s) complained therein, and instead served only as claims administrator for such plan(s).

Fourth Defense

Plaintiffs' complaint is barred because Benefit Assistance Corporation specifically alleges that it provided its services in conformity with the usual customs and practices of the industry, and having fully performed its services in compliance with these standards, Benefit Assistance Corporation is not liable to plaintiffs under any legal theory.

Fifth Defense

Plaintiffs' complaint is barred inasmuch as Benefit Assistance Corporation specifically alleges that it provided its services in conformity with any and all requirements of

any contract with plaintiffs, and having fully performed its services in compliance with such contract, Benefit Assistance Corporation is not liable to plaintiffs under any legal theory.

Sixth Defense

Plaintiffs' complaint against Benefit Assistance Corporation is barred in that Benefit Assistance Corporation, at all times, acted reasonably and prudently in accordance with the then existing standard of care of a health plan claims administrator required under the same or similar circumstances.

Seventh Defense

Benefit Assistance Corporation, at all times, exercised the skill, care and diligence ordinarily exercised by entities similarly situated, and performed any and all actions, tasks and obligations required of a health plan claims administrator.

Eighth Defense

Plaintiffs, by their actions, have waived, released, settled, discharged, ratified, entered into an accord and satisfaction, and/or are estopped and/or prohibited by the applicable statute of limitations and the equitable doctrine of laches from maintaining this action against Benefit Assistance Corporation, because throughout the time period in which Benefit Assistance Corporation served as claims administrator for certain health plan(s) sponsored by plaintiffs and thereafter, plaintiffs continued to operate the health plan(s) in the same or similar manner.

Ninth Defense

Plaintiffs' complaint is barred by the affirmative defense of comparative fault and/or comparative negligence.

Tenth Defense

Benefit Assistance Corporation invokes the doctrine of comparative assumption of risk and alleges that the fault of plaintiffs must be compared to the fault, if any, of Benefit Assistance Corporation and any other alleged tortfeasors and that any recovery by plaintiffs must be reduced by the corresponding degree of fault of plaintiffs.

Eleventh Defense

To the extent plaintiffs have failed to mitigate their damages, if any, their claims are barred.

Twelfth Defense


Benefit Assistance Corporation asserts each and every other matter which constitutes a defense to this action. Benefit Assistance Corporation reserves the right to plead and assert defenses listed under Rule 8(c) of the West Virginia Rules of Civil Procedure, or any other matter constituting an avoidance or affirmative defense, if and when such is warranted as a result of discovery or otherwise.

WHEREFORE, Benefit Assistance Corporation demands that the plaintiffs' complaint against it be dismissed, with prejudice, and that this defendant be awarded its costs and expenses, including attorneys' fees expended herein.

DEFENDANT, BENEFIT ASSISTANCE CORPORATION, DEMANDS A TRIAL BY JURY.

BENEFIT ASSISTANCE CORPORATION

By Counsel


Gerard R. Stowers (WVSB 3633)
Lenna R. Chambers (WVSB 10337)
BOWLES RICE LLP
600 Quarrier Street (25301)
Post Office Box 1386
Charleston, West Virginia 25325-1386
(304) 347.1100

Certificate of Service

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FBCEP1

I, Lenna R. Chambers, do hereby certify that I have caused a copy of the hereto attached **Answer on Behalf of Benefit Assistance Corporation** to be served upon,

CATHY S. GATSON, CLERK
KANAWHA COUNTY CIRCUIT COURT

Marvin W. Masters
The Masters Law Firm lc
181 Summers Street
Charleston, West Virginia 25301
Counsel for Plaintiffs

by placing the same in the regular United States Mail, postage prepaid, on this 5th day of June 2015.

Lenna R. Chambers
Lenna R. Chambers (WVSB 10337)

CIVIL COVER SHEET

PLAINTIFF: GREENBRIER HOTEL CORPORATION, et al.
v. CIVIL ACTION NO.: 15-C-562
DEFENDANT: MARSH & MCLENNAN AGENCY LLC, ET AL.

This document filed with Answer on Behalf of Defendant Benefit Assistance Corporation

II. TYPE OF CASE:


TORTS	OTHER	CIVIL
Asbestos	Adoption	Appeal from Magistrate
Professional Malpractice	Contract	Petition for Modification of Magistrate Sentence
Personal Injury	Real Property	Miscellaneous Civil
Product Liability	Mental Health	Other:
Other Tort	Appeal of Administrative Agency	

III. JURY DEMAND: Yes
CASE WILL BE READY FOR TRIAL BY (Month/Year): June 2016

IV. DO YOU OR ANY OF YOUR CLIENTS OR WITNESSES IN THIS CASE REQUIRE SPECIAL ACCOMMODATIONS DUE TO A DISABILITY OR AGE? NO
IF YES, PLEASE SPECIFY:

Wheelchair accessible hearing room and other facilities
Interpreter of another auxiliary aid for the hearing impaired
Reader or other auxiliary aid for the visually impaired
Spokesperson or other auxiliary aid for the speech impaired
Other:

Attorney: Lenna R. Chambers
Firm: Bowles Rice LLP
Address: P. O. Box 1386, Charleston, WV 25325-1386
Telephone: (304) 347-1100
Representing: Benefit Assistance Corporation


Lenna R. Chambers (WVSB 10337)

Dated: June 5, 2015