

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,

Plaintiffs,

v.

Civil Action No. 15-C-562
Judge Tod J. Kaufman

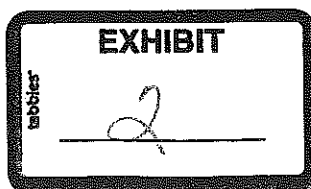
MARSH & MCLENNAN AGENCY LLC, a
limited liability company; THOMAS
RUTHERFOORD, INC., a Virginia corporation;
RUTHERFOORD INTERNATIONAL, INC., a
Virginia corporation; RUTHERFOORD
FINANCIAL SERVICES, INC., a Virginia
corporation; RUTHERFOORD BENEFIT
SERVICES, INC., a Virginia corporation;
BENEFIT ASSISTANCE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

Defendants.

ANSWER OF MARSH & MCLENNAN AGENCY, LLC, THOMAS RUTHERFOORD, INC.,
RUTHERFOORD INTERNATIONAL, INC., RUTHERFOORD FINANCIAL SERVICES, INC.,
AND RUTHERFOORD BENEFIT SERVICES, INC

Come now the Defendants, Marsh & McLennan Agency, LLC, Thomas Rutherford, Inc.,
Rutherford International, Inc, Rutherford Financial Services, Inc., and Rutherford Benefit
Services, Inc. (sometimes collectively referred to as "the Rutherford Defendants"), by counsel,
and respond to the allegations contained in Plaintiffs' Complaint as follows:

1. The Rutherford Defendants admit the allegations in Paragraph 1 to the extent the
Greenbrier Hotel Corporation and the Greenbrier Sporting Club, Inc. are West Virginia
corporations, and that the Greenbrier Hotel Corporation operates the Greenbrier Hotel in White
Sulphur Springs, West Virginia. The Rutherford Defendants are without sufficient knowledge
and information to form a belief as to the truth of the remaining allegations contained in
Paragraph 1.



2. The Rutherford Defendants admit the allegations in Paragraph 2 to the extent the Greenbrier employs a significant amount of employees, and that some of those employees were provided with a self-funded employee healthcare plan from approximately 2010 until 2013. The Rutherford Defendants are without sufficient knowledge and information to form a belief as to the truth of the remaining allegations contained in Paragraph 2.

3. The Rutherford Defendants admit the allegations in Paragraph 3 to the extent the Rutherford entities are Virginia Corporations. Defendant, Rutherford Benefit Services, Inc., further admits that it consults with employers and assists them with creating and implementing employee benefit plans throughout the mid-Atlantic and Southeast region. Rutherford Benefit Services, Inc. also admits that it was acting on its own behalf when it provided consulting services to Plaintiffs. Defendant, Marsh & McLennan Agency, LLC, further admits that it is a Delaware Limited Liability Company, and that it acquired Thomas Rutherford, Inc. in 2010. The Rutherford Defendants deny all remaining allegations in Paragraph 3 not specifically admitted.

4. The Rutherford Defendants admit the allegations in Paragraph 4 in that Marsh & McLennan Agency, LLC is an insurance broker that operates nationwide. The Rutherford Defendants deny all remaining allegations in Paragraph 4 not specifically admitted.

5. The Rutherford Defendants admit the allegations in Paragraph 5 that Marsh & McLennan Agency, LLC acquired Thomas Rutherford, Inc. in March 2010, and that the advertising materials of Thomas Rutherford, Inc. state that it is a Marsh & McLennan Agency LLC company. The Rutherford Defendants deny all remaining allegations in Paragraph 5 not specifically admitted.

6. In response to the allegations in Paragraph 6, the Rutherford Defendants state that the allegations constitute legal conclusions to which a response is not required. To the extent a response is deemed necessary, the Rutherford Defendants deny the allegations contained in Paragraph 6.

7. In response to the allegations in Paragraph 7, the Rutherford Defendants state the allegations contained therein relate to other parties and, therefore, no response is required. To the extent a response is deemed necessary, the Rutherford Defendants admit, upon information and belief, that BAC is a West Virginia corporation that administers self-funded employee healthcare plans. The Rutherford Defendants deny all remaining allegations in Paragraph 7 not specifically admitted.

8. In response to the allegations in Paragraph 8, the Rutherford Defendants state the allegations contained therein relate to other parties and, therefore, no response is required. To the extent a response is deemed necessary, the Rutherford Defendants admit, upon information and belief, that Mr. Romeo is an insurance agent in West Virginia. The Rutherford Defendants deny all remaining allegations in Paragraph 8 not specifically admitted.

9. In response to the allegations in Paragraph 9, the Rutherford Defendants state the allegations contained therein relate to other parties and, therefore, no response is required. To the extent a response is deemed necessary, the Rutherford Defendants are without sufficient knowledge and information to form a belief as to the truth of the remaining allegations contained in Paragraph 9.

10. In response to the allegations in Paragraph 10, the Rutherford Defendants state the allegations contained therein relate to other parties and, therefore, no response is required. To the extent a response is deemed necessary, the Rutherford Defendants admit, upon information and belief, that BAC is a West Virginia corporation that administers self-funded employee healthcare plans. The Rutherford Defendants deny all remaining allegations in Paragraph 10 not specifically admitted.

11. In response to the allegations in Paragraph 11, the Rutherford Defendants deny that they purchased or administered the Greenbrier's self-funded employee healthcare plan. In further response, the Rutherford Defendants admit that BAC administered the Greenbrier's self-funded employee healthcare plan from approximately 2010 through 2013. The Rutherford Defendants deny all remaining allegations in Paragraph 11 not specifically admitted.

12. The Rutherford Defendants deny the allegations in Paragraph 12.
13. The Rutherford Defendants deny the allegations in Paragraph 13.
14. The Rutherford Defendants admit the allegations in Paragraph 14 in that Rutherford Benefit Services, Inc. consulted with the Greenbrier from approximately 2009 through 2013 regarding the creation, implementation, and renewal of the Greenbrier's self-funded employee healthcare plan. The Rutherford Defendants deny all remaining allegations in Paragraph 14 not specifically admitted.
15. The Rutherford Defendants admit the allegations in Paragraph 15 in that Rutherford Benefit Services, Inc. consulted with the Greenbrier from approximately 2009 through 2013 regarding the creation, implementation, and renewal of the Greenbrier's self-funded employee healthcare plan. The Rutherford Defendants deny all remaining allegations in Paragraph 15 not specifically admitted.
16. The Rutherford Defendants admit the allegations in Paragraph 16 in that Rutherford Benefit Services, Inc. consulted with the Greenbrier from approximately 2009 through 2013 regarding the creation, implementation, and renewal of the Greenbrier's self-funded employee healthcare plan, and further admit that Rutherford Benefit Services, Inc. was compensated for its services. The Rutherford Defendants deny all remaining allegations in Paragraph 16 not specifically admitted.
17. The Rutherford Defendants admit the allegations in Paragraph 17 in that the Greenbrier's self-funded employee healthcare plan went into effect in 2010, and that this plan covered the Greenbrier's eligible non-union employees. The Rutherford Defendants deny all remaining allegations in Paragraph 17 not specifically admitted.
18. The Rutherford Defendants deny the allegations in Paragraph 18.
19. The Rutherford Defendants admit the allegations in Paragraph 19 in that Rutherford Benefit Services, Inc. represented to the public and to plaintiffs that it was knowledgeable concerning employee benefit plans, including the creation and implementation of self-funded employee healthcare plans, and that it had experience, resources, service, and strategic

approach, including a proactive management plan. The Rutherford Defendants deny all remaining allegations in Paragraph 19 not specifically admitted.

20. The Rutherford Defendants admit the allegations in Paragraph 20.

21. The Rutherford Defendants admit the allegations in Paragraph 21 in that Rutherford Benefit Services, Inc. would periodically meet with representatives of the Plaintiffs and would also make a renewal presentation that included appropriate claims and cost information for the Plaintiffs to consider in deciding whether to renew, modify, expand, or cancel the self-funded employee health care plan, including the terms and conditions. The Rutherford Defendants deny all remaining allegations in Paragraph 21 not specifically admitted.

22. The Rutherford Defendants admit the allegations in Paragraph 22 in that the Plaintiffs utilized a self-funded employee health care plan and paid for Rutherford Benefit Services, Inc.'s services. The Rutherford Defendants deny all remaining allegations in Paragraph 22 not specifically admitted.

23. The Rutherford Defendants admit the allegations in Paragraph 23 in that Rutherford Benefit Services, Inc. provided regular updates to Plaintiffs regarding plan costs and claims information. The Rutherford Defendants deny all remaining allegations in Paragraph 23 not specifically admitted.

24. In response to the allegations in Paragraph 24 relating to legal duty, the Rutherford Defendants state that said allegations constitute a legal conclusion to which no response is required. In response to the allegations not relating to legal duty, the Rutherford Defendants admit that Rutherford Benefit Services, Inc. reviewed benefits, claims, costs, network fees, and discounts, and provided general consulting services regarding the Plaintiffs' self-funded employee healthcare plan. The Rutherford Defendants deny all remaining allegations in Paragraph 24 not specifically admitted.

25. In response to the allegations in Paragraph 25 relating to legal duty, the Rutherford Defendants state that said allegations constitute a legal conclusion to which no response is required. In response to the allegations not relating to legal duty, the Rutherford Defendants

admit that Rutherford Benefit Services, Inc. provided accurate information regarding the cost of the Plaintiffs' self-funded employee healthcare plan. The Rutherford Defendants deny all remaining allegations in Paragraph 25 not specifically admitted.

26. In response to the allegations in Paragraph 26 relating to legal duty, the Rutherford Defendants state that said allegations constitute a legal conclusion to which no response is required. In response to the allegations not relating to legal duty, the Rutherford Defendants admit that Rutherford Benefit Services, Inc. provided accurate information regarding the cost of the Plaintiffs' self-funded employee healthcare plan. The Rutherford Defendants deny all remaining allegations in Paragraph 26 not specifically admitted.

27. In response to the allegations in Paragraph 27 relating to legal duty, the Rutherford Defendants state that said allegations constitute a legal conclusion to which no response is required. In response to the allegations not relating to legal duty, the Rutherford Defendants admit that Rutherford Benefit Services, Inc. reviewed claim costs, network costs, reinsurance costs and expenses to provide regular and accurate cost information to Plaintiffs. The Rutherford Defendants deny all remaining allegations in Paragraph 27 not specifically admitted.

28. The Rutherford Defendants deny the allegations in Paragraph 28.

29. The Rutherford Defendants deny the allegations in Paragraph 29.

30. The Rutherford Defendants admit the allegations in Paragraph 30 in that the subject plan terminated on December 31, 2013. The Rutherford Defendants deny all remaining allegations in Paragraph 30 not specifically admitted.

COUNT I

31. The Rutherford Defendants repeat and reassert the responses to Paragraphs 1 through 30 as if fully set forth herein verbatim.

32. The Rutherford Defendants admit the allegations in Paragraph 32 (erroneously designated as Paragraph 27), in that Rutherford Benefit Services, Inc. consulted with the Plaintiffs regarding creating and implementing the Plaintiffs' self-funded employee healthcare

plan, and that Rutherford Benefit Services, Inc. reviewed claim costs, network costs, reinsurance costs and expenses to provide regular and accurate cost information to Plaintiffs. The Rutherford Defendants deny all remaining allegations in Paragraph 32 not specifically admitted.

33. The Rutherford Defendants deny the allegations in Paragraph 33 (erroneously designated as Paragraph 28).

34. The Rutherford Defendants deny the allegations in Paragraph 34 (erroneously designated as Paragraph 29).

COUNT II

35. The Rutherford Defendants repeat and reassert the responses to Paragraphs 1 through 34 as if fully set forth herein verbatim.

36. The Rutherford Defendants deny the allegations in Paragraph 36 (erroneously designated as Paragraph 34).

37. The Rutherford Defendants admit the allegations in Paragraph 37 (erroneously designated as Paragraph 35), in that Rutherford Benefit Services, Inc. consulted with the Plaintiffs regarding creating and implementing the Plaintiffs' self-funded employee healthcare plan, and that Rutherford Benefit Services, Inc. reviewed claim costs, network costs, reinsurance costs and expenses to provide regular and accurate cost information to Plaintiffs. The Rutherford Defendants also state that all of these services were provided in a reasonable and proper manner. The Rutherford Defendants deny all remaining allegations in Paragraph 37 not specifically admitted.

38. The Rutherford Defendants admit the allegations in Paragraph 38 (erroneously designated as Paragraph 36), in that the Plaintiffs utilized a self-funded employee healthcare plan from 2010 through 2013. The Rutherford Defendants deny all remaining allegations in Paragraph 38 not specifically admitted.

39. The Rutherford Defendants deny the allegations in Paragraph 39 (erroneously designated as Paragraph 37).

40. The Rutherford Defendants deny the allegations in Paragraph 40 (erroneously designated as Paragraph 38).

COUNT III

41. The Rutherford Defendants repeat and reassert the responses to Paragraphs 1 through 40 as if fully set forth herein verbatim.

42. The Rutherford Defendants deny the allegations in Paragraph 42 (erroneously designated as Paragraph 40).

43. The Rutherford Defendants admit the allegations in Paragraph 43 (erroneously designated as Paragraph 41) in that Rutherford Benefit Services, Inc. consulted with the Plaintiffs regarding creating and implementing the Plaintiffs' self-funded employee healthcare plan, and that Rutherford Benefit Services, Inc. reviewed claim costs, network costs, reinsurance costs and expenses to provide regular and accurate cost information to Plaintiffs. The Rutherford Defendants deny all remaining allegations in Paragraph 43 not specifically admitted.

44. The Rutherford Defendants admit the allegations in Paragraph 44 (erroneously designated as Paragraph 42) in that the Plaintiffs utilized a self-funded employee healthcare plan from 2010 through 2013, and that Rutherford Benefits Services, Inc. was paid for its services. The Rutherford Defendants deny all remaining allegations in Paragraph 44 not specifically admitted.

45. The Rutherford Defendants deny the allegations in Paragraph 45 (erroneously designated as Paragraph 43).

46. The Rutherford Defendants deny the allegations in Paragraph 46 (erroneously designated as Paragraph 44), and further specifically state that all cost information was accurately presented.

47. The Rutherford Defendants deny the allegations in Paragraph 47 (erroneously designated as Paragraph 45).

48. The Rutherford Defendants deny the allegations in Paragraph 48 (erroneously designated as Paragraph 46).

49. The Rutherford Defendants deny that Plaintiffs are entitled to any relief contained in the *ad damnum* clause of the Complaint.

First Defense

The Complaint may fail to state a cause of action upon which relief may be granted.

Second Defense

All or a portion of the claims contained in the Complaint may be barred by the applicable statute of limitations.

Third Defense

To the extent applicable, the Rutherford Defendants assert the defenses of waiver and estoppel and the doctrine of unclean hands.

Fourth Defense

To the extent applicable, the Rutherford Defendants assert the defenses of comparative negligence and comparative assumption of risk.

Fifth Defense

Not being fully advised as to all of the facts and circumstances surrounding the allegations contained in the Complaint, the Rutherford Defendants hereby invoke and assert all other affirmative defenses which may prove applicable including, but not necessarily limited to, those specifically set forth in Rule 8(c) of the West Virginia Rules of Civil Procedure.

Sixth Defense

Plaintiffs failed to mitigate their damages, if any.

Seventh Defense

Plaintiffs' alleged damages are the result of Plaintiffs' own conduct, or by the conduct of its agents or representatives, or by the conduct of a person(s), firm(s), or corporation(s), other than the Rutherford Defendants, and was either the sole proximate cause or proximately contributed to the damages alleged sustained by Plaintiffs.

Eighth Defense

To the extent applicable, the Rutherford Defendants assert the defense of improper venue.

Ninth Defense

The Rutherford Defendants deny that Plaintiffs are entitled to a judgment against it and further deny that Plaintiffs are entitled to an award of attorneys' fees or costs as alleged in the Complaint.

Tenth Defense

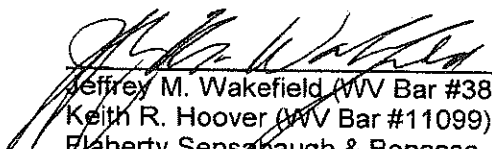
The Rutherford Defendants deny all allegations contained in the Complaint that were not expressly admitted.

Wherefore, the Rutherford Defendants pray that they have judgment entered in their favor together with such other and further relief as the Court may deem proper.

The Rutherford Defendants demand a trial by jury as to all issues so triable.

**MARSH & MCLENNAN AGENCY LLC,
THOMAS RUTHERFOORD, INC.,
RUTHERFOORD INTERNATIONAL, INC.,
RUTHERFOORD FINANCIAL SERVICES,
INC., and RUTHERFOORD BENEFIT
SERVICES, INC.**

By Counsel,



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Counsel for Defendants

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2015 JUN -8 PM 2:39
CATHY S. GRIFFIN, CLERK
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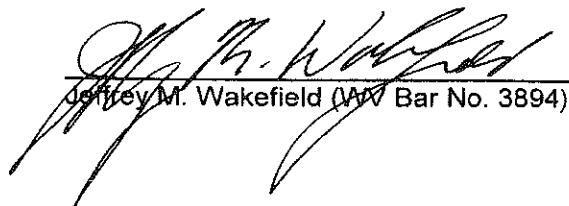
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SERVICES, INC., a Virginia corporation;
BENEFIT ASSISTANCE CORPORATION,
a West Virginia corporation; **ROMEO**
CONSULTING, INC.; and **RICHARD**
ROMEO,

Defendants.

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of June, 2015, a true and correct copy of the foregoing "Answer of Marsh & McLennan Agency, LLC, Thomas Rutherford, Inc., Rutherford International, Inc., Rutherford Financial Services, Inc., and Rutherford Benefit Services, Inc." was served via regular U.S. Mail, postage prepaid, to the following counsel of record:

Marvin W. Masters
The Masters Law Firm, Pc
181 Summers Street
Charleston, WV 25301
Counsel for Plaintiffs


Jeffrey M. Wakefield (WV Bar No. 3894)

PLAINTIFF: GREENBRIER HOTEL CORPORATION and THE GREENBRIER SPORTING CLUB, INC.

CASE NO. 15-C-562

DEFENDANT: MARSH & MCLENNAN AGENCY LLC; THOMAS RUTHERFOORD, INC.; RUTHERFOORD INTERNATIONAL, INC.; RUTHERFOORD FINANCIAL SERVICES, INC.; RUTHERFOORD BENEFIT SERVICES, INC.; BENEFIT ASSISTANCE CORPORATION; ROMEO CONSULTING, INC.; and RICHARD ROMEO,

2015 JUN -8 PM 2:39

CATHY S. FISHER, CLERK
KANAWHA COUNTY CIRCUIT COURT

II. TYPE OF CASE:

TORT	OTHER	CIVIL
<input type="checkbox"/> Asbestos	<input type="checkbox"/> Adoption	<input type="checkbox"/> Appeal from Magistrate Court
<input type="checkbox"/> Professional Malpractice	<input checked="" type="checkbox"/> Contract	<input type="checkbox"/> Petition for Modification of Magistrate Sentence
<input type="checkbox"/> Personal Injury	<input type="checkbox"/> Real Property	<input type="checkbox"/> Miscellaneous Civil
<input type="checkbox"/> Product Liability	<input type="checkbox"/> Mental Health	<input type="checkbox"/> Other
<input type="checkbox"/> Other Tort	<input type="checkbox"/> Appeal of Administrative Agency	

III. JURY DEMAND: ☒ Yes ☐ No

CASE WILL BE READY FOR TRIAL BY (Month/Year) Unknown at this time

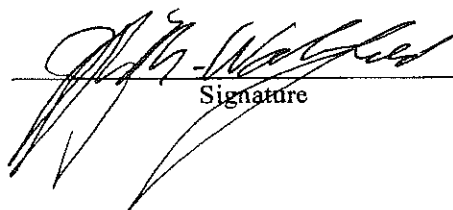
IV. DO YOU OR ANY OF YOUR CLIENTS OR WITNESSES IN THIS CASE REQUIRE SPECIAL ACCOMMODATIONS DUE TO A DISABILITY OR AGE? ☐ YES: ☒ NO: x


IF YES, PLEASE SPECIFY: None known at this time.

- ☐ Wheelchair accessible hearing room and other facilities
- ☐ Interpreter or other 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:

Jeffrey M. Wakefield (WV Bar No. 3894)
FLAHERTY SENSABAUGH BONASSO PLLC
P. O. Box 3843
Charleston, West Virginia 25338
(304) 345-0200

Representing:
Marsh & McLennan Agency, LLC, Thomas
Rutherford, Inc., Rutherford International, Inc.,
Rutherford Financial Services, Inc., and Rutherford
Benefit Services, Inc.


Signature

6/5/15 
Dated