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February 5, 2026

Via Federal Express

C. Casey Forbes, Clerk
Intermediate Court of Appeals of West Virginia
WV Judicial Tower
4700 MacCorkle Avenue, SE, Second Floor
Charleston WV 25304

Re: Gregory H Schillace, Petitioner
Vs. Horizon Ventures of West Virginia, Inc.
Intermediate Court No. 25-ICA-432

Dear Mr. Forbes:

Enclosed please find the original and one copy of the **APPENDIX PURSUANT TO RULE 7(e) OF THE WEST VIRGINIA RULES OF APPELLATE PROCEDURE**; and the original and ten copies of the **BRIEF OF THE PETITIONER, GREGORY H. SCHILLACE** together with a **CERTIFICATE** showing service of the same upon opposing counsel on this day, which we request be filed in the appropriate Court file.

Thank you for your time and consideration in this matter. If you have any questions or comments, please do not hesitate to contact me at your convenience.

Sincerely yours,

A handwritten signature in blue ink, appearing to read "G. Schillace", written over a horizontal line.

Gregory H. Schillace

GHS/jls
Enclosures

C. Casey Forbes, Clerk
February 5, 2026
Page 2

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NO. 25-ICA-432

IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

CHARLESTON

GREGORY H. SCHILLACE,
Petitioner

v. 25-ICA-432

HORIZON VENTURES OF WEST VIRGINIA, INC.
Respondent

FROM THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA
HONORABLE JOE SHAFFER, JUDGE

TO: THE HONORABLE JUSTICES OF THE SUPREME COURT OF APPEALS OF WEST
VIRGINIA

GREGORY H. SCHILLACE

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TABLE OF CONTENTS

STATEMENT OF THE KIND OF PROCEEDING AND NATURE OF THE RULING BELOW	1
SUMMARY OF ARGUMENT	3
ASSIGNMENTS OF ERROR.	4
STATEMENT OF FACTS.	4
STATEMENT REGARDING ORAL ARGUMENT	11
DISCUSSION.	11
A. <u>Standard of Review.</u>	11
B. <u>The Equitable Doctrines of Res Judicata and Collateral Estoppel Have No Application to This Civil Action.</u>	12
C. <u>The Doctrine of Judicial Estoppel Prevents the Respondent From Claiming Any Preclusive Effect From Civil Action No. 18-C-76.</u>	16
D. <u>The Doctrine of Unclean Hands Prevents the Respondent From Invoking the Equitable Doctrines of Collateral Estoppel and Res Judicata.</u>	18
CONCLUSION.	20

State Cases

<u>Allegheny Country Farms, Inc. v. Huffman,</u> 237 W.Va. 355, 787 S.E.2d 626 (2016).	19
<u>American Bituminous Power Partners, L.P. v.</u> <u>Horizon Ventures of West Virginia, Inc.,</u> 2015 WL 2261649 (W.Va. Sup.Ct. 2015).	4, 5
<u>American Bituminous Power Partners, L.P. v.</u> <u>Horizon Ventures of West Virginia, Inc.,</u> 248 W.Va. 572, 889 S.E.2d 294 (Ct. App. 2023).	4
<u>Bailey v. Banther,</u> 173 W.Va. 220, 314 S.E.2d 176 (1983).	19
<u>Bajada v. Crystal Lake Property Owners' Association,</u> 2024 WL 3581344 (W.Va. Ct.App. 2024).	11
<u>Baker v. Chemours Company FC, LLC,</u> 244 W.Va. 553, 855 S.E.2d 344 (2021).	14
<u>Bell v. Perkins,</u> 2021 WL 595415 (W.Va. Sup.Ct. 2021).	16
<u>Bison Interests, LLC. V. Antero Resources Corporation,</u> 244 W.Va. 391, 854 S.E.2d 211 (2020).	19
<u>Blake v. Charleston Area Medical Center, Inc.,</u> 201 W.Va. 469, 498 S.E.2d 41 (1997).	13
<u>Chalifoux v. West Virginia Department of Health and</u> <u>Human Resources,</u> 250 W.Va. 617, 906 S.E.2d 270 (2023).	15
<u>Charles WV Mall, LLC v. Charleston Urban Renewal</u> <u>Authority,</u> 248 W.Va. 565, 889 S.E.2d 287 (W.Va. App. 2023).	14
<u>Computer One, Inc. v. Grisham & Lawless P.A.,</u> 144 N.M. 424, P.3d 1175 (2008).	12
<u>Conley v. Spillers,</u> 171 W.Va.584, 301 S.E.2d 216 (1983).	14
<u>Dillon v. Board of Education of Mingo County,</u> 171 W.Va. 631, 301 S.E.2d 588 (1983).	17
<u>Gentry v. Farruggia,</u> 132 W.Va. 809, 53 S.E.2d 741 (1949).	13
<u>Gordon v. Jefferson County Commission,</u> 252 W.Va. 237, 921 S.E.2d 692 (2025).	11

<u>Green v. Schaffer</u> , 2024 WL 1256375 (W.Va. App. 2024)	14
<u>Hazeltine v. Keenan</u> , 54 W.Va. 600, 46 S.E.2d 609 (1904)	13
<u>Horizon Ventures of West Virginia, Inc. v. American Bituminous Power Partners, L.P.</u> , 245 W.Va. 1, 857 S.E.2d 33 (2021)	4
<u>Horizon Ventures of West Virginia, Inc. v. American Bituminous Power Partners, L.P.</u> , 246 W.Va. 374, 873 S.E.2d 905 (2022)	4
<u>Kapitus Servicing, Inc. v. Timberline Four Seasons Utilities, Inc.</u> , 249 W.Va. 70, 894 S.E.2d 547 (2023)	11, 12
<u>Northern Pueblos Enterprises v. Pueblo Electric & Refrigeration</u> , 98 N.M. 47, 644 P.2d 1036 (1982)	13
<u>Province v. Province</u> , 196 W.Va. 473, 473 S.E.2d 894 (1996)	19
<u>Soto v. Hope National Gas Co.</u> , 142 W.Va. 373, 95 S.E.2d 769 (1956)	14
<u>Springer v. Runyon</u> , 2024 WL 2273398 (W.Va. Sup.Ct. 2024)	18
<u>Trickett v. Laurita</u> , 223 W.Va. 357, 674 S.E.2d 218 (2009)	15
<u>West Virginia Department of Transportation, Division of Highways v. Robertson</u> , 217 W.Va. 497, 618 S.E.2d 506 (2005)	16, 17

Constitution, Statutes and Regulations

West Virginia Code §30-2-15	12, 14, 15, 16
---------------------------------------	----------------

Rules of Civil Procedure

West Virginia Rules of Civil Procedure Rule 5.2	2
West Virginia Rules of Civil Procedure Rule 12(b)(6)	2

Rules of Appellate Procedure

West Virginia Rules of Appellate Procedure Rule 19(a)	11
West Virginia Rules of Appellate Procedure Rule 7(e)	7

IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

CHARLESTON

GREGORY H. SCHILLACE,
Petitioner

v. 25-ICA-432

HORIZON VENTURES OF WEST VIRGINIA, INC.
Respondent

FROM THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA
HONORABLE JOE SHAFFER, JUDGE

BRIEF OF THE PETITIONER, GREGORY H. SCHILLACE

TO: THE HONORABLE JUSTICES OF THE INTERMEDIATE COURT OF APPEALS OF
WEST VIRGINIA

**I. Statement of the Kind of Proceeding
and Nature of the Ruling Below**

On January 27, 2025 the petitioner, Gregory H. Schillace, filed the underlying civil action seeking to collect attorney fees owed by and expenses advanced on behalf of the respondent. Appendix at 1 and 401. The petitioner provided legal representation to the respondent from on or about October 21, 2015 through on or about September 18, 2020. Appendix at 28 and 38.

The respondent was served with the summons and complaint through the West Virginia Secretary of State and prior to filing any responsive pleading, filed a Motion to Seal claiming information contained in the complaint was encompassed within the

attorney/client privilege. Appendix at 72. With no notice to the petitioner, the circuit court entered a Temporary Order Sealing Portions of the Case Record on February 24, 2025 approximately four and one half hours after the motion for protective order was filed. Appendix at 401.

The Temporary Order Sealing Portions of the Case Record sealed the entirety of the complaint and its attachment purportedly pursuant to Rule 5.2 of the West Virginia Rules of Civil Procedure. Appendix at 85. The petitioner was then provided with ten (10) calendar days (as opposed to business days) to respond to the motion. Appendix at 86.

On February 28, 2025 the respondent filed a motion to dismiss the complaint pursuant to Rule 12(b)(6) of the West Virginia Rules of Civil Procedure claiming the complaint was barred by the doctrine of collateral estoppel. Appendix at 88. On March 3, 2025 a second attorney and law firm entered an appearance on behalf of the respondent as co-counsel. Appendix at 200.

Prior to filing the motion to dismiss the respondent, on January 27, 2025 filed a Motion to File Defendant's Motion to Dismiss Plaintiff's Complaint Under Seal. Appendix at 401. On March 4, 2025 the circuit court entered an order temporarily granting, in part the motion of the defendant to file the motions to dismiss and exhibits under seal. Appendix at 203.

On March 6, 2025 the petitioner filed the response of the petitioner to the Emergency Motion to Seal of the Defendant.

Appendix at 207. On March 11, 2025 the petitioner filed the response to the motion of the respondent to file its motion to dismiss under seal. Appendix at 226.

The respondent submitted its reply to the response of the petitioner to the Emergency Motion to Seal on March 13, 2025. Appendix at 234. The petitioner responded to the motion to dismiss on March 19, 2025. Appendix at 242.

On March 26, 2025 the respondent filed a reply to the response of the petitioner regarding the motion to dismiss. Appendix at 266. The circuit court entered an order on May 13, 2025 scheduling a hearing regarding the motion to dismiss for May 22, 2025. Appendix at 322.

The respondent filed a motion to continue the May 22, 2025 hearing on May 14, 2025. Appendix at 325. The circuit court, on May 15, 2025, entered an order rescheduling the hearing regarding the motion to dismiss for May 27, 2025. Appendix at 329.

On October 6, 2025 the circuit court entered an order granting the motion of the respondent to dismiss the complaint. Appendix at 331. The twenty-nine (29) page final order concluded that the doctrine of collateral estoppel barred the complaint. Appendix at 331.

II. Summary of Argument

The denial of the attorney charging lien in one of the actions in which the petitioner represented he respondent for a small percentage of the attorney fees owed by the respondent to the

petitioner can not as a matter of law operate as res judicata to the underlying civil action to recover the entirety of the attorney fees owed and unreimbursed expenses. The elements of res judicata and collateral estoppel do not exist to bar the underlying civil action.

III. Assignments of Error

I. The equitable doctrines of res judicata and collateral estoppel have no application to this civil action.

II. The doctrine of judicial estoppel prevents the respondent from claiming any preclusive effect from Civil Action No. 18-C-76.

III. The doctrine of unclean hands prevents the respondent from invoking the equitable doctrines of collateral estoppel and res judicata.

IV. Statement of Facts

On or about October 21, 2015 the petitioner, Gregory H. Schillace, was retained to represent the respondent with respect to the contentious relationship between the respondent and American Bituminous Power Partners, L.P. related to their contractual relationship involving the lease of the Grant Town Power Plant real property¹. Appendix at 21. At the time the petitioner was retained

¹The relationship between the respondent and its tenant, American Bituminous Power Partners, L.P. has been the subject of at least four (4) circuit court civil actions; three (3) proceedings before the West Virginia Supreme Court of Appeals; and, one (1) proceeding before this Court. American Bituminous Power Partners, L.P. v. Horizon Ventures of West Virginia, Inc., 2015 WL 2261649 (W.Va. Sup.Ct. 2015); Horizon Ventures of West Virginia, Inc. v. American Bituminous Power Partners, L.P., 245 W.Va. 1, 857 S.E.2d 33 (2021); Horizon Ventures of West Virginia, Inc. v. American Bituminous Power Partners, L.P., 246 W.Va. 374, 873 S.E.2d 905 (2022); American Bituminous Power Partners, L.P. v. Horizon Ventures of West Virginia, Inc., 248 W.Va. 572, 889 S.E.2d 294 (Ct. App. 2023).

to represent the respondent, the civil action styled: Horizon Ventures of West Virginia, Inc. v. American Bituminous Power Partners, L.P. et al., Civil Action No. 13-C-196G, Circuit Court of Ohio County, West Virginia, was already pending with a motion for summary judgment granted by the Circuit Court in favor of the respondent being reversed by the West Virginia Supreme Court of Appeals and the action transferred to the Business Court Division of the Ohio County Circuit Court. American Bituminous Power Partners, L.P. v. Horizon Ventures of West Virginia, Inc., 2015 WL 2261649 (W.Va. Sup.Ct. 2015). Appendix at 29.

After terminating the attorney who filed Civil Action No. 13-C-196G on behalf of the respondent and represented it through the 2015 appeal, the president of the respondent, Stanley M. Sears, executed a Contingent Fee Contract on behalf of the respondent, Horizon Ventures of West Virginia, Inc., with the petitioner on or about October 21, 2015, obligating the respondent to pay attorney fees and reimburse advanced expenses to the petitioner. Appendix at 21. The petitioner continued to represent the respondent up through and including September 16, 2020, providing services to the respondent valued at three hundred eleven thousand nine hundred twenty-five dollars and sixty-seven cents (\$311,925.67) and advancing expenses of seventeen thousand two hundred twenty-three dollars and seventy cents (\$17,223.70) during the five (5) year period of representation. Appendix at 38-40.

Civil Action No. 13-C-196G proceeded through protracted

litigation with the Circuit Court concluding in the Order of September 5, 2017 that the respondent contracted away its right to seek rent until certain debt owed by American Bituminous Power Partners, L.P. to third party financial institutions was paid. Appendix at 53-56. The September 5, 2017 Order granting summary judgment was without prejudice regarding issues related to the rent owed to the respondent with the remaining issues unrelated to rent owed by American Bituminous to Horizon Ventures set to be tried by a jury. Appendix at 53.

The remainder of Civil Action No. 13-C-196G was tried to a jury in Ohio County Circuit Court, Business Court Division, on two (2) separate occasions with the first resulting in a mistrial due to discovery misconduct of American Bituminous. Appendix at 107. The second trial was conducted on March 19 and 20, 2018, with the jury finding that the respondent was not responsible for in excess of \$500,000.00 of reclamation costs claimed to be owed to American Bituminous Power Partners, L.P. Appendix at 54-56.

This elimination of the claimed reclamation debt claimed by American Bituminous as a result of the jury verdict in favor of the respondent is a thing of value recovered by the respondent pursuant to the Contingent Fee Contract with the petitioner. Appendix at 21. The representation of the respondent by the petitioner continued uninterrupted after the jury's verdict; post trial motions; the filing of the notice of appeal by American Bituminous; as well as preparation to file suit upon satisfaction of the debt owed to

third party financial institutions which precluded recovery in Civil Action No. 13-C-196G. Appendix at 56-62.

American Bituminous Power Partners, L.P. filed the notice of appeal and the West Virginia Supreme Court of Appeals entered a scheduling order requiring any transcripts to be filed by August 20, 2018; the appendix be designed pursuant to Rule 7(e) of the West Virginia Rules of Appellate Procedure on or before August 20, 2018; the appeal perfected by the filing of the appellant's brief on or before October 1, 2018; and, the respondent's brief due on or before November 15, 2018. Appendix at 108. Prior to perfecting its appeal, American Bituminous withdrew its notice of appeal, resulting in the verdict in favor of the respondent being final, however, American Bituminous Power Partners, L.P. had already filed another lawsuit for which the petitioner provided representation to the respondent. Appendix at 108-109.

On or about August 27, 2018 American Bituminous Power Partners, L.P. filed the civil action styled: American Bituminous Power Partners, L.P. v. Horizon Ventures of West Virginia Inc., Civil Action No. 18-C-130, Circuit Court of Marion County, West Virginia. Appendix at 109. Although filed on August 27, 2018, service of the summons and complaint through the West Virginia Secretary of State was not accomplished until December 14, 2018. Appendix at 109.

The petitioner maintained detailed time records regarding the representation of the respondent, an example of which was an

exhibit presented to the trial court. Appendix at 124. During January 2019, the petitioner was requested by Stanley S. Sears, President of the respondent, to represent the respondent in the civil action styled: Horizon Ventures of West Virginia, Inc. v. American Bituminous Power Partners, L.P., Civil Action No.: 18-C-76, Circuit Court of Marion County, West Virginia. Appendix at 109.

Civil Action No. 18-C-76 had been filed by a law firm other than the petitioner, however, after a motion for summary judgment was granted against the respondent, with the ruling announced at a December 6, 2018 hearing and memorized in a written order of January 30, 2019, the respondent requested the petitioner to prosecute the appeal of the Circuit Court Order to the West Virginia Supreme Court of Appeals. Appendix at 110. The petitioner agreed to undertake the appeal of Civil Action No. 18-C-76 on the same terms and conditions as the ongoing, continuing representation of the respondent. Appendix at 110.

By correspondence of November 12, 2018 the petitioner confirmed that the continued representation of the respondent in all matters was on a contingent fee basis as agreed in the October 21, 2015 Contingent Fee Contract and that as of November 12, 2018 the petitioner had advanced unreimbursed expenses of ten thousand nine hundred seventy dollars and ninety-nine cents (\$10,970.99) and attorney fees at the standard hourly rate equal to one hundred fifty-one thousand two hundred eighty-seven dollars (\$151,287.00). Appendix at 132.

The petitioner also memorialized the attorney/client relationship with the respondent by correspondence of August 27, 2020. Appendix at 110. The August 27, 2020 correspondence confirmed the amount of unreimbursed advanced expenses; the hourly rate of three hundred fifty dollars (\$350.00) and the total value of the services rendered and expected to be rendered. Appendix at 110. The respondent did not object or respond to these letters with any claim that the petitioner was not entitled to be compensated.

On or about September 16, 2020 the respondent discharged the petitioner as its attorney without cause or fault on the part of the petitioner. Appendix at 113. The petitioner prepared and filed motions to withdraw as counsel in the two (2) pending civil actions including Civil Action No. 18-C-76 which was pending before the West Virginia Supreme Court of Appeals and set for oral argument on September 23, 2020. Appendix at 113.

In the civil action styled: Horizon Ventures of West Virginia, Inc. v. American Bituminous Power Partners, L.P., Civil Action No. 18-C-76, Circuit Court of Marion County, West Virginia, the petitioner filed a Notice of Attorney Lien on February 26, 2021. Appendix at 113. The petitioner also filed a Notice of Attorney Lien in the civil action styled: American Bituminous Power Partners, L.P. v. Horizon Ventures of West Virginia, Inc., Civil Action No. 18-C-130, Circuit Court of Marion County, West Virginia, Business Court Division. Appendix at 113.

On or about June 26, 2024 in the Civil Action No. 18-C-76, a

proposed order was filed indicating that the respondent and American Bituminous Power Partners, L.P. had reached a confidential agreement and resolution of that civil action. The proposed order contains no mention of the Notice of Attorney Lien filed by the petitioner on February 26, 2021. Appendix at 250.

On July 12, 2024 the petitioner served an objection to the entry of the June 26, 2024 proposed order as it completely disregarded the February 26, 2021 Notice of Attorney Lien. Appendix at 251. As of July 12, 2024 there had been no objection to the February 26, 2021 Notice of Attorney Lien. Appendix at 251.

On July 18, 2024 the respondent filed a Notice of Hearing with respect to the "merits of the objection of Gregory H. Schillace to Entry of Order Regarding Agreement and Resolution and Horizon's Response thereto and any associated filings". Appendix at 251. At the time of the filing of the Notice of Hearing, the respondent had not filed a response to the objection of the petitioner. Appendix at 251.

More than thirty (30) days later, the respondent filed "Horizon's Motion to Strike Objection of Gregory H. Schillace to Entry of Order Regarding Agreement and Resolution". Appendix at 251. The petitioner served a response to the motion to strike on September 17, 2024. Appendix at 251.

With respect to Civil Action No., 18-C-76 the circuit court denied the objection of the petitioner to the Order Regarding Agreement and Resolution during a hearing held on September 19,

2024. Appendix at 251. Prior to the distribution of any funds held by the circuit clerk in Civil Action No. 18-C-76, the petitioner filed an Amended Notice of Filing Attorney Charging Lien which was subsequently disregarded by the circuit court. Appendix at 251-252.

In Civil Action No. 18-C-130 the Notice of Attorney Lien remains uncontested by the respondent. Appendix at 250. Upon information and belief, funds were paid by American Bituminous Power Partners, L.P. to the respondent with no consideration for the notice of lien of the petitioner. Appendix at 251.

V. Statement Regarding Oral Argument

Pursuant to Rule 19(a) of the West Virginia Rules of Appellate Procedure, the petitioner asserts that this matter is suitable for Rule 19 oral argument as it involves the assignment of error in the application of settled law.

VI. Discussion

A. Standard of Review

The standard of review of this Court where a circuit court has granted a motion to dismiss is de novo. Gordon v. Jefferson County Commission, 252 W.Va. 237, 921 S.E.2d 692 (2025); Bajada v. Crystal Lake Property Owners' Association, 2024 WL 3581344 (W.Va. Ct.App. 2024). As explained by this Court in Kapitus Servicing, Inc. v. Timberline Four Seasons Utilities, Inc., 249 W.Va. 70, 894 S.E.2d 547 (2023), that:

The term "de novo" means "anew". In other words, we [this Court] review the circuit court's ruling in the same way that the circuit court made the ruling, as

though the ruling were never made.

With respect to the doctrine of res judicata, one of the essential requirements of res judicata is that the issue raised in the second action or suit must be identical with the issue raised and determined in the first action or suit. Kapitus Servicing, Inc. v. Timberline Four Seasons Utilities, Inc., 249 W.Va. 70, 894 S.E.2d 547 (2023). As a matter of law, the refusal to enforce a notice of an attorney charging lien filed pursuant to West Virginia Code §30-2-15 by the Circuit Court of Marion County is not identical to the issues raised in the civil action underlying this appeal, therefore, doctrine of res judicata does not authorize the dismissal of the civil action by the circuit court.

B. The Equitable Doctrines of Res Judicata and Collateral Estoppel Have No Application to This Civil Action.

Neither the respondent nor the circuit court identify any decision of any court in any jurisdiction that held that the dismissal of an attorney charging lien operates as res judicata to a lawsuit filed by the attorney to collect attorney fees owed. Although the West Virginia Supreme Court of Appeals has not addressed this issue, the Supreme Court of New Mexico held in Computer One, Inc. v. Grisham & Lawless P.A., 144 N.M. 424, P.3d 1175 (2008), that a charging lien filed by the former attorneys of the client did not operate as res judicata to the legal malpractice action later filed by the client.

The Supreme Court of New Mexico observed that an attorney

charging lien is designed to protect the value of the attorney's services in a settlement fund arising from a lawsuit, as opposed to an opportunity on the part of the attorney to assert all the claims they may have against the former client. Id. P.3d at 1180. An attorney charging lien is asserted against a judgment or settlement fund arising from a lawsuit; not against the client; and, not an independent lawsuit. Id. P.3d at 1180.

An attorney charging lien is confined to the judgment or funds recovered by the attorney. Hazeltine v. Keenan, 54 W.Va. 600, 46 S.E.2d 609 (1904). Beyond the limits of the charging lien the attorney is "free to go against the client for remaining fees under the contract". Northern Pueblos Enterprises v. Pueblo Electric & Refrigeration, 98 N.M. 47, 644 P.2d 1036 (1982).

The doctrines of res judicata, or claim preclusion, and collateral estoppel, or issue preclusion, are closely related doctrines which seek to avoid the expense of relitigation of claims which have been fully or fairly decided. Blake v. Charleston Area Medical Center, Inc., 201 W.Va. 469, 498 S.E.2d 41 (1997). Even where these doctrines may apply, they are not rigidly enforced where to do so would defeat the ends of justice. Gentry v. Farruggia, 132 W.Va. 809, 53 S.E.2d 741 (1949); Blake v. Charleston Area Medical Center, Inc., 201 W.Va. 469, 498 S.E.2d 41 (1997).

The doctrine of res judicata is based upon the recognized public policy to quiet litigation and the principal that individuals should not be forced to litigate an issue more than

once. Baker v. Chemours Company FC, LLC, 244 W.Va. 553, 855 S.E.2d 344 (2021). A lawsuit may be barred on the basis of res judicata if:

- (1) there is a final adjudication on the merits in prior action by a court having jurisdiction of the proceedings;
- (2) the two actions involve either the same parties or persons in privity with those same parties;
- (3) the cause of action identified for resolution in the subsequent proceeding is either identical to the cause of action determined in the prior action or such that it could have been resolved, had it been presented, in the prior action.

Charles WV Mall, LLC v. Charleston Urban Renewal Authority, 248 W.Va. 565, 889 S.E.2d 287 (W.Va. App. 2023).

One of the essential requirements of res judicata is that the issue raised in the second action or the suit must be on the issue which was or could have been raised and determined in the first action or suit. Soto v. Hope National Gas Co., 142 W.Va. 373, 95 S.E.2d 769 (1956); Conley v. Spillers, 171 W.Va.584, 301 S.E.2d 216 (1983); Green v. Schaffer, 2024 WL 1256375 (W.Va. App. 2024). The presentation of an attorney lien pursuant to West Virginia Code §30-2-15 regardless of the outcome of the lien does not act as collateral estoppel or res judicata with respect to a lawsuit to collect attorney fees and costs advanced by the lawyer who remains unpaid for services provided and expenses advanced.

The Notice of Attorney Lien filed by the plaintiff in Civil Action No. 18-C-76 does not involve the same parties as the

underlying action and did not operate as res judicata to the underlying action. An attorney lien filed pursuant to West Virginia Code §30-2-15 involves different procedures including the constitutional right in the underlying action to a trial by jury. Chalifoux v. West Virginia Department of Health and Human Resources, 250 W.Va. 617, 906 S.E.2d 270 (2023).

The plaintiff was not a party to Civil Action No. 18-C-76 and any payment pursuant to an attorney lien provided by West Virginia Code §30-2-15 is limited to undistributed moneys which are part of a judgment or fund resulting from the attorney's services. Trickett v. Laurita, 223 W.Va. 357, 674 S.E.2d 218 (2009). The amounts owed to the petitioner by the respondent exceed the funds available pursuant to the attorney lien precluding the application of res judicata.

Collateral estoppel is distinguishable from res judicata in that collateral estoppel bars litigation of matters which have been actually litigated while res judicata applies to matters that could have been litigated. Chalifoux v. West Virginia Department of Health and Human Resources, 250 W.Va. 617, 906 S.E.2d 270 (2023). The doctrine of res judicata precludes piecemeal litigation occasioned by splitting different legal theories for different relief into serial litigation, which did not occur in this matter. Id. S.E.2d at 284.

Unlike res judicata, collateral estoppel requires that:

- (1) the issue previously decided is identical to the one presented in the action in question;

- (2) there is a final adjudication on the merits of the prior action;
- (3) the party against whom the doctrine is invoked was a party or in privity with a party to a prior action; and,
- (4) the party against whom the doctrine is raised had a full and fair opportunity to litigate the issue in the prior action.

Bell v. Perkins, 2021 WL 595415 (W.Va. Sup.Ct. 2021). In this instance neither the doctrine of res judicata nor the doctrine of collateral estoppel empower the circuit clerk to dismiss the underlying action.

The petitioner was not a party in Civil Action No. 18-C-76; the attorney charging lien statute, West Virginia Code §30-2-15, does not afford the petitioner with the same relief and procedure as this civil action including, but not limited to the right to a jury trial; and, the petitioner could not have obtained complete relief in Civil Action No. 18-C-76, as the undistributed funds were substantially less than owed by the respondent to the petitioner. Accordingly, the doctrines of collateral estoppel and res judicata could not be used by the circuit court to deprive the petitioner the opportunity to seek redress in the underlying civil action.

C. The Doctrine of Judicial Estoppel Prevents the Respondent From Claiming Any Preclusive Effect From Civil Action No. 18-C-76.

The doctrine of judicial estoppel is a common law principle which precludes a party from asserting in a legal proceeding inconsistent with a position taken in prior litigation. West

Virginia Department of Transportation, Division of Highways v. Robertson, 217 W.Va. 497, 618 S.E.2d 506 (2005). Judicial estoppel prevents a party from assuming inconsistent positions in a series of suits in reference to the same facts or state of facts. Dillon v. Board of Education of Mingo County, 171 W.Va. 631, 301 S.E.2d 588 (1983).

During the September 19, 2024 hearing in Civil Action No. 18-C-76 counsel for the respondent made the following representations:

- (1) "...although the undersigned [plaintiff] is not entitled to a contingent fee, the undersigned [plaintiff] is entitled to compensation for services performed. That's a quantum meruit argument. That's a suit he has to bring. That's not a charging lien." **Transcript at page 8.** Appendix at 157.
- (2) "Now, quantum meruit, maybe he [plaintiff] prevails, may he [plaintiff] gets some money on that, but that's a civil suit..." **Transcript at page 15.** Appendix at 164.
- (3) "If he [plaintiff] wants to file suit against Horizon, like everybody else, you know, would have to do, that's what he [plaintiff] needs to do, and we'll defend that case or we'll pay what's due." **Transcript at page 16.** Appendix at 165.
- (4) "This charging lien is simply not valid. Now, I'm not saying he doesn't get it right under quantum meruit to have this case, but what happens in that is very important. And he [plaintiff] brings his case and at that point Horizon gets to a certain defense, that defense may be, yeah, you're right. You get some value for what you did but there's also some harm that you did to Horizon in your representation. There's not opportunity for us to push back on that." **Transcript at page 21.** Appendix at 170.
- (5) "If he [plaintiff] has a case to bring, then let him [plaintiff] bring it." **Transcript at page 22.**

Appendix at 171.

In Civil Action No. 18-C-76 the respondent, represented by the same attorneys representing it now, made representations to the Circuit Court of Marion County regarding the need for a separate civil action to establish entitlement by the petitioner to attorneys fees calculated pursuant to the principle of quantum meruit. Appendix at 171. The respondent then claimed that the ruling of the Marion County Circuit Court conforming to the respondent's argument in Civil Action No. 18-C-76 operates as res judicata to the underlying action.

D. The Doctrine of Unclean Hands Prevents the Respondent From Invoking the Equitable Doctrines of Collateral Estoppel and Res Judicata

The petitioner provided legal representation to the respondent for five (5) years expending effort on behalf of the respondent based upon the hours of the petitioner and staff equal to three hundred eleven thousand nine hundred twenty-five dollars and sixty-seven cents (\$311,925.67) and unreimbursed expenses of seventeen thousand two hundred twenty-three dollars and seventy cents (\$17,223.70). It is inequitable for the respondent to now claim that the petitioner is barred from recovery in this civil action when the respondent represented in Civil Action No. 18-C-76 that the petitioner was required to file a separate law suit to recovery under the principle of quantum meruit. Springer v. Runyon, 2024 WL 2273398 (W.Va. Sup.Ct. 2024). Appendix at 171.

The doctrine of unclean hands provides that a party who seeks

equitable relief such as the application of collateral estoppel or res judicata must come to the court with clean hands. Allegheny Country Farms, Inc. v. Huffman, 237 W.Va. 355, 787 S.E.2d 626 (2016). The lack of clean hands bars equitable relief. Province v. Province, 196 W.Va. 473, 473 S.E.2d 894 (1996); Bailey v. Banther, 173 W.Va. 220, 314 S.E.2d 176 (1983).

The absence of any payment with respect to attorney fees and unreimbursed expenses precludes the respondent from seeking equitable relief pursuant to the doctrine of unclean hands. While the respondent may assert that some amount of attorney fees are not owed, the respondent can not fairly assert that it owes the petitioner nothing.

Similar to the doctrine of unclean hands is the principle that collateral estoppel and res judicata will not be rigidly applied where such application would plainly defeat the ends of justice. Bison Interests, LLC. V. Antero Resources Corporation, 244 W.Va. 391, 854 S.E.2d 211 (2020). The dismissal of the underlying civil action where money is clearly owed to the petitioner from the respondent was contrary to the principal that the ends of justice be served.

As acknowledged by the Circuit Court of Marion County during the September 19, 2024 hearing:

it's clear to this Court that Mr. Schillace provided services. I think it would be absurd for any party to deny that. He did work on this case.

Appendix at 166. The motion to dismiss should have been denied

preventing the respondent from unfairly avoiding its obligation to pay attorney fees owed and reimburse expenses advanced to and by the petitioner.

VII. Conclusion

The Final Order of the Circuit Court of Harrison County should be reversed and this action remanded to the Circuit Court for further proceedings.

Dated this 5th day of February, 2026.



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INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

GREGORY H. SCHILLACE
d/b/a SCHILLACE LAW OFFICE
Plaintiff Below, Petitioner

v.) No. 25-ICA-432

HORIZON VENTURES OF WEST VIRGINIA, INC.
Defendant Below, Respondent

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of February, 2026, I served the foregoing **APPENDIX PURSUANT TO RULE 7(e) OF THE WEST VIRGINIA RULES OF APPELLATE PROCEDURE**; and the **BRIEF OF THE PETITIONER, GREGORY H. SCHILLACE** upon all opposing counsel of record by U.S. mail, in an envelope addressed as follows:

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