
INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

OAK POINT PARTNERS, LLC,

Plaintiff Below, Petitioner,

v.

LARRY PACK, in his Official Capacity
as Treasurer of the State of West Virginia,

Defendant Below, Respondent.

From the Circuit Court of Kanawha County, West Virginia
Civil Action No. 2025-C-812

PETITIONER'S BRIEF

OAK POINT PARTNERS, LLC

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Petitioner Oak Point Partners, LLC (“Oak Point”) submits this brief in support of its appeal from the Circuit Court of Kanawha County, West Virginia’s (the “Circuit Court”) *Order Granting Motion to Dismiss* entered on October 28, 2025 (the “Order”).

Assignments of Error

1. The Circuit Court erred by finding that Oak Point failed to state a claim for which relief may be granted.
2. The Circuit Court erred by finding that the Treasurer acted within his discretion and authority when he denied Oak Point’s claims.
3. The Circuit Court erred by finding that the Treasurer may request whatever documents he thinks are necessary before approving or denying a claim for unclaimed property.

Statement of the Case

This case involves Respondent Larry Pack’s (the “Treasurer”) wrongful denial of Oak Point’s claims for unclaimed property under the West Virginia Uniform Unclaimed Property Act (the “Act”), and the Circuit Court’s subsequent error in dismissing Oak Point’s Complaint against the Treasurer to establish its claims. Oak Point is a private investment firm and one of its lines of business is the acquisition of non-operating and residual assets from business entities, including unclaimed property. *See Appx. at 7.* And Oak Point has acquired ownership of certain unclaimed property held by the Treasurer by virtue of asset purchase agreements with prior owners. *See Appx. at 7.* Since 2010, the Treasurer has approved and paid over 105 of Oak Point’s claims.

Between February 9, 2023, and present, Oak Point filed 113 claims for unclaimed property (the “Claims”), which were supported by the same type of evidence as claims previously approved by the Treasurer. *See Appx. at 7.* In accordance with the Act, Oak Point filed the Claims on the form prescribed by the Treasurer, verified the Claims, and provided the Treasurer with evidence

of its ownership of the unclaimed property, including, but not limited to, a copy of the asset purchase agreements. *See Appx. at 7.* As it has always done when filing claims with the Treasurer, Oak Point redacted the purchase price in the asset purchase agreements because the purchase price is confidential. *See Appx. at 7.* The purchase price is the only term of the asset purchase agreements redacted by Oak Point, *see Appx. at 7.*

Despite being provided with the evidence required to allow the Claims, the Treasurer denied the Claims because Oak Point redacted the confidential purchase price contained in each of the asset purchase agreements. *See Appx. at 8.* Confused by the Treasurer's denial, Oak Point reached out to the Treasurer's office to endeavor to resolve the issue. During a meeting between representatives of Oak Point and the Treasurer's office on May 21, 2025, the Treasurer's representatives (1) failed to provide any basis for requiring the disclosure of the confidential purchase price under the Act or the related rules; (2) failed to provide any reason why the confidential purchase price was required in order to allow the Claims; and (3) cited a written policy requiring the disclosure of the confidential purchase price, but refused to provide a copy of the policy upon request. *See Appx. at 8.*

Oak Point then attempted, for the second time, to work directly with the Treasurer in order to avoid litigation by sending a letter to the Treasurer on May 27, 2025, explaining Oak Point's position that the Treasurer's insistence on disclosure of the purchase price for each asset purchase agreement was baseless. *See Appx. at 8.* Oak Point also shared its concern that there exists no statutory protection to protect unredacted proprietary and confidential information from disclosure to the public through an open records request. Oak Point's attempt to resolve this dispute without resorting to litigation, however, was unsuccessful. *See Appx. at 8.*

On July 9, 2025, Oak Point filed its Complaint against the Treasurer to establish its Claims pursuant to the Act. *See Appx.* at 3-13. The Treasurer filed his Motion to Dismiss on September 8, 2025, arguing that he has plenary authority to request and require any evidence he deems necessary to determine when a claim for abandoned property has been established and that the Complaint should be dismissed because the Treasurer was well within his authority to deny Oak Point's Claims. *See Appx.* at 14-23. On September 26, 2025, Oak Point filed its Response to the Motion to Dismiss arguing that Oak Point's action against the Treasurer is specifically authorized by the Act, the Treasurer does not have plenary authority to request any evidence he deems necessary to assess a claim, and that the confidentiality requirements of the Act do not protect Oak Point's documents from disclosure. *See Appx.* at 24-35.

On October 28, 2025, the Circuit Court granted the Treasurer's Motion to Dismiss, concluding that Oak Point failed to state a claim for which relief may be granted. *See Appx.* at 56-62. In reaching its conclusion, the Circuit Court found, among other things, that **“if the Treasurer denies a claim under the Act “The claimant may . . . maintain an action under [W. Va. Code § 36-8-16].”** (emphasis added). The Circuit Court further found that (1) “neither the Act nor the legislative rule specify documents the Treasurer may request, nor do they prohibit the Treasurer from requesting specific types of documents or information”; (2) “the Legislature has expressly permitted the Treasurer to require whatever documents he thinks are necessary before approving or denying a claim for unclaimed property”; (3) “the Treasurer acted within his discretion and in accordance with the Act when he requested non-redacted documents from Oak Point, and he was equally within his discretion when he denied Oak Point's claims after it refused to provide non-redacted documents”; (4) “the Act sets forth the exclusive means by which Oak Point may establish its claims, and the Treasurer acted within his discretion and authority under

the Act when it denied Oak Point's claims after Oak Point refused to provide non-redacted documents"; (5) "there is no legal basis to reverse or reconsider the Treasurer's decision because the Treasurer denied Oak Point's claims for reasons that the Act explicitly permits him to deny claims when the claimants fail to provide evidence that the Treasurer requested"; and (6) "Oak Point has not stated and cannot state a claim for which relief may be granted because Oak Point refused to provide the Treasurer with documents he requested and is permitted to request." Appx. at 61.

Summary of Argument

The Circuit Court erred in granting the Treasurer's Motion to Dismiss for three reasons. First, the Act specifically provides (and the Circuit Court found) that a person aggrieved by a decision of the Treasurer may bring an original action in circuit court to establish his claim. *See* W. Va. Code § 36-8-16. Oak Point is such a person and plead facts sufficient to state a claim for relief in its Complaint. As such, the Circuit Court erred by finding that Oak Point failed to state a claim for which relief may be granted.

Second, this case is not an appeal from the Treasurer's denial of Oak Point's Claims. Rather, it is an action to establish Oak Point's Claims in the Circuit Court. While Oak Point certainly believes that the Treasurer's denial of its Claims is wrongful, Oak Point is not required to prove this in order to establish its Claims in Circuit Court. Therefore, the Circuit Court erred by finding that the Treasurer acted within his discretion and authority when he denied Oak Point's Claims and that this necessitated dismissal of Oak Point's Complaint.

Finally, the Act permits the Treasurer to request evidence that is required, *i.e.* necessary, to allow a claim. The evidence at issue, however, is not necessary for the Treasurer to allow Oak Point's Claims. Accordingly, the Circuit Court erred by finding that the Treasurer may request

whatever documents he thinks are necessary before approving or denying a claim for unclaimed property.

Statement Regarding Oral Argument and Decision

Oak Point respectfully requests that this case be set for oral argument under Rule 20 because the dispositive issues have not been authoritatively decided and the case involves issues of first impression and issues of fundamental public importance. *See* W. Va. R. App. P. 10(c)(6), 18(a), 20(a).

Argument

I. Standard of Review.

“Appellate review of a circuit court's order granting a motion to dismiss a complaint is *de novo*.” Syl. Pt. 1, *W. Va. Counties Grp. Self-Insurance Risk Pool, Inc. v. Great Cacapon Volunteer Fire Dep’t, Inc.*, 244 W. Va. 10, 851 S.E.2d 89 (2020) (quoting Syl. Pt. 2, *State ex rel. McGraw v. Scott Runyan Pontiac-Buick, Inc.*, 194 W. Va. 770, 461 S.E.2d 516 (1995)). “Generally, findings of fact are reviewed for clear error and conclusions of law are reviewed *de novo*. However, ostensible findings of fact, which entail the application of law or constitute legal judgments which transcend ordinary factual determinations, must be reviewed *de novo*.” Syl Pt. 2, *EQT Prod. Co. v. Crowder*, 241 W. Va. 738, 828 S.E.2d 800 (2019) (quoting Syl. Pt. 1, *State ex rel. Cooper v. Caperton*, 196 W. Va. 208, 470 S.E.2d 162 (1996)). Further, “[w]here the issue on an appeal from the circuit court is clearly a question of law or involving an interpretation of a statute, we apply a *de novo* standard of review.” Syl. Pt. 2, *W. Va. Counties Grp. Self-Insurance Risk Pool, Inc.*, 244 W. Va. 10, 851 S.E.2d 89 (quoting Syl Pt. 1, *Chrystal R.M. v. Charlie A.L.*, 194 W. Va. 138, 459 S.E.2d 415 (1995)).

II. The Circuit Court Erred by Finding that Oak Point Failed to State a Claim for which Relief may be Granted.

The allegations in Oak Point's Complaint were sufficient to state a claim upon which relief can be granted. *See* W. Va. R. Civ. P. 8(a) ("A pleading that states a claim for relief shall contain: (1) a short and plain statement of the claim showing that the pleader is entitled to relief; and a demand for the relief sought, which may include relief in the alternative or different types of relief."). The purpose of the Act is to return unclaimed property to its rightful owner. *See* W. Va. Code § 36-8-1, *et seq.*; Uniform Law Commission, Unclaimed Property Act, Revised, Description, <https://www.uniformlaws.org/committees/community-home?CommunityKey=4b7c796a-f158-47bc-b5b1-f3f9a6e404fa> (last visited Jan. 28, 2026). Under the Act, an owner of unclaimed property may file a claim with the Treasurer to recover the property from the state. *See* W. Va. Code § 36-8-15. If the Treasurer denies the claims, the Act requires the Treasurer to "inform the claimant of the reasons for the denial and specify what additional evidence is *required* before the claim will be allowed," and permits a claimant to "*maintain an action under section 16 of this article.*" W. Va. Code § 36-8-15(b) (emphasis added). Specifically, the Act provides that "[a] person aggrieved by a decision of the [Treasurer] or whose claim has not been acted upon within ninety days after its filing *may maintain an original action to establish the claim in the circuit court of Kanawha County, naming the [Treasurer] as a defendant.*" W. Va. Code § 36-8-16 (emphasis added). This is exactly what happened in this case.

As the owner of certain unclaimed property held by the Treasurer who was aggrieved by the Treasurer's decision, Oak Point filed an original action to establish its Claims in the Circuit Court. In its Complaint, Oak Point alleged that it complied with the Act by filing the Claims on the forms prescribed by the Treasurer, verifying the Claims, and providing all the evidence required for the Treasurer to allow the Claims. *See* Appx. at 7. Oak Point further alleged that the Treasurer

denied the Claims, informed Oak Point of the reasons for the denial, and specified what additional evidence was required before the Claims would be allowed. *See Appx.* at 8. Thus, Oak Point sufficiently alleged that it was aggrieved by a decision of the Treasurer and, as such, was permitted to maintain an action against the Treasurer to have the Circuit Court determine whether Oak Point's evidence is sufficient to establish its Claims. *See W. Va. Code § 36-8-15(b); W. Va. Code § 36-8-16.* Accordingly, these allegations are sufficient to state a claim upon which relief can be granted. *See W. Va. R. Civ. P. 8(a).* For this reason alone, the Circuit Court's Order should be reversed.

III. The Circuit Court Erred by Finding that the Treasurer Acted within His Discretion and Authority when He Denied Oak Point's Claims.

The Circuit Court found that (1) “the Treasurer acted within his discretion and in accordance with the Act when he requested non-redacted documents from Oak Point, and he was equally within his discretion when he denied Oak Point's claims after it refused to provide non-redacted documents,” (2) “the Act sets forth the exclusive means by which Oak Point may establish its claims, and the Treasurer acted within his discretion and authority under the Act when it denied Oak Point's claims after Oak Point refused to provide non-redacted documents,” and (3) “there is no legal basis to reverse or reconsider the Treasurer's decision because the Treasurer denied Oak Point's claims for reasons that the Act explicitly permits him to deny claims when claimants fail to provide evidence that the Treasurer requested.” *Appx.* at 61.

Importantly, this case is not an appeal of the Treasurer's decision to deny Oak Point's Claims. Instead, this case is an action to establish Oak Point's Claims. The Act specifically provides that if the Treasurer denies a claim or fails to act upon a claim within ninety (90) days after its filing, a claimant may “file a new claim with the [Treasurer],” *W. Va. Code § 36-8-15(b)*, or “*maintain an original action to establish the claim in the circuit court of Kanawha County, naming the [Treasurer] as a defendant.*” *W. Va. Code § 36-8-16* (emphasis added); *see W. Va.*

Code § 36-8-15(b). The Act does not require that a claimant file a new claim with the Treasurer or seek any administrative review of the Treasurer’s decision before filing suit. *See Id.*; West Virginia Society of Certified Public Accountants, Guidebook on West Virginia Taxes at Ch. 11 § 1116, <https://www.wvscpa.org/storage/files/4650fe6c53d18bc4ae829142bd680d63.pdf> (last visited Jan. 28, 2026).

Similarly, the Act does not require any judicial review of the Treasurer’s decision after filing suit. *See Id.* Instead, the Act allows a claimant to “***maintain an original action to establish the claim***” in circuit court. *Id.* In short, the Legislature created this cause of action to give an aggrieved claimant, such as Oak Point, the ability to establish its claim in circuit court, before a different fact finder, after the Treasurer denies its claim.

This plain reading of the Act is supported by comments to the Uniform Unclaimed Property Act (1995), which is the version of the Act adopted by West Virginia. Specifically, the comment to Section 15, titled “Filing Claim with Administrator; Handling of Claims by Administrator,” states that “[t]he administrator’s decision on a claim does not operate as collateral estoppel or *res judicata*.” Uniform Unclaimed Property Act § 15 cmt. (Nat’l Conf. of Comm. on Unif. State Laws 1995). In addition, the comment to Section 16, titled “Action to Establish Claim,” states that “[i]n any judicial action commenced to recover the property from the administrator, the claimant may proceed *de novo*, and the court will not be limited to a mere review of the administrator’s decision.” *Id.* at § 16 cmt.

Here, the Circuit Court appears to have viewed this case as an appeal of the Treasurer’s decision to deny Oak Point’s Claims, rather than an original action to establish Oak Point’s Claims. *See Appx.* at 58 (“Oak Point argued that West Virginia law provides this Court with subject matter jurisdiction to appeal the Treasurer’s decision and that the Treasurer exceeded his authority by

requesting ‘unnecessary or irrelevant documentation’ regarding Oak Point’s claims.”); Appx. at 61 (“there is no legal basis to reverse or reconsider the Treasurer’s decision because the Treasurer denied Oak Point’s claims for reasons that the Act explicitly permits him to deny claims when claimants fail to provide evidence that the Treasurer requested.”). While Oak Point certainly believes that the Treasurer wrongfully denied its Claims, *see supra* at 9-12, Oak Point need not show, and the Circuit Court need not determine, that the Treasurer wrongfully denied Oak Point’s Claims for Oak Point to establish its Claims in Circuit Court. Put differently, if Oak Point were to establish its Claims to the satisfaction of the Circuit Court, then Oak Point’s claims must be allowed. *See* W. Va. Code § 36-8-16. And Oak Point is permitted to bring a complaint in circuit court seeking to establish its Claims because the Treasurer has denied them. *See Id.* The Circuit Court, therefore, erred in dismissing Oak Point’s Complaint because the Complaint states a cause of action pursuant to W. Va. Code § 36-8-16.

IV. The Circuit Court Erred by Finding that the Treasurer may Request Whatever Documents He Thinks are Necessary before Approving or Denying a Claim for Unclaimed Property.

The Circuit Court found that (1) “neither the Act nor the legislative rule specify documents the Treasurer may request, nor do they prohibit the Treasurer from requesting specific type of documents or information”; and (2) “the Legislature has expressly permitted the Treasurer to require whatever documents he thinks are necessary before approving or denying a claim for unclaimed property.” Appx. at 61. Neither the Act nor the Code of State Rules, however, permit the Treasurer to demand unnecessary or irrelevant documentation before allowing a claim for unclaimed property.

The Act provides that, if the Treasurer denies a claim, he “shall inform the claimant of the reasons for the denial and specify what additional evidence is *required* before the claim will be

allowed.” W. Va. Code § 36-8-15(b) (emphasis added). The Act limits the Treasurer to requesting only required, *i.e.* necessary, evidence. The Code of State Rules similarly provides that a claimant “shall provide any other evidence the [Treasurer] may **require** in order to allow [the] claim.” W. Va. C.S.R. § 112-5-9.2 (emphasis added). To date, the Treasurer has failed to explain why the purchase price in the asset purchase agreements is necessary to determine Oak Point’s ownership of the unclaimed property. Instead, the Treasurer argued, and the Circuit Court agreed, that he has plenary authority to request whatever documents he deems are necessary. *See* Appx. at 21 (“The question as to ‘why’ the Treasurer requires non-redacted copies of asset purchase agreements is entirely irrelevant to this action because the Legislature has expressly permitted the Treasurer to require whatever documents he thinks are necessary.”); Appx. at 61. The plain language of the Act and the Rule do not support such unlimited discretion.

It is extremely unlikely that the Legislature intended to grant the Treasurer broad power to demand any document, any evidence from any claimant, and to further permit the Treasurer to refuse to pay claims unless he receives whatever he demands regardless of how irrelevant, unnecessary, or excessive it is to proving ownership of the unclaimed property he is charged with safekeeping for the rightful owner. As the Supreme Court of Appeals has explained, “we must remain mindful that the language of a statute is not to be construed in any mystical fashion. In the absence of any specific indication to the contrary, words used in a statute will be given their common, ordinary and accepted meaning.” *EQT Prod. Co. v. Irby*, No. 22-ICA-305, 2023 W. Va. App. LEXIS 356, at *6 (W. Va. ICA Dec. 15, 2023) (quoting *Tug Valley Recovery Ctr. v. Mingo County Comm’n*, 164 W. Va. 94, 100, 261 S.E.2d 165, 169 (1979)). Accordingly, the plain language of the Act should be given its common, ordinary, and accepted meaning – that is, the Act allows

the Treasurer to request evidence that is required, *i.e.* necessary, to allow a claim, not evidence that is irrelevant, unnecessary, or excessive.

Moreover, the Treasurer and the Circuit Court's reliance on the Rule having the force and effect of statute is misplaced. *See Appx.* at 19, 20, 61. There is no Rule requiring a claimant to provide commercially sensitive and confidential information, such as the purchase price in the asset purchase agreements, to the Treasurer, particularly where, as here, such information is neither determinative of the ownership of the unclaimed property nor required to allow the claim. As alleged in the Complaint, the Treasurer denied Oak Point's Claims based on a written "policy" requiring the disclosure of the purchase price contained in asset purchase agreements. *See Appx.* at 8. If such policy exists, then it is the very definition of a legislative rule, *see* W. Va. Code § 29A-1-2(e) ("Every rule which, when effective, is determinative of any issue affecting constitutional, statutory or common law rights, privileges or interests is a legislative rule."), which "has no legal force or effect until promulgated by specific authorization of the Legislature." W. Va. Code § 29A-1-2(e).

Oak Point has provided the evidence required to establish its claims. *See Appx.* at 7. The operative provisions of the asset purchase agreements, which unconditionally and irrevocably transfer to Oak Point all right title and interest to the sellers' unclaimed property, were fully disclosed. The purchase price, which was redacted from the asset purchase agreements because it is commercially sensitive and confidential, is not determinative of ownership and is not required to allow Oak Point's claims. Indeed, that information was not needed for the Treasurer to have determined more than 100 claims by Oak Point over the past two decades so it should follow that the Treasurer may determine Oak Point's ownership of the unclaimed property without the confidential purchase price. The fact that the Treasurer cannot articulate why this information is

required demonstrates the information is unnecessary to fulfilling the Treasurer's statutory duty. As such, from both the perspective of application of the Act to determine the validity of Oak Point's Complaint as well as an analysis of the merits, or lack thereof, to the Treasurer's position that it can deny a claim due to a claimant's refusal to provide wholly irrelevant information, the Circuit Court erred in dismissing Oak Point's Complaint.

Conclusion

For the reasons set forth above, and for any other reasons appearing to the Court, Oak Point respectfully requests that the Court (1) reverse the Circuit Court's Order; (2) remand this case to the Circuit Court for further proceedings consistent with the decision of this Court; and (3) award such further relief as the Court deems necessary and appropriate.

CERTIFICATE OF SERVICE

I, Arie M. Spitz, do hereby certify that the foregoing **Petitioner's Brief** was electronically filed with the Court on January 28, 2026, using the File & ServeXpress System, which will send notification of such filing to the following counsel of record:

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