

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

CHARLESTON

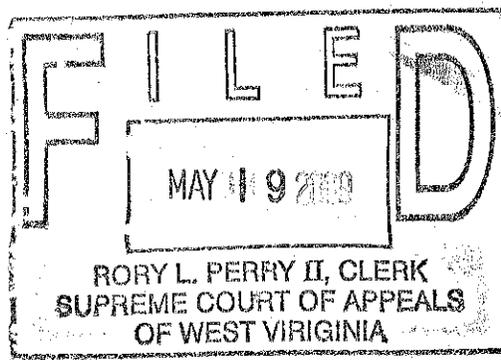
STANLEY W. DUNN, JR., and  
KATHERINE B. DUNN,

Plaintiffs Below/Appellants,

v.

DOUGLAS S. ROCKWELL and  
CAROL ROCKWELL, and  
MARTIN & SEIBERT, L.C.,

Defendants Below/Appellees.



**REPLY BRIEF ON BEHALF OF THE APPELLANTS, STANLEY W. DUNN, JR. AND  
KATHERINE B. DUNN, TO THE RESPONSE OF DOUGLAS S. ROCKWELL, IN  
SUPPORT OF THEIR PETITION FOR APPEAL<sup>1</sup>**

James A. Varner, Sr. (WV State Bar #3853)  
Debra Tedeschi Herron (WV State Bar #6501)  
McNeer, Highland, McMunn & Varner, L.C.  
Empire Building - 400 West Main Street  
P. O. Drawer 2040  
Clarksburg, WV 26302-2040  
Telephone: (304) 626-1100  
Facsimile: (304) 623-3035  
*Co-Counsel for Appellants*

William Francis Xavier Becker (WV State Bar #5238)  
PNC Bank Building  
260 East Jefferson Street, Second Floor  
Rockville, MD 20850  
Telephone: (301) 340-6966  
Facsimile: (301) 309-6653  
*Co-Counsel for Appellants*

<sup>1</sup> The instant reply brief is filed in response to the Brief of Douglas Rockwell served upon counsel on the 4th day of May, 2009. The Appellants note that Douglas Rockwell previously petitioned the Court for additional time to file a response to the Appellants' Brief in Support of their Petition for Appeal. Co-counsel for Douglas Rockwell, Kathy M. Santa Barbara, contended that she had not received the Appellants' brief. In responding to the Appellants' objection to extending additional time, counsel for the Dunns noted that there was not any contention that Douglas Rockwell's co-counsel, Gregory Schillace failed to timely receive the brief. Ms. Santa Barbara asserted that all pleadings in the underlying case, except those relating to the depositions of one of the expert witnesses, were filed by Ms. Santa Barbara and not Gregory Schillace. Accordingly, it is important to note that Ms. Santa Barbara did not file, nor sign the Brief of Douglas Rockwell, but rather, the same was filed by Gregory Schillace.

**TABLE OF CONTENTS**

STATEMENT OF FACTS ..... 1

DISCUSSION ..... 1

    I.    The Dumns Instituted Suit Within the Applicable Time Frame ..... 1

    II.   The “Continuous Representation Doctrine” Does Apply ..... 4

PRAYER FOR RELIEF ..... 6

**TABLE OF AUTHORITIES**

**CASES**

*Comm. Leg. Ethics of the W. Va. St. Bar v. Cometti,*  
189 W. Va. 262, 430 S.E.2d 320 (1993) ..... 3

*Lawyer Disciplinary Board v. Artimez,*  
208 W. Va. 288, 540 S.E.2d 156 (2000) ..... 3, 4

*McCoy v. Miller,*  
213 W. Va. 161, 578 S.E.2d 355 (2003) ..... 2

*Smith v. Stacy,*  
198 W. Va. 498, 482 S.E.2d 115 (1996) ..... 4

*Trafalgar H. Constr., Inc. v. ZMM, Inc.,*  
211 W. Va. 578, 567 S.E.2d 294 (2002) ..... 4

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

**STATEMENT OF FACTS<sup>2</sup>**

In his statement of facts, Douglas S. Rockwell significantly relies upon the deposition of Stanley Dunn taken on January 24, 2008. It is important to note to the Court that the January 24, 2008 depositions were taken pursuant to a Court Order issued on October 24, 2007. *See Appendix.* The scope of these depositions was limited to address Mr. Dunn's recovery of the unexecuted and final extension to the series of option agreements. *See D.S. Rockwell Brief*, p. 2, lines 1-2. A review of the quotes relied upon by Douglas S. Rockwell clearly shows that the questioning during the depositions exceeded the scope permitted by the Court. Subsequently, the Appellants filed a Motion *in Limine* regarding these depositions. *See pleading of February 1, 2008, attached hereto as Exhibit A.* The circuit court has not yet ruled on that motion. Accordingly, this testimony must be viewed with skepticism given the pending motion.

**DISCUSSION**

**I. The Dunns Instituted Suit Within the Applicable Time Frame.**

In support of the granting of summary judgment in favor of Carol Rockwell and Martin & Seibert, Douglas S. Rockwell also joins the chorus and individually asserts that the Appellants' claims are barred by the applicable two-year statute of limitations. Although using a different date than that of his spouse as to when the Dunns' cause of action was time barred, Carol Rockwell asserts December, 2004, while Douglas S. Rockwell asserts that the same was time barred as of

---

<sup>2</sup> Appellants herein incorporate by reference the Statement of Facts presented in Brief on Behalf of the Appellants, Stanley W. Dunn, Jr. and Katherine B. Dunn, in Support of Their Petition for Appeal, previously filed with the Court.

September, 2005, Douglas S. Rockwell fails to dispute the material facts that he did not fully disclose to his clients in writing the details of his land acquisition.

As has been stated, the plaintiffs orally granted to Douglas S. Rockwell permission to 'square up' the existing 3.0 acre Rockwell residential lot. Thus, both parties knew of the acquisition of the additional real property. However, as was also recognized by the circuit court and supported by the testimony of the Dunns, *the Dunns were unaware of the precise size and location of the property acquired by the Rockwells. See June 16, 2008 Order.* In fact, Carol Rockwell recognized that the Dunns knew only of the "approximate location" of the property. *C. Rockwell Brief, at p. 20* Moreover, the testimony relied upon by Douglas S. Rockwell in support of his position merely suggests that the Dunns knew that something was potentially wrong.

The only "undisputed" evidence is that the Dunns were not made aware of the precise size and location of the parcel acquired by Carol Rockwell until the fall of 2005, when they were presented with a copy of the December 27, 2002 deed from Hugh Hoover and his sister to Carol Rockwell for the 6.87 acre parcel. Note the acquiring parties, the Rockwells, never informed the Dunns of this material fact, that being, the precise size and location of the parcel the Rockwells acquired. Thus, at the very least, the statute of limitations could not begin to run until the fall, 2005, when the Dunns first learned of the precise size and location of the 6.87 acre tract.

The Dunns did not acquire the Hoover tract, less the 6.87 acre tract extracted by their attorney Douglas S. Rockwell, until November, 2005. Thus, while Carol Rockwell and Martin & Seibert argue to the Court that the statute of limitations for the Dunns' claims expired in September, 2005, at that time, the Dunns only possessed an option to purchase the Hoover tract. The Dunns did not obtain the title to the land in question, less the 6.87 acre tract, until November, 2005. Thus, at the

very least, Dunns cause of action could not have accrued until the time of their acquisition of the Hoover tract, less the 6.87 acre parcel extracted by the Rockwells.

In its conclusions of law, the circuit court noted that the “discovery rule” does not eliminate the affirmative duty that the law imposes upon a plaintiff to discover or make inquiry to discern additional facts about his injury when placed on notice of the possibility of wrongdoing. *McCoy v. Miller*, 213 W. Va. 161, 165, 578 S.E.2d 355, 359 (2003). It is important to note that at no time did the primary wrongdoer, Douglas S. Rockwell, ever satisfy his *affirmative obligation due to his clients to fully disclose in writing precisely* what he had done.

The duty of the attorney to his client, as expressed for example within the Rules of Professional Conduct, is intended “to ensure that clients are represented by competent attorneys who practice their profession with fairness, honesty and integrity.” *Lawyer Disciplinary Board v. Artimez*, 208 W.Va. 288, 540 S.E.2d 156, 164 (2000). Douglas Rockwell falls well below this standard in this instance.

In essence, the Appellees and the circuit court would have this Court shift the affirmative duty of the attorney to fully disclose in writing all adequate information about his self-dealing with the client and direct the client to secure independent advice, to a duty now imposed upon the clients, the Dunns, to determine how and when they were wronged by their own attorney.

Most importantly, Douglas S. Rockwell, the attorney for the Dunns, had an affirmative *duty to disclose in writing* to his client the exact extent of his self-dealing. In order to absolve himself of such deliberate and wrongful self-dealing,

[i]t is incumbent upon the attorney to fully disclose the nature of his interest to the client, including its possible adverse effect on the client. The client should also be given an opportunity to seek independent advice. Finally, the client must then consent to the attorney’s participation in such adverse interest.

*Comm. Leg. Ethics of the W. Va. St. Bar v. Cometti*, 189 W. Va. 262, 430 S.E.2d 320, 325 (1993) (emphasis added) (other citations omitted).

This breach of an affirmative duty constitutes the fraudulent concealment that tolls any limitations period, if such an oft-repeated defensive principle were to apply to the circumstances at hand. "Fraudulent concealment involves the concealment of facts by one with knowledge or the means of knowledge, and a duty to disclose, coupled with an intention to mislead or defraud." *Trafalgar H. Constr., Inc. v. ZMM, Inc.*, 211 W. Va. 578, 584, 567 S.E.2d 294, 300 (2002) (citing *Silva v. Stevens*, 156 Vt. 94, 589 A.2d 852, 857 (1991)).

As noted in detail within page 7 of the Appellants' initial brief, at no time did Douglas S. Rockwell fulfill his affirmative duty to disclose in writing to his clients of the precise size and location of the ground acquired by the Rockwells from Hoover. As counsel to Stanley and Katherine Dunn, Douglas S. Rockwell *repeatedly* failed to fully disclose to his clients precisely what he extracted, in his wife's name, from within the Hoover tract.

Given the arguments noted above, as well as those expressed fully in the Appellants' initial brief, the Orders of the circuit court granting summary judgment in favor of Carol Rockwell and Martin & Seibert must be reversed. Douglas Rockwell, the intentional and secretive wrongdoer, shall not also benefit from the circuit court's error.

## **II. The "Continuous Representation Doctrine" Does Apply.**

Examining the "continuous representation doctrine", this Court in *Smith v. Stacy*, 198 W. Va. 498, 482 S.E.2d 115 (1996) opined that under the continuous representation doctrine, the statute of limitations in a legal malpractice claim is tolled until the professional relationship terminates with respect to the matter underlying the representation. *Id.* In support of his position, Douglas S. Rockwell asserts that his subsequent actions taken on behalf of the Dunns were "only tangentially

related to the legal representation” of Stanley Dunn<sup>3</sup> and therefore cannot toll the statute of limitations. *D.S. Rockwell Brief*, at p. 15. Moreover, he asserts that the “continuous representation doctrine” is inapplicable because the Dunns had actual knowledge of the negligent act.

Stanley and Katherine Dunn sought the legal assistance and guidance of Douglas S. Rockwell to secure an Option to Purchase a large tract of farm land in Jefferson County, West Virginia. The purchase was to take place in the form of a §1033 exchange. A series of three options was prepared by Douglas S. Rockwell, Esquire -- in his capacity as the attorney and not simply a document producer for the Dunns. At least two of the option agreements were prepared while Douglas S. Rockwell was an employee of the Martin & Seibert law firm. Thereafter, during the spring of 2005, according to Stanley Dunn, he commissioned Douglas S. Rockwell, as his attorney, to prepare an Extension Agreement relating to the Option to Purchase the remaining parcel of the Hoover tract. This Extension Agreement was never executed.

In the instant civil action, although outside the employ of Martin & Seibert, as late as 2005, Douglas S. Rockwell sent a bill to Stanley Dunn for services rendered in connection with the §1033 exchange. *See January 11, 2007 Deposition of Douglas S. Rockwell, Exhibit 5*. Upon questioning, Douglas S. Rockwell admitted that he was acting as an attorney at the time the options were being discussed and the designations were being made by him. In his brief, however, Douglas S. Rockwell asserts that because he did not participate in the negotiation process between the Hoovers and the

---

<sup>3</sup> Douglas Rockwell goes on to assert that he only prepared a “generic option agreement” with the Dunns “fill[ing] in any and all pertinent information . . .” *D.S. Rockwell Brief*, at p. 16. Is Douglas now asserting he was only a scrivener? At no time did Douglas ever represent himself as a mere document producer, much like Legal Zoom. In fact, to the contrary, Douglas Rockwell, in his own deposition, acknowledged that he was acting as an attorney. Now, not only hiding behind his spouse, Douglas Rockwell seeks to minimize his role to that of just a document preparer; he certainly is not the typist, for Douglas Rockwell admits he cannot type or operate a computer. Perhaps Douglas Rockwell and his brief writer need to be reminded that “in the context of attorney’s business dealings with a client, that an attorney’s conduct must measure up to the high standards required of a member of the bar, even if [his/her] duties in a particular transaction do not involve the practice of law.” *Artimez, supra*, at p. 164; other citation omitted.

Dunns, his actions as late as 2005 were merely tangentially related to a general representation (*D.S. Rockwell Brief*, at pp. 15, 17), and thus, his actions do not toll the statute of limitations. The problem with this argument, however, is that as late as 2005, Douglas Rockwell sent a bill to Stanley Dunn relating to the § 1033 exchange. Accordingly, the relationship between Stanley Dunn and Douglas S. Rockwell cannot be deemed one of a mere continued general professional relationship as Douglas S. Rockwell suggests. Rather, the professional, attorney-client relationship continued to exist and it related to the ongoing purchase, exchange and acquisition of the Hoover tract by the Dunns.

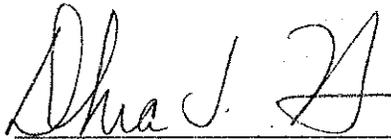
As a part of his argument, Douglas S. Rockwell suggests that since Stanley Dunn had knowledge of his improper conduct, the statute of limitations is not tolled. This argument, however, based upon this Court's holding in a legal malpractice claim wherein the parties are attempting to reverse or mitigate the harm created by the alleged malpractice. The facts in this case, however, do not lend themselves to such an argument, as the parties were not attempting to mitigate or reverse the effects of Douglas S. Rockwell's purchase as the Dunns were not aware of the details of the Rockwell purchase. In fact, when the point in time came that the Dunns learned of the precise size and location of the 6.87 acre parcel, Stanley Dunn, through a series of correspondence in April 2006 and a personal visit to the Rockwells' home, attempted to address the extensive and never disclosed Rockwell land acquisition. These attempts by the Dunns to have the Rockwells return even a portion of the parcel were refused by the Rockwells. Thus, Douglas S. Rockwell's request for a modification of established West Virginia law holding that the application of the "continuous representation doctrine" tolls the statute of limitations until termination of the professional relationship should be disregarded. Contrary to Douglas S. Rockwell's argument, there does not exist an inconsistency in tolling the statute of limitations even when the client is aware of the alleged problem.

**PRAYER FOR RELIEF**

WHEREFORE based upon the foregoing and for all the reasons set forth above as well as all other arguments set forth by the Appellants in the respective briefs, the Appellants herein, plaintiffs Stanley W. Dunn, Jr. and Katherine B. Dunn, respectfully request this Honorable Court enter an Order reversing the Circuit Court of Jefferson County, West Virginia's June 16, 2008 "Order Granting Defendant Martin & Seibert's Motion to Amend Judgment and Entering Summary Judgment on Each of Plaintiff's Claims Against Martin & Seibert," and its August 13, 2008 "Order Granting Defendant Carol Rockwell Summary Judgment" and remand the case to the Circuit Court of Jefferson County, West Virginia with instructions.

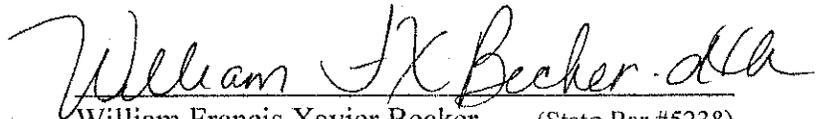
Respectfully submitted this the 18th day of May, 2009.

**Appellants, STANLEY W. DUNN, JR. and  
KATHERINE DUNN, By Counsel:**



James A. Varner, Sr. (WV State Bar #3853)  
Debra Tedeschi Herron (WV State Bar #6501)

McNeer, Highland, McMunn and Varner, L.C.  
Empire Building - 400 West Main Street  
P. O. Drawer 2040  
Clarksburg, WV 26302-2040  
Telephone: (304) 626-1100



William Francis Xavier Becker (State Bar #5238)  
PNC Bank Building  
260 East Jefferson Street, Second Floor  
Rockville, MD 20850  
Telephone: (301) 340-6966

IN THE CIRCUIT COURT FOR JEFFERSON COUNTY,  
WEST VIRGINIA

STANLEY W. DUNN, JR. \*

and \*

KATHERINE B. DUNN \*

VS. \*

No.: 06-C-282

DOUGLAS S. ROCKWELL \*

AND \*

CAROL K. ROCKWELL \*

AND \*

MARTIN & SEIBERT, L. C. \*

RECEIVED

FEB 01 2008

JEFFERSON COUNTY  
CIRCUIT COURT

**MOTION IN LIMINE<sup>1</sup> AS TO THE DEPOSITIONS UNDERTAKEN BY  
THE DEFENSE DUE IT FAR EXCEEDING THE PERMISSIBLE SCOPE OF  
THIS COURT'S ORDER**

And

**MOTION TO ASSESS ALL COSTS AND EXPENSES INCURRED**

Now come the plaintiffs, Stanley and Katherine Dunn, by and through their counsel, William Francis Xavier Becker, Esquire, with this Motion *In Limine*.

In this instance the defendants far exceeded the permissible scope of this Court's Order (see the attached) that permitted a second deposition of the plaintiffs.

<sup>1</sup> From the Latin meaning "at the threshold." See *Luce v. United States*, 469 U. S. 38, 105 S. Ct. 400, 462 n. 2 (1984).

**EXHIBIT A**

RECEIVED FEB 06 2008

By its own terms, the earlier Order of this Court, which was produced by the

defendants, the relief requested by the plaintiffs was not granted.

By agreement the deposition in question was scheduled on the 12<sup>th</sup> of October 2007, to be undertaken on the 19<sup>th</sup> of November 2007. Due to a calendar conflict with one of the attorneys for the individual defendants, the deposition was not noted until January 2008. The new deposition date was Thursday the 24<sup>th</sup> of January 2008.

Since this was a second deposition of the plaintiffs<sup>2</sup>, the scope of the deposition was limited to the factual background of the unsigned Extension Agreement that accompanied the Stanley Dunn affidavit of June 2006. The Order by its own terms was specifically limited in its scope. The Order was not such as to permit inquiry to what otherwise might be considered relevant evidence. See *Vincent v. Preiser*, 175 W. Va. 797, 338 S. E. 2d 398 (1985). The inquiry pursued by the defendants literally was a 're-run' of the earlier inquiry of the plaintiffs.<sup>3</sup>

A Motion *In Limine* is a preliminary or pretrial procedural device. In this instance, the relief requested is warranted so to prohibit the offending parties from offering evidence, which was objected to throughout the duration of the deposition. The conduct of this particular deposition far exceeded the relief and the permissible scope of the inquiry permitted pursuant to this Court's Order of dated the 24<sup>th</sup> of October 2007. See, 75 Am. Jur. 2d *Trials* § 94.

If the litigation process is to be governed by standards as set forth within Court Orders, it is expected of all parties to the dispute to, as best as humanly

<sup>2</sup> It must be noted, that the plaintiffs request for a limited second deposition of the defendants in regard to their affidavits addressing the subsequent discovered Extension Agreement was not granted by this Court's Order of 24 October 2007.

<sup>3</sup> When the transcript is prepared and presented to the undersigned a supplement to this Motion shall be presented.

possible, strive to maintain both the intent and the particular directives of a Court Order. It is not the opportunity to 'push the envelope' to the limit. Attorneys are vested with discretion to grant relief and impose sanctions when individuals do not maintain minimum standards of conduct. See for example, *Bartles v. Hinkle*, 196 W. Va. 381, 472 S. E. 2d 827 (1996).

In addition and most importantly in support of the relief requested by way of this Motion, this Court can, in those instances when a discovery order is blatantly violated, direct that the information impermissibly obtained be deemed subject to a remedial protective order. See for example, *Church of Scientology of California v. United States*, 506 U. S. 9, 113 S. Ct. 447 (1992). It is inappropriate for an attorney to deliberately violate a Court Order. See *Office of Disciplinary Counsel v. Niggemyer*, 221 W. Va. 59, 650 S. E. 2d 158 (2007) (discussing an attorney's violation of the Orders of the Supreme Court).

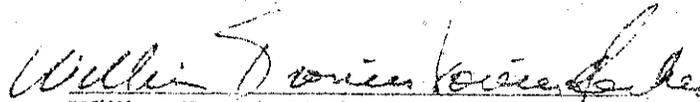
The litigation process is intended to seek the facts and enable the trier-of-the-facts to determine 'where the truth lies' for the just resolution of claims. See *Playboy Enterprises, Inc., V. Sup. Ct. (Greene)*, 201 Cal. Rptr. 207, 154 C. A. 3d 14 (1984). The litigation process is not intended for 'gamesmanship.'

Due to the fact that this particular deposition exercise was excessively long (from approximately 1:00 p.m. to 9:00 p.m.), the scope of the inquiry far exceed that which was permitted and intended, and the manner of the inquiry was lacking in its display of professionalism<sup>4</sup> the plaintiffs seek not only relief by way of an Order *In*

---

<sup>4</sup> Notwithstanding even the most contentious litigation, attorneys should ever be mindful that the practice of law is a profession and that attorneys are expected to extend professional courtesy to opposing counsel and the deponent. See *Scully v. Tauber*, 138 Md. App. 423, 771 A. 2d 550 (2001) (discussing such courtesy in the context of scheduling depositions).

Date: 30 January 2008

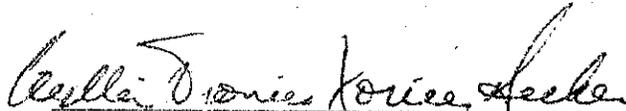


William Francis Xavier Becker  
PNC Bank Building, 2<sup>nd</sup> Floor  
260 E. Jefferson St.  
Rockville, MD 20850  
(301) 340-6966

**HEARING REQUEST**

Katherine and Stanley Dunn request an oral hearing on this Motion in accordance with West Virginia Rules of Civil Procedure, Rule 78 and Rule 22.03 of the West Virginia Trial Court Rules.

Counsel for Katherine and Stanley Dunn estimates the time of this hearing not to exceed 30 minutes.



William Francis Xavier Becker

Certificate of Service

I hereby certify that a copy of this pleading was sent by way of first class mail, postage pre-paid and by email transmission to the following:

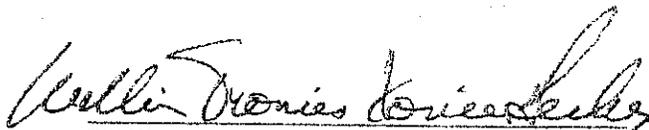
Gregory H. Shillace  
Attorney for Douglas S. Rockwell  
Huntington Bank Building  
230 West Pike Street  
Suite 303  
P.O. Box 1526  
Clarksburg, West Virginia 26302

Kathy Santa Barbara  
518 W. Stephen Street  
Martinsburg, W. Va. 25401

Robert D. Aitcheson  
Attorney for Carol K. Rockwell  
P.O. Box 750  
Charles Town, West Virginia 25414

Christopher K. Robertson  
Attorney for Martin & Seibert, P. C.  
P.O. Box 1068  
310 W. Burke Street  
Martinsburg, West Virginia 25402

on the 30<sup>th</sup> day of Jan 2008.

  
William Francis Xavier Becker

Mt. In Litine  
Improper deposition

Court Order

of

24 October 2007

Permitting The Deposition

But Defining Its Scope

*W. Becker*

IN THE CIRCUIT COURT FOR JEFFERSON COUNTY, WEST VIRGINIA

STANLEY W. DUNN, Jr. and  
KATHERINE B. DUNN,

Plaintiffs,

vs.

Civil Action No. 06-C-282  
(Judge David H. Sanders)

RECEIVED  
OCT 25 2007  
JEFFERSON COUNTY  
CIRCUIT COURT

DOUGLAS S. ROCKWELL,  
CAROL K. ROCKWELL, and  
MARTIN & SEIBERT, L.C.,

Defendants.

ORDER

ON THE 12<sup>TH</sup> DAY OF OCTOBER, 2007 came the Plaintiffs, Stanley W. Dunn, Jr., in person, and Katherine B. Dunn, by counsel, William Francis Xavier Becker, Esquire, and also came the Defendants, Douglas S. Rockwell and Carol K. Rockwell (hereinafter the "Rockwell Defendants"), in person and by counsel, Kathy M. Santa Barbara, Esquire and the law firm of Santa Barbara Law Offices, P.L.L.C., and also appeared telephonically, Gregory H. Schillace, Esquire, co-counsel for Douglas S. Rockwell, Robert D. Aitcheson, Esquire, co-counsel for Carol K. Rockwell, and Christopher K. Robertson, Esquire and the law firm of Jackson Kelly PLLC, counsel for the Defendant, Martin & Seibert, L.C., for a status conference scheduled this date. Whereupon the Court proceeded to hear the representations of counsel for the parties with respect to various pending matters herein, and having heard the same, the Court does Order as follows:

1. That there is presently pending and ripe for decision the Defendants' Joint Motion and Memorandum to Exclude Wilfully Withheld Document or, Alternatively, to Defer Ruling on Plaintiffs' Motion for Partial Summary Judgment to Permit Further Discovery and Briefing; To Extend Briefing Schedule on Martin & Seibert's Cross-Motion for Summary Judgment; and to Re-Open Depositions of Plaintiffs (hereinafter the "Joint Motion"). With the agreement of all parties, the further depositions of the Plaintiffs will be taken on the 19<sup>th</sup> day of November, 2007, commencing at 10:30 o'clock a.m. at a place to be mutually agreed upon by the parties, which

RECEIVED OCT 25 2007

depositions will be directed to the document which was the subject of the Joint Motion and the allegations of the Plaintiffs' Amended Complaint by Interlineation. Questioning at said depositions on behalf of the Rockwell Defendants will be made by Robert Aitchison on behalf of Mrs. Rockwell, and Gregory Schillace on behalf of Mr. Rockwell, unless either of said counsel should suddenly not become available in which event questioning may be conducted by Kathy M. Santa Barbara in the place and stead of such unavailable co-counsel. Kathy M. Santa Barbara may attend said depositions but shall not be entitled to question the deponents so as to avoid any "tag team" approach to the questioning. At the said depositions, counsel for the parties shall make every attempt to schedule the depositions of expert witnesses in this case. There shall be no further depositions of the Rockwell Defendants. The relief requested in the Joint Motion with respect to the costs and attorneys' fees incurred in the taking of the Plaintiffs' depositions shall be itemized and held in abeyance for taxation at the conclusion of this civil action.

2. The Court will enter an Order pursuant to Trial Court Rule 22 with respect to the briefing schedule upon the Motion for Summary Judgment previously filed herein on behalf of Carol K. Rockwell.

3. The pending Motion of the Plaintiffs to extend the discovery deadlines in this matter are hereby rendered moot.

4. The only other pending Motion before this Court which has already been addressed by a Trial Court Rule 22 Scheduling Order and which will be decided in accordance therewith is the Renewed Motion of Martin & Soibert for Summary Judgment.

5. The Pre-Trial Conference in this matter shall be continued to March 14, 2008 commencing at 10:30 o'clock a.m.

6. The Jury Trial of this matter shall commence on April 8, 2008 at 9:00 o'clock a.m. and is anticipated to take approximately one week.

7. Dispositive motions shall be filed 45 days prior to the Pre-Trial Conference, *to wit*, by January 29, 2008.

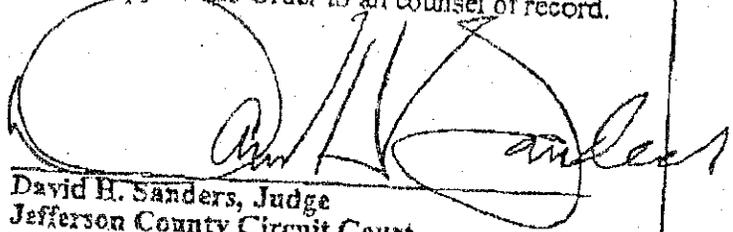
All other deadlines for the trial of this matter, and hereby moved forward by the same number of days as the trial (72 days), to wit, as follows: (a) any further mediation agreed to by the parties shall be completed by November 29, 2007; and discovery requests shall be made no later than December 5, 2007.

IT IS SO ORDERED.

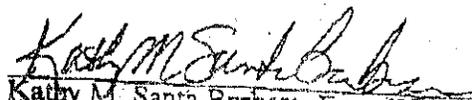
The Court notes the exceptions and objections of the parties to any adverse rulings.

The Clerk is directed to forward an attested copy of this Order to all counsel of record.

DATE: 10/24/07

  
 David H. Sanders, Judge  
 Jefferson County Circuit Court

SEC  
 RAA  
 B Schillace  
 W. Becker  
 R. Santa Barbara  
 R. Robertson  
 10/26/07  
 AP  
 Submitted by:

  
 Kathy M. Santa Barbara, Esq., WWSB #5960  
 Counsel for the Rockwell Defendants

A TRUE COPY  
 ATTEST:

PATRICIA A. NOLAND  
 CLERK, CIRCUIT COURT  
 JEFFERSON COUNTY, W.VA

BY   
 DEPUTY CLERK

IN THE CIRCUIT COURT FOR JEFFERSON COUNTY  
WEST VIRGINIA

STANLEY W. DUNN, JR. \*

and \*

KATHERINE B. DUNN \*

VS. \*

No.: 06-C-282

DOUGLAS S. ROCKWELL \*

AND \*

CAROL K. ROCKWELL \*

AND \*

MARTIN & SEIBERT, L.C. \*

ORDER

This matter comes before this Court upon the plaintiffs' Motion *In Limine* and other requested relief.

Upon review of the exhibits in support of the Motion, it is this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

ORDERED, that the use of the depositions of Stanley and Katherine Dunn taken on Thursday, the 25<sup>th</sup> of January, 2008 shall be specifically limited to those portions of the inquiry directed to the Extension Agreement that accompanied the Stanley Dunn Affidavit of the 22<sup>nd</sup> of June, 2007, and as noted in this Court's earlier Order of the 24<sup>th</sup> of October, 2007; and it is further,

RECEIVED FEB 06 2008

ORDERED, that the cost of the deposition and the attorney's fees incurred by the plaintiffs shall be paid by the defendants; counsel for the plaintiffs shall submit a billing statement or invoice for such expense, and the same shall constitute a judgment of this Court if favor of the plaintiffs.

Date: \_\_\_\_\_

\_\_\_\_\_  
David H. Sanders, Judge  
Circuit Court for Jefferson County, WV

cc:

Gregory H. Shillace  
Attorney for Douglas S. Rockwell  
Huntington Bank Building  
230 West Pike Street  
Suite 303  
P.O. Box 1526  
Clarksburg, West Virginia 26302

Robert D. Aitcheson  
Attorney for Carol K. Rockwell  
P.O. Box 750  
Charles Town, West Virginia 25414

Christopher K. Robertson  
Attorney for Martin & Seibert, P. C.  
P.O. Box 1068  
310 W. Burke Street  
Martinsburg, West Virginia 25402

Kathy Santa Barbara  
518 W. Stephen Street  
Martinsburg, W. Va. 25401

William Francis Xavier Becker  
PNC Bank Building, 2<sup>nd</sup> Floor  
260 E. Jefferson St.  
Rockville, MD 20850

**CERTIFICATE OF SERVICE**

This is to certify that on the 18th day of May, 2009, I served the foregoing *Reply*

***Brief on Behalf of the Appellants, Stanley W. Dunn, Jr. and Katherine B. Dunn, in Support of Their Petition for Appeal*** upon all counsel of record by depositing true copies in the United States

Mail, postage prepaid, in envelopes addressed as follows:

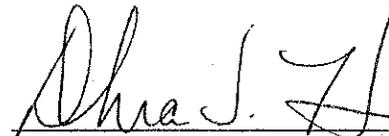
Gregory H. Schillace, Esquire  
Schillace Law Office  
230 West Pike Street, Suite 303  
P. O. Box 1526  
Clarksburg, WV 26302  
***Co-Counsel for Douglas S. Rockwell***

Robert D. Aitcheson, Esquire  
Aitcheson Law Office  
208 North George Street  
P. O. Box 750  
Charles Town, WV 25414  
***Counsel for Carol K. Rockwell***

William Francis Xavier Becker, Esquire  
PNC Bank Building  
260 East Jefferson Street, Second Floor  
Rockville, MD 20850  
***Co-Counsel for Plaintiffs***

Kathy Santa Barbara, Esquire  
Santa Barbara Law Offices  
518 West Stephen Street  
Martinsburg, WV 25401  
***Co-Counsel for Douglas S. Rockwell***

Christopher K. Robertson, Esquire  
Jackson Kelly PLLC  
310 West Burke Street  
P. O. Box 1068  
Martinsburg, WV 25402  
***Counsel for Martin & Seibert, L. C.***



James A. Varner, Sr. (WV State Bar #3853)  
Debra Tedeschi Herron (WV State Bar #6501)

McNeer, Highland, McMunn and Varner, L.C.  
Empire Building - 400 West Main Street  
P. O. Drawer 2040  
Clarksburg, WV 26302-2040  
Telephone: (304) 626-1100  
Facsimile: (304) 623-3035