

CIVIL CASE INFORMATION STATEMENT
CIVIL CASES

RALEIGH COUNTY
RECEIVED AND FILED
2015 MAY 11 A 10:45
PAUL H. FLANAGAN

In the Circuit Court, Raleigh County, West Virginia

I. CASE STYLE:

CIRCUIT CLERK _____

Plaintiff/Petitioners,

Case #

15-C-374

STATE OF WEST VIRGINIA ex rel.
PATRICK MORRISEY,
ATTORNEY GENERAL,

Judge

HLK

v.

Defendants/Respondents.

Days to
Answer

Type of Service

TRI-COUNTY BURIAL ASSOCIATION, an
unincorporated association,

20

Personal

H. E. MELTON, Individually and as an officer and
member of the Board of Directors
of Tri-County Burial Association,

20

Personal

CONNIE E. LEWIS, Individually and as an officer and
member of the Board of Directors
of Tri-County Burial Association,

20

Personal

LEONARD T. POWELL, Individually and as an officer and
member of the Board of Directors
of Tri-County Burial Association,

20

Personal

WILLIAM E. BOWLES, Individually and as an officer and
member of the Board of Directors
of Tri-County Burial Association,

20

Personal

DANIEL R. CALFEE, Individually and as an officer and
member of the Board of Directors
of Tri-County Burial Association,

20

Personal

Original and ___ copies of complaint furnished herewith.

(Continued On Next Page)

IN THE CIRCUIT COURT OF RALEIGH COUNTY, WEST VIRGINIA

RALEIGH COUNTY
RECEIVED AND FILED

STATE OF WEST VIRGINIA ex rel.
PATRICK MORRISEY,
Attorney General,

2015 MAY 11 A 10:45

PAUL H. FLANAGAN

Plaintiff/Petitioner,

CIRCUIT CLERK _____

v.

Civil Action No. 15-C-374

JUDGE HLK

TRI-COUNTY BURIAL ASSOCIATION, an
unincorporated association,
H. E. MELTON, Individually and as an officer and
member of the Board of Directors of Tri-County Burial Association,
CONNIE E. LEWIS, Individually and as an officer and
member of the Board of Directors of Tri-County Burial Association,
LEONARD T. POWELL, Individually and as an officer and
member of the Board of Directors of Tri-County Burial Association ,
WILLIAM E. BOWLES, Individually and as an officer and
member of the Board of Directors of Tri-County Burial Association,
and DANIEL R. CALFEE, Individually and as an officer and
member of the Board of Directors of Tri-County Burial Association,

Defendants/Respondents.

COMPLAINT AND PETITION FOR
TEMPORARY AND PERMANENT INJUNCTION

This action is brought pursuant to the West Virginia Consumer Credit and Protection Act, West Virginia Code § 46A-1-101 *et seq.* (“the Act”). Plaintiff/Petitioner, the State of West Virginia by Attorney General Patrick Morrissey (“the State”) has reason to believe that Defendants/Respondents, Tri-County Burial Association *et al.*, have violated the Act. The State

brings this action to enjoin and restrain the Defendants from engaging in unfair or deceptive acts or practices in connection with the burial association.

I.
THE PARTIES

1. The Plaintiff, the State of West Virginia, brings this action by and through Patrick Morrissey, Attorney General for the State of West Virginia.

2. The Attorney General is authorized to bring this action pursuant to W. Va. Code §§ 46A-7-108, -110 and -111.

3. Defendant, Tri-County Burial Association (hereinafter “the Association”), is an unincorporated business in Raleigh County, West Virginia, and has its principal postal address as Post Office Box 1678, Beckley, West Virginia 25802.

4. Defendant, H. E. Melton is an officer of the Association and member of the Board of Directors and helps run the Association. Melton resides at 116 Flat Top Lake Road, Ghent, West Virginia 25843.

5. Defendant, Connie E. Lewis is the treasurer of Tri-County Burial Association, a member of the Board of Directors, and a Certified Public Accountant. Lewis resides at 200 Parliament Road, Shady Spring, West Virginia 25918.

6. Defendant, Leonard T. Powell is the president of Tri-County Burial Association and a member of the Board of Directors. Powell resides at 359 Collins Hill Road, Glen Jean, West Virginia 25846 and/or 219 Bluestone Road, Mount Hope, West Virginia, 25880.

7. Defendant, William E. Bowles is an officer of Tri-County Burial Association and a member of the Board of Directors. Bowles resides at 105 Blueberry Place, Daniels, West Virginia, 25832.

8. Defendant, Daniel R. Calfee is an officer of Tri-County Burial Association and a member of the Board of Directors. Calfee resides at 411 Maxwell Hill Road, Beckley, West Virginia 25801.

9. Since at least 1967, Defendants have run an unincorporated, non-profit burial association in West Virginia.

10. The defendants, jointly and severally, controlled and made all decisions as to the policies, procedures and operations of the Association, including, but not limited to, the distribution of death benefits to the Association members; collection of membership fees, annual fees, and death benefit fees from members; material information to be disseminated or withheld from members; the number of members to be had in each chapter of the Association; and, whether to continue accepting or cease accepting new members.

11. To adhere to the fiction of a separate existence between the defendants, Melton, Lewis, Powell, Bowles and Calfee and Tri-County Burial Association would sanction fraud and promote injustice.

II. **JURISDICTION AND VENUE**

12. This Court has jurisdiction to hear this matter pursuant to W. Va. Const. Art. VIII, § 6 and W. Va. Code § 51-2-2 and § 53-5-3.

13. Venue is proper in this Court pursuant to W. Va. Code §§ 46A-7-114 and 56-1-1.

III.
STATEMENT OF FACTS

14. After receiving several complaints about Defendants from consumers in Raleigh County, West Virginia, in 2013-2014, the State commenced an investigation of the Defendants' business practices.

15. Tri-County Burial Association was created in Raleigh County in 1967.

16. The by-laws of the Association states that it was created to help people with their burial expenses.

17. Members were accepted after an application was sent in and then approved by the Board of Directors.

18. The Association solicited and sold memberships to West Virginia consumers and members were promised that funeral expenses would be paid.

19. At the time of acceptance, the member would pay \$26.00 to the Association. Some of this money went to what the Association termed a general burial fund.

20. When members would pass away, a card (hereinafter "the blue card") was sent to members requiring the payment of \$1.00 for each passing member's burial expense. The Association did not send a card until 10 members had passed away.

21. The blue cards contained the name and addresses of the deceased members.

22. At least 10 times a year the blue card was sent to members for payment.

23. If payment was not received, the member would not be in good standing with the Association.

24. Members were also required to pay \$13.00 annually to remain in good standing with the Association.

25. In 1997, the Association divided its membership into chapters; only 2000 members were contained in each chapter.

26. After the division into chapters, the blue cards were only sent for people who passed away in the member's chapter. As such, burial expense paid out would total \$2,000 for each member. Members were not advised or instructed regarding this reduction in burial payments.

27. At some time the Association stopped accepting new members; however, current members continued to pay the annual \$13.00 fee and continued to pay the blue card requirements.

28. On May 1, 2014, the building in which Tri-County Burial's office was contained was sold for \$200,000.

29. On or about September 26, 2014, the Association mailed a letter to members that stated the Board of Directors was meeting to vote on dissolving the Association.

30. Despite advising of the dissolution, the Association continued to send out blue cards to collect burial fees.

31. The West Virginia Consumer Credit and Protection Act (WVCCPA) prohibits, *inter alia*, an entity from engaging in unfair methods of competition and unfair or deceptive acts or practices in their relation with a consumer. *See W. Va. Code § 46A-6104.*

32. W.Va. Code § 46A-1-102(7) defines unfair methods of competition and unfair or deceptive acts or practices rather broadly, but specifically includes the following prohibited conduct:

(E) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation or connection that he does not have;

* * *

(L) Engaging in any other conduct which similarly creates a likelihood of confusion or of misunderstanding;

(M) The act, use or employment by any person of any deception, fraud, false pretense, false promise or misrepresentation, or the concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any goods or services, whether or not any person has in fact been misled, deceived or damaged thereby.

W. Va. Code § 46A-6-102(7)(E), -(L), and -(M).

33. The Defendants/Respondents engaged in unfair methods of competition and unfair or deceptive acts or practices in violation of the WVCCPA, generally, and W. Va. Code § 46A-6-104, specifically.

34. The Defendants created an association and misrepresented to consumers that purchasing a membership in the Association would provide them with death benefits equal to their entire burial expenses.

35. The Defendants misrepresented to members that a “change in the law” required it to break the Association’s membership into chapters containing no more than 2,000 members. No such law exists.

36. The Defendants intentionally and deliberately restricted the number of members in each chapter to 2,000 in order to dramatically reduce the amount of benefits paid to the individual member upon his or her death. For example, prior to breaking the membership into separate chapters, each member paid \$1.00 toward death benefits for each member who died. If there were 10,000 members, the death benefit paid out would be \$10,000. By limiting the number of members to 2,000, the Defendants limited the amount members would receive upon their deaths.

37. The Defendants did not disclose or explain the reduced death benefit to its members

38. The Defendants did not disclose to its members that the Defendants' decision to stop soliciting or accepting new members to the Association would dramatically reduce the amount paid out for death benefits as members died.

39. The Defendants represented to members that the Association had been dissolved, leaving elderly members who have paid for years into the Association with no money to help with their own burial expenses.

40. Despite the Defendants' representations that the Association has been dissolved, Defendants continue to mail blue cards to members and request payment of \$1.00 upon the death of other members.

41. Since the dissolution of the Association, the Defendants have cancelled memberships of consumers who refused to continue to make payments pursuant to the blue card requests.

42. The Defendants did not keep members apprised of changing dynamics in the Association and intentionally stopped accepting members to the detriment of those who were still members of the Association.

43. The Defendants transferred real property in which the Association held an interest without recording a statement of authorization in the office of the Clerk of the County Commission of Raleigh County, West Virginia – the county wherein the property was situate.

44. The Defendants derived the sum of at least \$185,000.00 from the sale of said real property.

45. The Defendants have depleted the funds derived from the sale of said real property and continue to deplete these funds.

46. The Defendants have depleted these funds to the detriment of the membership of the Association.

IV. CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION

47. The State reasserts each and every foregoing allegation/paragraph in this Complaint as if set forth fully herein.

48. The Defendants represented to consumers that membership in the Association would result in the payment of their entire burial expenses upon their death when it did not.

49. The Defendants' representations that membership in the Association had benefits that it did not have constitutes unfair or deceptive acts or practices as defined by W. Va. Code § 46A-6-102(7)(E) and violates W. Va. Code § 46A-6-104.

50. The Defendants' misrepresentations as to the benefits derived from membership in the Association constitutes unfair or deceptive acts or practices as defined by W. Va. Code § 46A-6-102(7)(M) and violates W. Va. Code § 46A-6-104.

51. The Defendants' misrepresentations and concealment, suppression or omission of the material fact that membership in the Association had benefits that it did not have constitutes unfair or deceptive acts or practices as defined by W. Va. Code § 46A-6-102(7)(L) and violates W. Va. Code § 46A-6-104.

SECOND CAUSE OF ACTION

52. The State reasserts each and every foregoing allegation/paragraph in this Complaint as if set forth fully herein.

53. The Defendants represented to consumers that membership in the Association would result in the payment of \$2,000.00 in benefits at the time of their deaths and it did not.

54. The Defendants' representations that membership in the Association had benefits that it did not have constitute unfair or deceptive acts or practices as defined by W. Va. Code § 46A-6-102(7)(E) and violates W. Va. Code § 46A-6-104.

55. The Defendants' misrepresentations as to the benefits derived from membership in the Association constitute unfair or deceptive acts or practices as defined by W. Va. Code § 46A-6-102(7)(M) and violates W. Va. Code § 46A-6-104.

56. The Defendants' misrepresentations and concealment, suppression or omission of the material fact that membership in the Association had benefits that it did not have constitute unfair or deceptive acts or practices as defined by W. Va. Code § 46A-6-102(7)(L) and violates W. Va. Code § 46A-6-104.

THIRD CAUSE OF ACTION

57. The State reasserts each and every foregoing allegation/paragraph in this Complaint as if set forth fully herein.

58. The Defendants misrepresented to members of the Association that a change in some unspecified law required it to divide the membership into separate chapters containing no more than 2,000 members, when no such law exists.

59. The Defendants' misrepresentations constitute unfair or deceptive acts or practices as defined by W. Va. Code § 46A-6-102(7)(M) and violate W. Va. Code § 46A-6-104.

60. The Defendants' misrepresentations and concealment, suppression or omission of the material fact no law exists which required it to divide the membership in the Association into

chapters of 2,000 members each constitute unfair or deceptive acts or practices as defined by W. Va. Code § 46A-6-102(7)(L) and violates W. Va. Code § 46A-6-104.

FOURTH CAUSE OF ACTION

61. The State reasserts each and every foregoing allegation/paragraph in this Complaint as if set forth fully herein.

62. The Defendants failed to disclose to consumers that dividing the membership into chapters of 2,000 members each would dramatically, substantially and detrimentally reduce the benefits they would each receive at the time of their deaths.

63. The Defendants' conduct constitutes unfair or deceptive acts or practices as defined by W. Va. Code § 46A-6-102(7)(M) and violate W. Va. Code § 46A-6-104.

64. The Defendants' conduct also constitutes unfair or deceptive acts or practices as defined by W. Va. Code § 46A-6-102(7)(L) and violates W. Va. Code § 46A-6-104.

FIFTH CAUSE OF ACTION

65. The State reasserts each and every foregoing allegation/paragraph in this Complaint as if set forth fully herein.

66. The Defendants failed to disclose to consumers that the Defendants' decision to stop soliciting or accepting new members into the Association would dramatically, substantially and detrimentally reduce the benefits they would each receive at the time of their deaths.

67. The Defendants' conduct constitutes unfair or deceptive acts or practices as defined by W. Va. Code § 46A-6-102(7)(M) and violate W. Va. Code § 46A-6-104.

68. The Defendants' conduct also constitutes unfair or deceptive acts or practices as defined by W. Va. Code § 46A-6-102(7)(L) and violates W. Va. Code § 46A-6-104.

SIXTH CAUSE OF ACTION

69. The State reasserts each and every foregoing allegation/paragraph in this Complaint as if set forth fully herein.

70. The Defendants represented to members that the Association had been dissolved, but continued to conduct business by mailing blue cards to members and requiring the payment of \$1.00 per member death.

71. The Defendants' conduct constitutes unfair or deceptive acts or practices as defined by W. Va. Code § 46A-6-102(7)(L) and violates W. Va. Code § 46A-6-104.

SEVENTH CAUSE OF ACTION

72. The State reasserts each and every foregoing allegation/paragraph in this Complaint as if set forth fully herein.

73. As the parties responsible for the actions of Tri-County Burial Association, Defendants are contractually obligated to fulfill the terms of the Association agreement executed by the Board of Directors.

74. Defendants intentionally engaged in unlawful conduct that directly and proximately caused the Association to be dissolved and the members of the Association to receive no benefit from their relationship.

75. By the actions set forth above, each Defendant has intentionally and willfully violated W. Va. Code § 46A-6-104.

EIGHTH CAUSE OF ACTION

76. The provisions of West Virginia Code § § 36-11-1 through -17, the Uniform Unincorporated Nonprofit Association Act (hereinafter "the UUNAA"), describe those documents required to be filed with the West Virginia Secretary of State.

77. Included in the required filings are the Association's service of process agent, the address of the Association, and the name of the non-profit. W. Va. Code § 36-11-10.

78. The Defendants failed to comply with the filing requirements of UUNAA, specifically W. Va. Code § 36-11-10.

79. The Defendants' failure to comply with the provisions of UUNAA constitute *per se* unfair or deceptive acts or practices and violate W. Va. Code § 46A-6-104.

INJUNCTIVE RELIEF

80. The State reasserts each and every foregoing allegation/paragraph in this Complaint as if set forth fully herein.

81. Pursuant to the West Virginia Consumer Credit and Protection Act, including notably W. Va. Code § 46A-7-108 through -110, the State seeks to temporarily and permanently enjoin the Defendants/Respondents from any ongoing current violations as well as prohibit similar unlawful conduct in the future.

82. The State also seeks an immediate temporary injunction freezing the assets of the Defendant Association, specifically all monies contained in any bank accounts derived from payments solicited from members and from the sale of real property in which the Association held an interest.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, State of West Virginia ex rel. Attorney General Patrick Morrisey, hereby prays for the following:

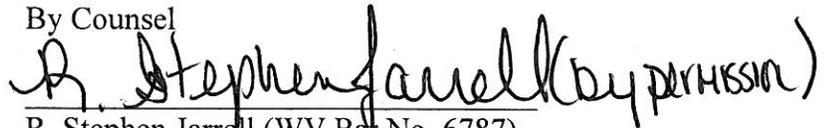
1. An Order TEMPORARILY and PERMANENTLY ENJOINING and RESTRAINING Defendants/Respondents, including all officers, directors, managers, agents, employees, servants, independent contractors, heirs, successors,

for each and every willful and repeated violation of chapter 46A of the West Virginia Code that they committed, as provided in W. Va. Code § 46A-7-111(2);

8. Such other and further relief as the Court deems just and appropriate.

Respectfully submitted:
STATE OF WEST VIRGINIA, ex rel.
PATRICK MORRISEY,
Attorney General

By Counsel

 (by permission)

R. Stephen Jarrell (WV Bar No. 6787)
Assistant Attorney General
Consumer Protection/Antitrust Division
Post Office Box 1789
Charleston, WV 25326-1789
Telephone: 304-558-8986

VERIFICATION

STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA, TO-WIT:

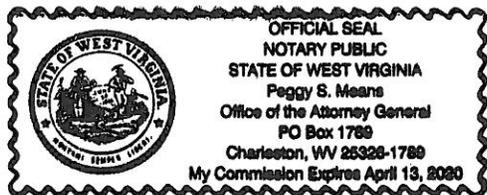
I, R. STEPHEN JARRELL, ASSISTANT ATTORNEY GENERAL, being duly sworn, depose and say that I am the counsel of record for the Plaintiffs in the Complaint and Petition for Preliminary and Permanent Injunction in the foregoing styled civil action; that I am familiar with the contents of the foregoing Complaint and Petition for Preliminary and Permanent Injunction; and that the facts and allegations contained therein are true, except such as are therein stated upon information and belief, and that as to such allegations I believe them to be true.

R. S. Jarrell

R. STEPHEN JARRELL (WV State Bar 6787)
ASSISTANT ATTORNEY GENERAL
Consumer Protection Division and
Antitrust Division

Taken, subscribed, and sworn to before me in the County and State aforesaid this 11th day of May, 2015.

My commission expires April 13, 2020.



Peggy S. Means

NOTARY PUBLIC