

IN THE CIRCUIT COURT OF MARION COUNTY, WEST VIRGINIA

JOHN MANCHIN II,

Plaintiff,

v.

Civil Action No. 14-C-216

JOSEPH MANCHIN III; and  
ROCH MANCHIN,

Defendants.

COMPLAINT

Parties

1. Plaintiff John Manchin II is an adult person who is a resident and citizen of Fairmont, Marion County, West Virginia.

2. Defendant Joseph Manchin III is an adult person who is a resident and citizen of Charleston, Kanawha County, West Virginia.

3. Defendant Roch Manchin is an adult person who is a resident and citizen of Farmington, Marion County, West Virginia.

4. At times relating to this civil action, Plaintiff John Manchin II was a doctor of osteopathic medicine, who practiced medicine full-time in Marion County, West Virginia, and he continues to do so through the present.

5. At times relating to this civil action, Defendant Joseph Manchin III was a businessman, involved in the carpet

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MARION COUNTY, WEST VIRGINIA

business, real estate, coal brokerage, and other ancillary endeavors, and also served as an elected official of and for this State.

6. At times relating to this civil action, Defendant Roch Manchin was a businessman, involved in the carpet business, real estate, coal brokerage, and other ancillary endeavors.

7. At times relating to this civil action, Plaintiff John Manchin II and Defendants Joseph Manchin III and Roch Manchin are brothers and were actual and purported partners and co-owners of real estate and business interests, who owed to each other certain legal, equitable, and fiduciary duties under West Virginia law.

8. As a result of their family relationship, their close personal relationship, and their actual and purported partnerships, Plaintiff John Manchin II and Defendants Joseph Manchin III and Roch Manchin occupied and maintained a confidential and fiduciary relationship at all times relevant to the various legal and equitable claims made in this civil action.

#### Venue

9. Plaintiff John Manchin II asserts that venue is proper in this Court under the provisions of *West Virginia Code* § 56-1-1 because Plaintiff and Defendant Roch Manchin are residents of Marion County, West Virginia, and the unlawful,

inequitable and tortious acts and conduct, breaches of duties, and causes of action complained of occurred in Marion County, West Virginia.

General Factual Allegations

10. In the early 1980's, Plaintiff John Manchin II and Defendants Joseph Manchin III and Roch Manchin formed, owned, and operated Manchin Brothers, located in Marion County, West Virginia.

11. Manchin Brothers was formed, owned, and operated as a West Virginia general partnership of which Plaintiff John Manchin II, Defendant Joseph Manchin III, and Defendant Roch Manchin were equal general partners.

12. Plaintiff John Manchin II provided all funding and capital contributions so that Manchin Brothers could be formed, established, and funded, thereby enabling it to acquire general partnership assets.

13. Beginning at its formation, Manchin Brothers acquired ownership in and title to assets, including money and rents, real estate holdings, farm land, a commercial office building, and interest in coal reserves.

14. At the time of the formation of Manchin Brothers, Defendants Joseph Manchin III and Roch Manchin, and other family members, owned, controlled, and operated Manchin Carpet Center,

a West Virginia general partnership, located in Marion County, West Virginia.

15. Thereafter, in the late 1980's and early 1990's, Manchin Carpet Center, a West Virginia general partnership, became financially distressed, was unable to pay its debts, and became insolvent.

16. Due to pressure from its bank, Manchin Carpet Center's general partners, including Defendants Joseph Manchin III and Roch Manchin, were required to acquire assets, funding, and a loan guarantor to stabilize its failing financial condition so that they would not be forced into bankruptcy.

17. In response to Manchin Carpet Center's distressed financial condition, Defendants Joseph Manchin III and Roch Manchin requested financial assistance and support from their brother and partner in Manchin Brothers, Plaintiff John Manchin II, including loan guarantees for debt payment and the loan and infusion of money to and for them and Manchin Carpet Center, and as a result of Plaintiff's assistance and support and upon Defendants' representations to him, he became a purported partner of Manchin Carpet Center.

18. The total amount or value of the financial assistance and support provided by Plaintiff John Manchin II to Defendants Joseph Manchin III and Roch Manchin and their general partnership, Manchin Carpet Center, was in excess of \$1.7



million, all of which was provided to their primary creditor, Community Bank & Trust, located in Marion County, West Virginia.

19. Defendants Joseph Manchin III and Roch Manchin were able to reorganize Manchin Carpet Center and utilize and transfer its partnership funds, property and assets to other entities and to continue operating unencumbered by the significant financial debt paid by Plaintiff, and it currently exists as Wholesale Carpet Outlet, Inc., incorporated by Defendant Roch Manchin on January 30, 1991.

20. Defendants Joseph Manchin III and Roch Manchin, as individuals and general partners of Manchin Carpet Center, contractually agreed and promised to repay Plaintiff John Manchin II, their brother and partner in Manchin Brothers and purported partner in Manchin Carpet Center, the amount or value of the financial assistance and support provided to them and their failing partnership.

21. On repeated and numerous occasions over time, Plaintiff John Manchin II has requested that Defendants Joseph Manchin III and Roch Manchin satisfy their contractual obligation, promise, and agreement to pay him for the amount or value of the financial assistance and support provided to them and their failing partnership.

22. On each occasion when Plaintiff John Manchin II requested and sought repayment and satisfaction of his claim for

the amount or value of the financial assistance and support he provided to Defendants and their failing partnership, Defendants Joseph Manchin III and Roch Manchin, orally and in writing, renewed their contractual obligation, promise and agreement to repay Plaintiff such amounts and did so most recently by correspondence and the written Funds Sharing Agreement executed by Defendant Joseph Manchin III on July 24, 2012, and Defendant Roch Manchin on July 31, 2012, a copy of which is attached hereto and marked as Complaint Exhibit 1.

23. On repeated and numerous occasions when Plaintiff John Manchin II requested and sought repayment from Defendants, as set forth above, Defendants Joseph Manchin III and Roch Manchin, individually and collectively, renewed their contractual obligation, promise and agreement to repay Plaintiff such amounts and affirmatively represented that, if he delayed and withheld legal and equitable proceedings to collect from them and their failing partnership, Manchin Carpet Center, the amount and value due and owing him, Plaintiff John Manchin II would be granted, conveyed, and provided a one-third (1/3) interest in the coal reserves and coal brokerage businesses and other businesses incorporated, formed, and owned by them.

24. Plaintiff John Manchin II relied upon Defendants Joseph Manchin III's and Roch Manchin's representations and assurances that he would be repaid in funds and a one-third

(1/3) interest in any coal reserve acquired and coal brokerage businesses and other businesses incorporated, formed, and owned by them.

25. Upon information and belief, Defendants Joseph Manchin III and Roch Manchin terminated and dissolved the general partnership, Manchin Brothers, without notice to and without the knowledge or consent of Plaintiff John Manchin II and, as such, Manchin Brothers is no longer an entity and does not exist at this time in its original form or name, and it is believed that its funds, assets and property were transferred to Wholesale Carpet, Inc.

26. Upon information and belief, Defendants Joseph Manchin III and Roch Manchin reorganized and transferred general partnership funds and assets belonging to Manchin Brothers to Manchin Enterprises, a West Virginia general partnership owned and controlled by Defendant Joseph Manchin III and his son, Joseph Manchin IV, and otherwise acquired coal reserves and established coal brokerage businesses and other businesses in this State utilizing said funds and assets, in whole or part.

27. Upon information and belief, in spite of their numerous and repeated renewed promises to and agreements with Plaintiff over time to do so, Defendants Joseph Manchin III and Roch Manchin negligently, intentionally, and willfully failed and refused to repay Plaintiff John Manchin II and further

failed to provide him a one-third (1/3) ownership interest in the coal reserves they acquired and the coal brokerage businesses and other businesses incorporated, formed, and owned by them in this State.

28. Upon information and belief, Plaintiff John Manchin II asserts that Defendants Joseph Manchin III and Roch Manchin represented to him, on numerous and repeated occasions, that he was a one-third (1/3) owner in Transcom, Inc., incorporated in 1987, and Enersystems, Inc., incorporated in 1988. Transcom, Inc., is now Farmington Resources, Inc., as a result of reorganizations and mergers subsequent to incorporation.

29. At the time of termination and dissolution of Manchin Brothers and Manchin Carpet Center and/or their reorganization, merger or acquisition, Defendants Joseph Manchin III and Roch Manchin failed to notify Plaintiff John Manchin II of same; failed to account for the transfer and disposition of general partnership funds and assets; failed to disburse to him his one-third (1/3) share of general partnership funds and assets; and failed to provide him evidence of his one-third (1/3) interest in the coal reserves and coal brokerage businesses and other businesses incorporated, formed and owned by them in this State.

General Procedural Allegations

30. Plaintiff John Manchin II presents various legal and equitable claims against Defendants Joseph Manchin III and Roch Manchin, jointly and severally. Among those claims identified in the enumerated counts of this Complaint will be Plaintiff's assertion that promissory estoppel and detrimental reliance apply to his breach of contract claim.

31. Defendants Joseph Manchin III's and Roch Manchin's submission of and their agreement to the Funds Sharing Agreement constitute an acknowledgement by new promise of their debt and contractual obligations to Plaintiff, and, by operation of law, West Virginia Code § 55-2-8 entitles Plaintiff to maintain his legal claims at this time.

32. Defendants Joseph Manchin III's and Roch Manchin's unlawful, inequitable and tortious conduct, as set forth in this Complaint, enables Plaintiff to apply recognized West Virginia tolling doctrine to his legal claims made in this civil action, thereby extending any applicable period of limitations relevant to this case.

33. Defendants Joseph Manchin III's and Roch Manchin's unlawful, inequitable and tortious conduct, as set forth in this Complaint, and unclean hands equitably estop them from claiming and proving Plaintiff's legal and equitable claims presented in this civil action should be time barred by the

application of the doctrine of laches or any other legal or equitable doctrine.

**COUNT ONE  
VIOLATION OF UNIFORM PARTNERSHIP ACT**

34. Plaintiff incorporates by reference the allegations set forth in Paragraphs 1 through 33 of the Complaint as though fully set forth herein.

35. At various times relating to this civil action through present, Defendants Joseph Manchin III and Roch Manchin violated their specific and general duties, as partners or purported partners in Manchin Brothers and Manchin Carpet Center, owed to Plaintiff John Manchin II under the provisions of *West Virginia Code* § 47B-1-1, et seq.

36. Defendants Joseph Manchin III and Roch Manchin violated their duty of loyalty owed to Plaintiff John Manchin II, violated their duty to account for all partnership property, profits, and benefits derived by them in the conduct and winding up of Manchin Brothers and Manchin Carpet Center or otherwise derived from the use by them of partnership property, including withholding a partnership opportunity from Plaintiff John Manchin II, and otherwise violated the specific general standards and fiduciary duties imposed upon them by the provisions of *West Virginia Code* § 47B-4-4 and its subparts.

37. Plaintiff John Manchin II is entitled to seek relief from Defendants Joseph Manchin III and Roch Manchin as a direct and proximate result of their breach of fiduciary duties owed to him as their general partner under the provisions of West Virginia Code § 47B-4-4 and other provisions of the Uniform Partnership Act; is entitled to a full accounting of all partnership property acquired, used, transferred, and disposed of during the time period Manchin Brothers was in existence; is entitled to a full accounting of all coal reserves and business interests incorporated, formed, and owned by them during the time period Manchin Brothers was in existence; and is entitled to the production of all documents and records evidencing Defendants Joseph Manchin III's and Roch Manchin's conducting of Manchin Brothers and Manchin Carpet Center through the time period of their termination, dissolution, winding up the partnership businesses and their reorganization, merger and acquisition by other entities incorporated, formed and operated by them.

38. At no time relating to this civil action was Plaintiff John Manchin II advised or notified he was being disassociated, expelled, withdrawn, or removed from Manchin Brothers and Manchin Carpet Center, and he did not and does not consent or agree to same.

39. Defendants Joseph Manchin III and Roch Manchin have, therefore, wrongfully disassociated, expelled, withdrawn and removed Plaintiff John Manchin II from Manchin Brothers and Manchin Carpet Center; and, as a direct and proximate result thereof, Plaintiff has been damaged thereby and he is entitled to an accounting of all partnership funds and assets which have been wrongfully transferred and used without his knowledge and consent and of all revenues, profits, gains, and opportunities lost by him as a result of Defendants' negligent, intentional, willful, and wrongful conduct, as stated in this Complaint.

**COUNT TWO  
UNJUST ENRICHMENT**

40. Plaintiff incorporates by reference the allegations set forth in Paragraphs 1 through 39 of the Complaint as though fully set forth herein.

41. Defendants Joseph Manchin III and Roch Manchin have been unjustly enriched as a result of their receipt of financial assistance and support from Plaintiff John Manchin II in relation to the relief provided to them and Manchin Carpet Center and Plaintiff John Manchin II's capital contributions, enabling Defendants to acquire, use, and personally benefit from partnership assets belonging to Manchin Brothers, their general partnership and their actual or purported partnership in Manchin Carpet Center.



42. Plaintiff John Manchin II's financial assistance and support provided to Defendants Joseph Manchin III and Roch Manchin in relief of Manchin Carpet Center's financial distress, as set forth above, and his capital contributions provided to Defendants and the formation, establishment, and operation of Manchin Brothers were not intended to be or did not constitute gifts to the Defendants and were made with the express understanding and expectation of being treated fairly, in accordance with Defendants' promises, agreements, and affirmative representations that he would be repaid and that he would obtain a one-third (1/3) ownership interest in other assets and businesses in which they became involved and in which Manchin Carpet Center's and Manchin Brothers' assets and property were reorganized, transferred, utilized and acquired all for the personal benefit of these Defendants.

43. As a result of Defendants Joseph Manchin III's and Roch Manchin's representations, contractual promises, and agreements, as set forth above, which were detrimentally relied upon by the Plaintiff, and their actions in violation of the legal, equitable, and fiduciary duties imposed upon them by West Virginia law, Plaintiff John Manchin II remains unpaid and without any ownership interest in the coal reserves and the coal brokerage and other businesses now owned and operated by these Defendants and related persons and entities, and, as such,

Defendants have personally benefitted and have been unjustly enriched.

44. As a direct and proximate result of Defendants' personal benefit and unjust enrichment, Plaintiff is entitled to an award of monetary damages, together with equitable relief, all in accordance with West Virginia law.

**COUNT THREE  
CONSTRUCTIVE FRAUD**

45. Plaintiff incorporates by reference the allegations set forth in Paragraphs 1 through 44 of the Complaint as though fully set forth herein.

46. At various times relating to this civil action, Defendants Joseph Manchin III and Roch Manchin personally benefitted as a result of their close, personal, confidential, and fiduciary relationship with Plaintiff John Manchin II.

47. In obtaining the personal benefits, including the unlawful, inequitable, and tortious use of partnership assets, as set forth in this Complaint, Defendants violated their legal, equitable, and fiduciary duties to Plaintiff John Manchin II, and, as such, they engaged in constructive fraud, all to the harm and detriment of Plaintiff.

48. As a direct and proximate result of Defendants' constructive fraud, Plaintiff sustained harm and damages and is

entitled to an award of damages, together with equitable relief under West Virginia law.

**COUNT FOUR  
IMPOSITION OF CONSTRUCTIVE AND RESULTING TRUST**

49. Plaintiff incorporates by reference the allegations set forth in Paragraphs 1 through 48 of the Complaint as though fully set forth herein.

50. It was the express intent, agreement, and understanding among Plaintiff John Manchin II and Defendants that he would be repaid the amount or value of his financial assistance and support to Defendants and Manchin Carpet Center directly from Defendants, Manchin Carpet Center, and any of their recognized successor businesses.

51. It was also the express intent, agreement, and understanding among the parties to this civil action that Plaintiff John Manchin II would receive a one-third (1/3) ownership interest in the coal reserves acquired and the coal brokerage businesses being incorporated, formed, and owned by Defendants Joseph Manchin III and Roch Manchin and that such ownership interest would be valid consideration for the \$1.7 million in financial assistance and support provided to them and Manchin Carpet Center at the time of their financial distress.

52. Defendants' renewed promise to repay Plaintiff John Manchin II is evidenced by the Funds Sharing Agreement and

the correspondence attached to this Complaint and marked as Complaint Exhibit 1.

53. Defendants Joseph Manchin III's and Roch Manchin's negligent, intentional, and willful actions in refusing to repay Plaintiff John Manchin II, in refusing to provide him one-third (1/3) ownership interest in the coal reserves and coal brokerage businesses, as stated above, and in failing to discharge their legal, equitable, and fiduciary duties as general partners constitute a violation and breach of their contractual obligations, promises and agreements, the original intent of the parties, and the trust placed in the Defendants by Plaintiff John Manchin II.

54. As a result of the contractual obligations, promises and agreements, and renewed promises and agreements, as set forth in this Complaint, all of the assets previously acquired, owned, transferred, and distributed by Defendants Joseph Manchin III and Roch Manchin, Manchin Carpet Center, and Manchin Brothers, together with the coal reserves and business entities incorporated, formed, and owned by the Defendants are and constitute a constructive and resulting trust for the benefit of Plaintiff John Manchin II.

55. Under established doctrine and principles of equity, Plaintiff John Manchin II seeks the imposition of a constructive and resulting trust upon the funds and assets

belonging to Defendants Joseph Manchin III and Roch Manchin, Manchin Carpet Center, Manchin Brothers, Manchin Enterprises, and those belonging to or comprising the coal reserves and the coal brokerage and other businesses incorporated, formed, and owned by these Defendants.

56. To allow Defendants Joseph Manchin III and Roch Manchin to utilize, dissipate, transfer, and spend such funds and assets, as described in this Complaint, would constitute a violation of equity and be unjust enrichment, and same shall constitute a constructive and resulting trust for the benefit of Plaintiff John Manchin II to the extent of the amount and value of his claims presented in this civil action.

**COUNT FIVE  
BREACH OF FIDUCIARY DUTY**

57. Plaintiff incorporates by reference the allegations set forth in Paragraphs 1 through 56 of the Complaint as though fully set forth herein.

58. Defendants Joseph Manchin III and Roch Manchin violated their fiduciary duties to Plaintiff John Manchin II when they made false representations to him, upon which he relied: That he would be repaid; that his partnership interest in Manchin Brothers would be protected; and that he would be entitled to a one-third (1/3) ownership interest in the coal

reserves acquired and coal brokerage and other businesses incorporated, formed, and owned by Defendants.

59. Defendants Joseph Manchin III and Roch Manchin further violated their fiduciary duties to Plaintiff when he was unlawfully and involuntarily disassociated, expelled, withdrawn, and removed as a partner of Manchin Brothers; when Manchin Brothers' assets were used by Defendants for their own personal benefit and gain in acquiring coal reserves and in the incorporation, formation, and ownership of the coal brokerage and other businesses at issue; and when they sought and attempted to mislead Plaintiff by submitting to him the Funds Sharing Agreement, which, at best, was illusory and without legal substance. See Complaint Exhibit 1.

60. As a direct and proximate result of Defendants' breach of fiduciary duties as set forth in this Complaint, Plaintiff is entitled to recover damages and obtain equitable relief, all in accordance with West Virginia law.

**COUNT SIX  
BREACH OF CONTRACT**

61. Plaintiff incorporates by reference the allegations set forth in Paragraphs 1 through 60 of the Complaint as though fully set forth herein.

62. Defendants Joseph Manchin III and Roch Manchin have knowingly, intentionally, and voluntarily failed and

refused to repay Plaintiff John Manchin II the amount or value of the financial assistance and support provided to them and Manchin Carpet Center as agreed, represented, and promised.

63. Defendants Joseph Manchin III and Roch Manchin have knowingly, intentionally, and voluntarily failed and refused to provide, grant, and convey to Plaintiff John Manchin II a one-third (1/3) interest in all coal reserves acquired and coal brokerage businesses incorporated, formed, and owned by them as agreed, represented, and promised.

64. Defendants Joseph Manchin III and Roch Manchin have renewed their promise to pay Plaintiff John Manchin II, as set forth in this Complaint, as evidenced by the Funds Sharing Agreement and correspondence attached hereto and marked as Complaint Exhibit 1.

65. As a direct and proximate result of Defendants Joseph Manchin III's and Roch Manchin's breach of contract, agreement, and promises as set forth in this Complaint, Plaintiff John Manchin II is entitled to repayment in the amount of \$1.7 million, together with interest thereon, and one-third (1/3) ownership interest of all coal reserves and the coal brokerage and other businesses incorporated, formed, and owned by Defendants.

**COUNT SEVEN  
CIVIL CONSPIRACY**

66. Plaintiff incorporates by reference the allegations set forth in Paragraphs 1 through 65 of the Complaint as though fully set forth herein.

67. Defendants Joseph Manchin III and Roch Manchin, and others, agreed and acted in concert with the intent to deprive Plaintiff of his right, title and interest in and to the amount or value of the financial assistance and support provided to them and their failing business and his partnership interests in Manchin Brothers and Manchin Carpet Center, their funds, property, assets, and partnership opportunities available to them.

68. Defendants further conspired to commit constructive fraud on Plaintiff by misleading him with an illusory offer to settle his claims by use of the Funds Sharing Agreement, as set forth in this Complaint, because there was no expectation by Defendants at the time they made the offer to Plaintiff of any financial return or revenue being generated by Wellington Development - WVDT, LLC, and Defendants did not have an identifiable or verifiable legal interest in that limited liability company. See Complaint Exhibit 1.

69. As a direct and proximate result of Defendants' concerted action and conduct and their engaging in the



conspiracy, Plaintiff has been damaged and sustained losses in the past and will continue to do so with reasonable certainty into the future.

WHEREFORE, Plaintiff John Manchin II demands judgment of and from Defendant Joseph Manchin III and Defendant Roch Manchin, jointly and severally, in such amount as will fully and fairly compensate him for his damages and losses, together with prejudgment and post-judgment interest, and the costs incurred in this civil action. Plaintiff further requests entry of an Order awarding, declaring, and imposing a constructive and resulting trust upon Defendants and all of the assets and business interests implicated in this case following a thorough and complete accounting of Manchin Brothers' partnership funds, property, and assets, including the transfer and disposition thereof. Plaintiff further requests entry of an Order awarding and declaring that he is entitled to one-third (1/3) ownership interest in all coal reserves and businesses incorporated, formed, and owned by Defendants during the time period of his partnerships with Defendants and which were acquired and established utilizing Manchin Brothers' and Manchin Carpet Center's funds, property, and assets, in whole or part. Plaintiff further demands judgment of and from Defendants, jointly and severally, in such amount as would compensate him for the amount or value of the unjust enrichment Defendants

obtained and secured resulting from their breaches of the legal, equitable, and fiduciary duties set forth in this Complaint, together with injunctive relief, and such other and further relief as required and afforded by West Virginia law.

PLAINTIFF DEMANDS A TRIAL BY JURY.

JOHN MANCHIN II,  
PLAINTIFF,  
BY COUNSEL.



J. Michael Benninger  
WV Bar #312  
Benninger Law  
PROFESSIONAL LIMITED LIABILITY COMPANY  
P.O. Box 623  
Morgantown, WV 26505  
(304) 241-1856  
[mike@benningerlaw.com](mailto:mike@benningerlaw.com)

*Counsel for Plaintiff*

United States Senate  
WASHINGTON, DC 20510

Wednesday, July 25, 2012

VIA FIRST-CLASS MAIL

Dr. John Manchin II  
7125 Scottsdale Road  
Fairmont, WV 26554

Dear Dr. Manchin:

I hope this letter finds you well. I write to follow-up on your conversation yesterday with Senator Manchin. Please find enclosed with this correspondence three (3) copies of the "Funds Sharing Agreement." As Senator Manchin relayed to you, please sign all three copies. Please then send those copies to your brother, Rock Manchin, for his signatures.

Please feel free to contact me if you have any questions. He can be reached at (202) 224-3528 or [kirtan\\_mehta@manchin.senate.gov](mailto:kirtan_mehta@manchin.senate.gov).

Thank you so much for you time.

Sincerely,



Kirtan Mehta  
Chief Counsel to Senator Joe Manchin III



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FROM WV RADIO OF CLARKSBURG

## **FUNDS SHARING AGREEMENT**

This Agreement ("Agreement") by and between Senator Joseph Manchin III ("Senator Manchin"), of 505 Havana Drive, Charleston, WV 25311; Dr. John Manchin II ("Dr. Manchin"), of 7125 Scottsdale Road, Fairmont, WV 26554; and Rock Manchin ("Rock") of 2205 Church Street, P.O. Box 220, Farmington, WV 26571, is made effective as of the latest date of a party's signature below.

A. This Agreement relates to payments ("Funds") made to Senator Manchin by Wellington Development - WVDT LLC, of 1620 Locust Ave., Fairmont, West Virginia 26554 ("Company"), relating to the Nemacolin Power Project ("Project"). In the event that no Funds are ever distributed to Senator Manchin, this Agreement will be void as moot and no party will have any rights or obligations as to the other parties.

B. As appreciation for the care and support given by his brothers and in an attempt to resolve any future claims with regard to any Funds, Senator Manchin anticipates dividing any received Funds from Company between Senator Manchin, Dr. Manchin, and Rock. The method of division is specified below.

Therefore, the parties agree as follows:

1. **DIVISION OF PAYMENTS.** In the first instance, all the parties agree that if Company does not distribute Funds to Senator Manchin, then Senator Manchin is not obligated to distribute funds to Dr. Manchin or Rock. If Company distributes Funds to Senator Manchin, then Senator Manchin shall divide Funds among Senator Manchin, Dr. Manchin, and Rock in the following manner:

- a. Senator Manchin shall first deduct any expenses incurred for the receipt and distribution of Funds before distributing Funds to any of the parties.
- b. The first ONE MILLION DOLLARS (\$1,000,000) shall be given to Dr. Manchin. As long as Dr. Manchin survives, Senator Manchin and Rock will not accept Funds until Dr. Manchin receives a total of ONE MILLION DOLLARS (\$1,000,000).
- c. As long as all three parties survive, any subsequent Funds, after the first ONE MILLION DOLLARS (\$1,000,000) shall be equally divided in thirds between Senator Manchin, Dr. Manchin, and Rock.
- d. Whenever Dr. Manchin or Rock passes away, Senator Manchin's or his estate's share shall increase to a TWO-THIRDS (2/3) share of Funds. The remaining, surviving party will continue to receive his ONE-THIRD (1/3) share of Funds. Upon the death of the remaining, surviving party, Senator Manchin or his estate shall assume a ONE HUNDRED PERCENT (100%) share of Funds. The estates of Dr. Manchin and Rock will not receive any share of Funds upon the death of the respective party.
- e. At no time shall Senator Manchin's or his estate's share diminish and the share of Funds of Senator Manchin or his estate shall be ONE HUNDRED PERCENT (100%) upon the death of both Dr. Manchin and Rock.

2. **METHOD OF PAYMENTS.** With respect to the first ONE MILLION DOLLARS



(\$1,000,000) payable to Dr. Manchin only, Senator Manchin or his estate shall turn over all payments from Company to Dr. Manchin as soon as practicable. Otherwise, and after Dr. Manchin's share of the first ONE MILLION DOLLARS (\$1,000,000) has been paid, Senator Manchin or his estate shall hold all Funds received from Company and distribute the Funds at the end of each calendar year to Dr. Manchin and Rock.

**3. INDEMNITY.** Dr. Manchin and Rock agree to indemnify and hold harmless Senator Manchin or his estate for any claims that may arise, regardless of validity, from any conduct arising from this Agreement. Senator Manchin and his estate accept no responsibility for any claims arising out of the conduct of Company nor is he responsible for the amount of Funds, if any, that are received from Company. In addition, this agreement is terminated upon the death of both Dr. Manchin and Rock.

**4. NOTICES.** All notices required or permitted under this Agreement shall be in writing and shall be deemed delivered when delivered in person or on the third day after being deposited in the United States mail, postage paid, addressed as follows:

Senator Joseph Manchin III  
505 Havana Drive  
Charleston, WV 25311

Dr. John Manchin II  
7125 Scottsdale Road  
Fairmont, WV 26554

Rock Manchin  
2205 Church Street, P.O. Box 220  
Farmington, WV 26571

Such addresses may be changed from time to time by either party by providing written notice in the manner set forth above.

**5. ENTIRE AGREEMENT.** This Agreement contains the entire agreement of the parties and there are no other promises or conditions in any other agreement whether oral or written. This Agreement supersedes any prior written or oral agreements between the parties.

**6. AMENDMENT.** This Agreement may be modified or amended, if the amendment is made in writing and is signed by all the parties.

**7. SEVERABILITY.** If any provisions of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid or enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

**8. WAIVER OF CONTRACTUAL RIGHT.** The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

9. EXECUTION. This Agreement may be executed in counterparts. When each party has signed and delivered at least one counterpart, each counterpart shall be deemed an original and when taken together with other signed counterparts shall constitute one Agreement that shall be binding on all parties.

10. APPLICABLE LAW. This Agreement shall be governed by the laws of the State of West Virginia.

SENATOR JOE MANCHIN III:

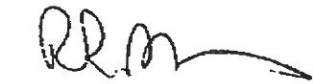
By: 

Date: July 24<sup>th</sup> 2012

AGREED TO AND ACCEPTED.

DR. JOHN MANCHIN II:

ROCK MANCHIN:



Date: 7/31/12

## **FUNDS SHARING AGREEMENT**

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A. This Agreement relates to payments ("Funds") made to Senator Manchin by Wellington Development - WYDT LLC, of 1620 Locust Ave., Fairmont, West Virginia 26554 ("Company"), relating to the Nemaquin Power Project ("Project"). In the event that no Funds are ever distributed to Senator Manchin, this Agreement will be void as moot and no party will have any rights or obligations as to the other parties.

B. As appreciation for the care and support given by his brothers and in an attempt to resolve any future claims with regard to any Funds, Senator Manchin anticipates dividing any received Funds from Company between Senator Manchin, Dr. Manchin, and Rock. The method of division is specified below.

Therefore, the parties agree as follows:

**1. DIVISION OF PAYMENTS.** In the first instance, all the parties agree that if Company does not distribute Funds to Senator Manchin, then Senator Manchin is not obligated to distribute funds to Dr. Manchin or Rock. If Company distributes Funds to Senator Manchin, then Senator Manchin shall divide Funds among Senator Manchin, Dr. Manchin, and Rock in the following manner:

- a. Senator Manchin shall first deduct any expenses incurred for the receipt and distribution of Funds before distributing Funds to any of the parties.
- b. The first ONE MILLION DOLLARS (\$1,000,000) shall be given to Dr. Manchin. As long as Dr. Manchin survives, Senator Manchin and Rock will not accept Funds until Dr. Manchin receives a total of ONE MILLION DOLLARS (\$1,000,000).
- c. As long as all three parties survive, any subsequent Funds, after the first ONE MILLION DOLLARS (\$1,000,000) shall be equally divided in thirds between Senator Manchin, Dr. Manchin, and Rock.
- d. Whenever Dr. Manchin or Rock passes away, Senator Manchin's or his estate's share shall increase to a TWO-THIRDS (2/3) share of Funds. The remaining, surviving party will continue to receive his ONE-THIRD (1/3) share of Funds. Upon the death of the remaining, surviving party, Senator Manchin or his estate shall assume a ONE HUNDRED PERCENT (100%) share of Funds. The estates of Dr. Manchin and Rock will not receive any share of Funds upon the death of the respective party.
- e. At no time shall Senator Manchin's or his estate's share diminish and the share of Funds of Senator Manchin or his estate shall be ONE HUNDRED PERCENT (100%) upon the death of both Dr. Manchin and Rock.

**2. METHOD OF PAYMENTS.** With respect to the first ONE MILLION DOLLARS

(\$1,000,000) payable to Dr. Manchin only, Senator Manchin or his estate shall turn over all payments from Company to Dr. Manchin as soon as practicable. Otherwise, and after Dr. Manchin's share of the first ONE MILLION DOLLARS (\$1,000,000) has been paid, Senator Manchin or his estate shall hold all Funds received from Company and distribute the Funds at the end of each calendar year to Dr. Manchin and Rock.

**3. INDEMNITY.** Dr. Manchin and Rock agree to indemnify and hold harmless Senator Manchin or his estate for any claims that may arise, regardless of validity, from any conduct arising from this Agreement. Senator Manchin and his estate accept no responsibility for any claims arising out of the conduct of Company nor is he responsible for the amount of Funds, if any, that are received from Company. In addition, this agreement is terminated upon the death of both Dr. Manchin and Rock.

**4. NOTICES.** All notices required or permitted under this Agreement shall be in writing and shall be deemed delivered when delivered in person or on the third day after being deposited in the United States mail, postage paid, addressed as follows:

Senator Joseph Manchin III  
505 Havana Drive  
Charleston, WV 25311

Dr. John Manchin II  
7125 Scottsdale Road  
Fairmont, WV 26554

Rock Manchin  
2205 Church Street, P.O. Box 220  
Farmington, WV 26571

Such addresses may be changed from time to time by either party by providing written notice in the manner set forth above.

**5. ENTIRE AGREEMENT.** This Agreement contains the entire agreement of the parties and there are no other promises or conditions in any other agreement whether oral or written. This Agreement supersedes any prior written or oral agreements between the parties.

**6. AMENDMENT.** This Agreement may be modified or amended, if the amendment is made in writing and is signed by all the parties.

**7. SEVERABILITY.** If any provisions of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid or enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

**8. WAIVER OF CONTRACTUAL RIGHT.** The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.



9. EXECUTION. This Agreement may be executed in counterparts. When each party has signed and delivered at least one counterpart, each counterpart shall be deemed an original and when taken together with other signed counterparts shall constitute one Agreement that shall be binding on all parties.

10. APPLICABLE LAW. This Agreement shall be governed by the laws of the State of West Virginia.

SENATOR JOE MANCHIN III:

By: 

Date: July 24<sup>th</sup> 2012

AGREED TO AND ACCEPTED.

DR. JOHN MANCHIN II:

\_\_\_\_\_

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

ROCK MANCHIN:

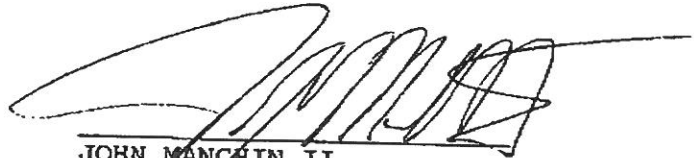


Date: 7/31/12

VERIFICATION

STATE OF WEST VIRGINIA,  
COUNTY OF MARION, to-wit:

I, JOHN MANCHIN II, being first duly sworn, hereby  
state that the facts and allegations set forth in the foregoing  
**Complaint** are true and correct, except insofar as they are  
therein stated to be upon information, and insofar as they are  
stated to be upon information, I believe them to be true and  
correct.

  
JOHN MANCHIN II

Taken, sworn to and subscribed before me this 23rd  
day of July, 2014.

My commission expires:

Jan. 31, 2023

  
Notary Public



FROM WV RADIO OF CLARKSBURG

(FRI) JUL 25 2014 12:23/ST. 12:18/NO. 633880305 P 31

