

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

JOHN D. MATHENY, as parent and natural
Guardian of John D. Matheny, II.,

Petitioner,

v.

CA No. 07-C-1787
(Hon. James C. Stucky)

CHRISTOPHER THOMAS,

Respondent.

**RESPONDENT'S FIRST DISCOVERY REQUEST
TO PETITIONER JOHN D. MATHENY**

PLEASE TAKE NOTICE that pursuant to Rules 33, 34 and 36 of the W. Va. Rules of Civil Procedure, Petitioner J. D. Matheny is hereby required to respond to the requests for admission stated below, to answer, under oath, the interrogatories set forth below, to admit or deny the matters specified herein, and to produce at the office of Respondent's counsel the documents identified below, within thirty (30) days of service hereof. In lieu of producing the documents for inspection, Defendant may forward legible copies of them to counsel for Respondent on or before the date of production.

These document production requests are continuing, and pursuant to Rule 26(e)(3) of the W. Va. Rules of Civil Procedure, the responses to them shall be supplemented promptly, but in any event not less frequently than ninety (90) days after the initial response, upon discovery or acquisition of further documents acquired after the production provided hereto.

I. DEFINITIONS

As used herein, the following terms have meaning and significance as set forth below:

1. "Petitioner," "your," or "you," shall mean J. D. Matheny and his servants, agents, employees, representatives, divisions, attorneys, and anyone else acting on its behalf.

2. Unless otherwise specifically defined herein, "Respondent" shall mean Christopher Thomas

3. "Petition" shall mean the Petition for Declaratory Judgment filed in this proceeding on August 22, 2007 at 4:39 PM.

4. "Identify" shall mean: (a) with respect to an individual, that you are to provide the name, current or last known address (business and home), current or last known telephone number (business and home), current or last known business position or title, and whether he or she is currently employed by Defendant; and (b) with respect to a document, that you are to provide the date, addressee and/or recipient, sender and/or author thereof, and the type of writing (*e.g.*, letter, inter-office memo, etc.).

5. As used herein, the phrase, "pertaining" or "pertaining to" means containing, alluding to, responding to, commenting upon, discussing, showing, disclosing, explaining, mentioning, analyzing, constituting, comprising, evidencing, setting forth, summarizing or characterizing, either directly or indirectly, in whole or in part.

6. The term "document," or "documents," as used herein, shall include all matters defined as documents by Rule 1001, W. Va. Rules of Evidence, plus the original, or a copy of

any kind, of written, typewritten, printed, or recorded material whatsoever, including, but not limited to, notes, memoranda, letters, diaries, calendars, articles, telegrams, facsimiles or other correspondence, worksheets, recordings, studies, analyses, opinions, books, reports, transcriptions of recordings, information retrievable from computers, pictures, drawings, photographs or other graphic representations, and any other physical means of communication, including tape recordings and magnetic tape. The term specifically includes any drafts, whether or not used, of the foregoing, and any altered or annotated copies of the foregoing.

7. The use of the singular includes the plural, and vice versa. The use of one gender includes all others appropriate in the context.

II. INSTRUCTIONS

1. All interrogatories should be answered on the basis of the personal knowledge or information and belief, including that of the officers, representatives, members, employees, agents, and contractors of any business owned or controlled by Defendant. If any answer is given on information and belief, such fact should be stated in the answer.

2. Each interrogatory shall be answered separately and not joined together and accorded a common answer. To the extent that information sought by an interrogatory can be furnished by reference to the answer furnished to another interrogatory, appropriate reference will be acceptable. Each answer shall be preceded by numeric identification and verbatim quote of the interrogatory to which the answer relates.

3. If any information called for in an interrogatory is being withheld on the ground that it is the subject of an attorney-client privilege or any other privilege, state with respect to such interrogatory that information is being withheld, list individually each document withheld

on the basis of privilege, state the alleged privilege applicable to each document, and state the ground for its application to each document.

4. To the extent that a document claimed to contain privileged material also contains reasonably segregable non-privileged material, the Petitioner shall redact or otherwise protect the privileged material and produce the redacted document.

5. With respect to all documents or parts of documents claimed to be privileged and withheld by way of redaction or otherwise, state the date, author, addressee, sender, persons to whom copies were furnished, together with their job titles, the subject matter of the document (or portion thereof redacted) and the paragraph or paragraphs of these interrogatories to which the document (or portion thereof redacted) responds.

6. If objection is made to any request for admissions, the reasons therefor shall be stated.

7. The answer to any request for admission shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter.

8. A denial of a request for admission shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify an answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder.

9. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that the party has made reasonable inquiry and that the information known or readily obtainable by the party is insufficient to enable the party to admit or deny.

10. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; the party may, subject to the provisions of Rule 37(c), deny the matter or set forth reasons why the party cannot admit or deny it.

III. REQUESTS FOR ADMISSION

REQUEST NO 1:

Admit that at the time of filing the Petition in this action, on August 22, 2007 at 4:39 PM, you did not have any evidentiary support for, nor did you specifically identify as likely to have evidentiary support after a reasonable opportunity for further investigation or discovery, the allegation in ¶ 7 of the Petition that Section 4.2 of the December 26, 2006 trust agreement, created by Christopher Thomas, and attached as Exhibit C to the Petition in this matter was “contrary to the language of the Separation, Property, and Settlement Agreement” attached as Exhibit A to the Petition.

REQUEST NO 2:

Admit that at the time of filing the Petition in this action, on August 22, 2007 at 4:39 PM, you did not have any evidentiary support for, nor did you specifically identify as likely to have evidentiary support after a reasonable opportunity for further investigation or discovery, the allegation in ¶ 7 of the Petition that Section 4.2 of the December 26, 2006 trust agreement, created by Christopher Thomas, and attached as Exhibit C to the Petition in this matter was contrary to “well-established law.”

REQUEST NO 3:

Admit that at the time of filing the Petition in this action, on August 22, 2007 at 4:39 PM, you did not have any evidentiary support for, nor did you specifically identify as likely to have

evidentiary support after a reasonable opportunity for further investigation or discovery, the allegation in ¶ 7 of the Petition that the naming of Christopher Thomas as Trustee of the December 26, 2006 trust agreement, created by Christopher Thomas, and attached as Exhibit C to the Petition in this matter was “contrary to the language of the Separation, Property, and Settlement Agreement” attached as Exhibit A to the Petition.

REQUEST NO 4:

Admit that at the time of filing the Petition in this action, on August 22, 2007 at 4:39 PM, you did not have any evidentiary support for, nor did you specifically identify as likely to have evidentiary support after a reasonable opportunity for further investigation or discovery, the allegation in ¶ 7 of the Petition that the naming of Christopher Thomas as Trustee of the December 26, 2006 trust agreement, created by Christopher Thomas, and attached as Exhibit C to the Petition in this matter was contrary to “well-established law.”

REQUEST NO 5:

Admit that at the time of filing the Petition in this action, on August 22, 2007 at 4:39 PM, no existing law or non-frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law, warranted the claim and/or legal contentions that Section 4.2 of the December 26, 2006 trust agreement, created by Christopher Thomas, and attached as Exhibit C to the Petition in this matter was “contrary to the language of the Separation, Property, and Settlement Agreement” attached as Exhibit A to the Petition.

REQUEST NO 6:

Admit that at the time of filing the Petition in this action, on August 22, 2007 at 4:39 PM, no existing law or non-frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law, warranted the claim and/or legal contentions that Section

4.2 of the December 26, 2006 trust agreement, created by Christopher Thomas, and attached as Exhibit C to the Petition in this matter was contrary to “well-established law.”

REQUEST NO 7:

Admit that at the time of filing the Petition in this action, on August 22, 2007 at 4:39 PM, no existing law or non-frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law, warranted the claim and/or legal contentions the naming of Christopher Thomas as Trustee of the December 26, 2006 Trust, Section 4.2 of the December 26, 2006 trust agreement, created by Christopher Thomas, and attached as Exhibit C to the Petition in this matter was contrary to the language of the Separation, Property, and Settlement Agreement” attached as Exhibit A to the Petition.

REQUEST NO.8

Admit that at the time of filing the Petition in this action, on August 22, 2007 at 4:39 PM, no existing law or non-frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law, warranted the claim and/or legal contentions that Section 4.2 of the December 26, 2006 trust agreement, created by Christopher Thomas, and attached as Exhibit C to the Petition in this matter was contrary to “well-established law.”

IV. INTERROGATORIES AND DOCUMENT REQUESTS

REQUEST NO. 1:

Should you not fully and completely admit **REQUEST FOR ADMISSION NO. 1** above, state in detail all facts upon which you base your denial, state the names, addresses and telephone numbers of all persons having knowledge of such fact, and produce copies of all

documents which support, contradict or otherwise pertain to the facts upon which you base your denial.

REQUEST NO. 2:

Should you not fully and completely admit **REQUEST FOR ADMISSION NO. 2** above, state in detail all facts upon which you base your denial, state the names, addresses and telephone numbers of all persons having knowledge of such fact, and produce copies of all documents which support, contradict or otherwise pertain to the facts upon which you base your denial.

REQUEST NO. 3:

Should you not fully and completely admit **REQUEST FOR ADMISSION NO. 3** above, state in detail all facts upon which you base your denial, state the names, addresses and telephone numbers of all persons having knowledge of such fact, and produce copies of all documents which support, contradict or otherwise pertain to the facts upon which you base your denial.

REQUEST NO. 4:

Should you not fully and completely admit **REQUEST FOR ADMISSION NO. 4** above, state in detail all facts upon which you base your denial, state the names, addresses and telephone numbers of all persons having knowledge of such fact, and produce copies of all documents which support, contradict or otherwise pertain to the facts upon which you base your denial.

REQUEST NO. 5:

Should you not fully and completely admit **REQUEST FOR ADMISSION NO. 5** above, identify every statute, regulation, decided case, legal doctrine, or other matter, upon which you base your denial, and explain why the matter cited supports your denial.

REQUEST NO. 6:

Should you not fully and completely admit **REQUEST FOR ADMISSION NO. 6** above, identify every statute, regulation, decided case, legal doctrine, or other matter, upon which you base your denial, and explain why the matter cited supports your denial.

REQUEST NO. 7:

Should you not fully and completely admit **REQUEST FOR ADMISSION NO. 7** above, identify every statute, regulation, decided case, legal doctrine, or other matter, upon which you base your denial, and explain why the matter cited supports your denial.

REQUEST NO. 8:

Should you not fully and completely admit **REQUEST FOR ADMISSION NO. 8** above, identify every statute, regulation, decided case, legal doctrine, or other matter, upon which you base your denial, and explain why the matter cited supports your denial.

CHRISTOPHER THOMAS

By Counsel

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Christopher Thomas,

Respondent.

CERTIFICATE OF SERVICE

I hereby certify that a copy of Respondent's First Discovery Request to Petitioner J. D. Matheny was mailed, postage pre-paid, this ___ day of September, 2007 to the following persons at the addresses indicated:

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Lindsay W. Taylor, Esq. #10142
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