

CIVIL CASE INFORMATION STATEMENT
CIVIL CASES

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

I. CASE STYLE:

Plaintiff(s)

Case #: 12-C-1293

Judge W. Webster

**JEFF BURGER, AMANDA BURGER and
DALE BURGER, on behalf of
themselves and all others similarly situated,**

Plaintiffs and Putative Class Representatives,

vs.

Defendant(s)

Days to
Answer

Type of Service

**MOUNTAIN STATE UNIVERSITY
a West Virginia corporation,
c/o Dusty Gwinn, J.D.
410 Neville Street
Beckley, WV 25801**

30 days

Secretary of State

**CHARLES H. POLK
c/o Dusty Gwinn, J.D.
410 Neville Street
Beckley, WV 25801**

30 days

Secretary of State

**THE MOUNTAIN STATE UNIVERSITY
BOARD OF TRUSTEES
c/o Dusty Gwinn, J.D.
410 Neville Street
Beckley, WV 25801**

30 days

Secretary of State

2012 JUL 11 PM 4:31
CATHY S. GATSON, CLERK
KANAWHA CO. CIRCUIT COURT

FILED

Original and 8 copies of Complaint furnished herewith.

PLAINTIFFS: JEFF BURGER, et al., on behalf of themselves and all others similarly situated DEFENDANTS: MOUNTAIN STATE UNIVERSITY, INC. et al.	CASE NUMBER:

II. TYPE OF CASE:

TORTS	OTHER CIVIL	
<input type="checkbox"/> Asbestos	<input type="checkbox"/> Adoption	<input type="checkbox"/> Appeal from Magistrate Court
<input type="checkbox"/> Professional Malpractice	<input type="checkbox"/> Contract	<input type="checkbox"/> Petition for Modification of Magistrate Sentence
<input type="checkbox"/> Personal Injury	<input type="checkbox"/> Real Property	<input type="checkbox"/> Miscellaneous Civil
<input type="checkbox"/> Product Liability	<input type="checkbox"/> Mental Health	<input checked="" type="checkbox"/> Other
<input type="checkbox"/> Other Tort	<input type="checkbox"/> Appeal of Administrative Agency	<input type="checkbox"/> Fraud or Conversion

III. JURY DEMAND: Yes No
CASE WILL BE READY FOR TRIAL BY (MONTH/YEAR): 06/13

IV. DO YOU OR ANY OF YOUR CLIENTS OR WITNESSES IN THIS CASE REQUIRE SPECIAL ACCOMMODATIONS DUE TO A DISABILITY OR AGE? YES NO
IF YES, PLEASE SPECIFY:
 Wheelchair accessible hearing room and other facilities
 Interpreter or other auxiliary aid for the hearing impaired
 Reader or other auxiliary aid for the visually impaired
 Spokesperson or other auxiliary aid for the speech impaired
 Other: Unknown at this time

JOSHUA L.BARRETT (WVSB No. 252)
LONNIE C. SIMMONS (WVSB No. 3406)
SEAN P. McGINLEY (WVSB No. 5836)
ROBERT M. BASTRESS III (WVSB No. 9616)

Firm: DiTRAPANO, BARRETT & DiPIERO, PLLC Representing:
 Plaintiffs Defendant
Address: P.O. Box 1631 Cross-Complainant
Charleston, WV 25326-1631 Cross-Defendant
Telephone: (304) 342-0133 Dated: July 11, 2012

Robert M. Bastress III
Signature

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

DALE BURGER,
AMANDA BURGER, and
JEFF BURGER,
on behalf of themselves and
all others similarly situated,

Plaintiff,

v.

Civil Action No. 12-C- 1293
Judge Wylster

MOUNTAIN STATE UNIVERSITY, INC.
a West Virginia corporation,
CHARLES H. POLK, and
THE MOUNTAIN STATE UNIVERSITY
BOARD OF TRUSTEES,

Defendants.

FILED
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KANAWHA CO. CIRCUIT COURT

CLASS ACTION COMPLAINT

Now comes Plaintiffs Dale Burger, Amanda Burger, and Jeff Burger, by counsel, and offer for their complaint against Defendants the following:

PARTIES:

1. Co-Plaintiffs Dale Burger, Amanda Burger, and Jeff Burger are, and have been, residents of Kanawha County, West Virginia. Plaintiffs have been and are students enrolled at MSU.
2. Defendant Mountain State University ("MSU") is a for-profit West Virginia corporation headquartered in Raleigh County, West Virginia. It provided private, higher education opportunities to individuals throughout West Virginia, including Kanawha County, in exchange for payment. Further, MSU has a center in Kanawha County, West Virginia.
3. The MSU Board of Trustees consists of Jerry T. Ice, V. Max Beard, Mona K.

Wiseman, Frank S. Harkins, Jr., William H. File, Jr., Harriet W. Cabell, Elmer Coppoolse and Lynn Blanchard at all times pertinent herein. Charles H. Polk was the President of MSU and also a Trustee at some or all times pertinent herein.

FACTS:

4. By choosing to attend MSU, Plaintiffs and putative class members are saddled with considerable student loans and were banking on leaving the school with an accredited degree in hand.

The Accreditation Process & HLC

5. The accreditation is a third-party stamp of approval that ensures universities or programs are meeting a minimum set of national standards. If a university loses its primary accreditation, any subsequent degrees conferred by the university are effectively worthless.
6. The Higher Learning Commission ("HLC") is the regional accrediting agency that accredits institutions of higher education in the 19 states that constitute its region. West Virginia falls in its region.
7. According to a spokesman for the HLC, losing an accreditation "is a very rare circumstance." Indeed, MSU is the first higher education institution in West Virginia history to have its school-wide accreditation revoked.

Notice to Defendants of MSU's Systemic Problems

8. In 2008, the HLC told Defendants in its report that despite the university's strong financial position and rising student enrollment, "it is not clear how the University will continue to respond to future challenges and opportunities with no clearly defined process for updating the University's long-term plans; limited empirical evidence

[transparency] guiding planning and budgeting ... no program review processes to determine and sustain academic quality and viability; and a lack of strong communication and collaboration in governance."

9. The 79-page 2008 report went on to say "long-term planning was remarked as "not necessary" and "pie in the sky" by some employees and board members,' and expressed concerns that there were no mechanisms in place to get feedback on how to improve the university."
10. In 2010, a national agency ("NLNAC") revoked the accreditation for MSU's nursing school. That prompted the West Virginia nursing board to place MSU's nursing program on provisional status, for major problems in leadership and failure to keep up-to-date student records.
11. The HLC took note of the problems in the nursing program, saying they were emblematic of larger breakdowns at the school.
12. Throughout the accreditation problems, members of Mountain State's board of trustees said they didn't know how bad the issues in the nursing school were, but vowed to remedy the situation.
13. In June 2011, the HLC placed MSU on "show cause" status, citing the school for its top-down leadership, lack of long-term planning, failure to collaborate with faculty, failure to give information to students, and the loss of specialized accreditation for the nursing program.
14. The HLC gave MSU one year to make big fixes at the school or risk losing its accreditation altogether.
15. Also, in 2011, the Chronicle of Higher Education indicated in its report that "[n]o

other college in the survey [of 519 colleges] devoted such a substantial share of its resources to a president[,]" as did MSU.

16. After a long, drawn out process of embarrassing events featuring Charles Polk and casting disrepute on MSU, which included the revelation that Defendant Polk had a salary of more than \$1.84 million in 2009 (according to media accounts) – higher than his counterparts at Harvard and Yale – and had used the school's two private planes on an excessively high number of occasions, Mr. Polk was fired as President by MSU's Board on January 19, 2011. At the time of the firing, Chairman Ice told media outlets, "[w]hile we felt that this is not the best time, we felt as a board that we had to change leadership. We have come to a conclusion that we cannot wait any longer."
17. Internal employees and students of MSU have indicated to media outlets that the Board obviously should have fired him sooner.

Misrepresentations by Defendants

18. During this entire time from 2008 through July 2012, Defendants reassured Plaintiffs and the putative class members that MSU was in sound shape, when in fact, such was not true.

HLC's Revocation of MSU's School-Wide Accreditation

19. On June 28, 2012, the Board of Trustees of the Higher Learning Commission ("HLC") acted to withdraw MSU's accreditation, effective August 27, 2012.
20. In the evening on July 9, 2012, the HLC informed Defendants of its decision.
21. The HLC's action was made public on July 10, 2012.
22. Plaintiffs found out about MSU's accreditation being withdrawn by hearing it on the news.

23. In a public letter posted to its website on July 10, 2012, the HLC explained MSU had lost its primary accreditation with the regional monitoring agency after years of failing to correct major problems in leadership, program evaluations, and campus-wide governance.
24. In particular, the HLC concluded:
- "The University has not conducted itself with the integrity expected of an accredited institution with regard to ensuring that its students have accurate and timely information about the status of their academic programs and consistent quality across all academic programs," said the HLC's letter.
 - "[The school] does not have the human and financial resources expected of an accredited institution and has not demonstrated that it can plan realistically for the future to anticipate and overcome institutional challenges."
 - MSU "lacks effective governance and administration to provide appropriate oversight over all levels of the institution" and lacked the support and staff to create "an effective teaching and learning environment."
25. After August 27, 2012, any classes or degrees from MSU will not be recognized as legitimate.
26. Even after the HLC's decision to strip MSU of its accreditation, MSU's administrators have downplayed the severity of the situation to Plaintiffs and other putative class members.

Putative Class

27. The Class is defined as, and thus consists of, "*all West Virginia residents who were enrolled as students of Mountain State University at any time since July 10, 2008 who have not yet received a degree as of the time of the filing of this complaint.*" Excluded from the class are Defendants, and any person, firm, trust, corporation or other entity related to or affiliated with the Defendants, including, without limitation, persons who are officers, directors, employees, associates or partners of Defendants. Also excluded

from the class are those individuals who have already filed individual lawsuits with respect to the 2010 revocation of the MSU's accreditation for its nursing program.

28. The Class is so numerous that joinder of individual members is impracticable. Numerous paper articles indicate as of April, more than 3,000 students were enrolled at MSU. Although some are not included in this putative class, joinder of the number of putative class members is nevertheless impracticable. The exact number of Class members can be readily determined from Defendants' records and/or their databases.
29. There are common questions of law and fact in this action that relate to and affect the rights of the Plaintiffs and each Class member, and the relief sought is common to the entire Class.
30. This complaint brought by the named Plaintiffs is typical of the claims of the Class in that the named Plaintiffs and Class members were all West Virginia resident students of MSU during the relevant period of time.
31. Notice, if required, can be provided to Class members by first class mail and/or by published notice using techniques and forms of notice similar to those customarily used in class action litigation.
32. Plaintiffs seek compensatory damages common to the Class and also seek to redress the unlawful conduct of Defendants.
33. Class certification is appropriate pursuant to Rule 23 because Defendants have acted and/or refused to act on grounds generally applicable to the Class.
34. Class certification is also appropriate under Rule 23 because, among other things, the pursuit of several actions by individual Class members would create the risk of varying adjudications and the creation of inconsistent standards of conduct for those

opposing the Class.

35. Further, individual actions by Class members may be dispositive of the interests of other members not parties to the adjudication of the claim which would impair or impede the ability of those individuals to protect their interests.
36. Class certification is also appropriate because the cost of litigation for individuals on this particular claim is unlikely to justify a case, yet class members are in need of the relief sought herein and Defendants are liable for the harm to Plaintiffs and the Class. Without class certification Class members will be unable to seek proper redress for the harm.
37. Plaintiffs will fairly and adequately represent and protect the interests of the Class.

COUNT I - VIOLATION OF WEST VIRGINIA CONSUMER CREDIT AND PROTECTION ACT ("WVCCPA")

38. Plaintiffs hereby incorporate by reference all of the previous allegations of this complaint.
39. Plaintiffs and all members of the putative class were and are West Virginia consumers.
40. West Virginia Code § 46A-6-104 prohibits unfair or deceptive acts or practices in the conduct of any trade or commerce. Relevant specific definitions of what may constitute an unfair or deceptive act or practice can be found in W. Va. Code § 46A-6-102(7)(B), (E), (G), (J), (L), (M), and (N).
41. Defendants' conduct unfair or deceptive acts or practices and thus violated W. Va. Code § 46A-6-104 .
42. As a consequence of Defendants' violation of the WVCCPA, Plaintiffs and all members of the putative class suffered substantial damages.

43. In addition to compensatory damages, the Plaintiffs seek all statutory damages available under the WVCCPA, including but not limited to the following:
- a. Actual damages for past and future violations of the WVCCPA as authorized by W. Va. Code § 46A-5-101(1);
 - b. Statutory damages in the maximum amount authorized by W. Va. Code § 46A-5-101(1) as adjusted for inflation pursuant to W. Va. Code § 46A-5-106 for each and every violation;
 - c. Attorney fees and the costs of litigation pursuant to W. Va. Code § 46A-5-104.

COUNT II – NEGLIGENCE

44. Plaintiffs hereby incorporated by reference all of the previous allegations of this complaint.
45. Defendants owed a duty to Plaintiffs and all members of the putative class.
46. Defendants breached this duty by, *inter alia*, failing to exercise ordinary care in the course of their duties.
47. As a result of Defendants' breaches, Plaintiffs and members of the putative class suffered substantial damages.

COUNT III – BREACH OF CONTRACT

48. Plaintiffs hereby incorporated by reference all of the previous allegations of this complaint.
49. Plaintiffs had a contract (implied and express) with Defendants in which Defendant agreed to provide the Plaintiff with a degree from a fully accredited institution (after Plaintiffs completed certain requirements) in exchange for payment from Plaintiffs.
50. Defendant breached the contract.

51. Plaintiffs and all members of the putative class have suffered damages as a result of these breaches.

COUNT IV – BREACH OF DUTY OF GOOD FAITH AND FAIR DEALING

52. Plaintiffs hereby incorporated by reference all of the previous allegations of this complaint.

53. Defendants owed a duty to Plaintiffs and the putative class members to act in good faith and in performance of the contract that existed between Plaintiffs and them.

54. Defendants breached this duty.

55. Plaintiffs and all members of the putative class have suffered damages as a result of these breaches.

WHEREFORE, Plaintiffs seek to recover damages sufficient to compensate them for the damages proximately caused by Defendants, including all compensatory and statutory damages plus interest, as stated above. Furthermore, Plaintiffs seek to recover punitive damages against Defendants in an amount sufficient to ensure that such actions are not repeated and in accordance with West Virginia law. Finally, Plaintiff seeks attorney fees and such other relief as this Court deems just.

PLAINTIFFS RESPECTFULLY REQUEST A TRIAL BY JURY.

DALE BURGER, AMANDA
BURGER, and JEFF BURGER,
Plaintiffs,

—By Counsel—



Lonnie C. Simmons (W.Va. Bar No. 3406)

Sean P. McGinley (W.Va. Bar No. 5836)

Robert M. Bastress III (W.Va. Bar No. 9616)

DiTRAPANO, BARRETT & DiPIERO, PLLC

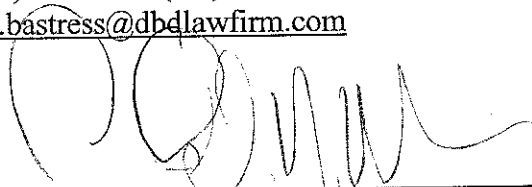
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