

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

E.R. 1, LLC, assignee of CASEYVILLE)	
SPORT CHOICE, LLC)	
)	
Complainant,)	
)	
v.)	PCB 08-30
)	(Citizens Enforcement-Land)
ERMA I. SEIBER, ADMINISTRATRIX OF)	
THE ESTATE OF JAMES A. SEIBER,)	
DECEASED, ERMA I. SEIBER,)	
INDIVIDUALLY, and FAIRMOUNT PARK,)	
INC.,)	
)	
Respondents.)	

**COMPLAINANT'S MOTION FOR LEAVE TO
AMEND THE COMPLAINT TO ADD A DEFENDANT**

COMES NOW Complainant E.R. 1, LLC, an assignee of Complainant Caseyville Sport Choice, LLC ("Caseyville"), by and through its undersigned counsel, and pursuant to Section 103.206(a) and (b) of the Illinois Administrative Code, respectfully moves the Court to give Caseyville leave to amend its Complaint to state a cause of action against an additional party defendant. In further support of its Motion for Leave to Amend the Complaint ("Motion"), Caseyville states and alleges as follows:

1. Complainant filed a Complaint before the Illinois Pollution Control Board ("Board") in October of 2007 and a First Amended Complaint in August of 2008. The First Amended Complaint, which was accepted by the Board, named the following Respondents: Erma I. Seiber, Administratrix of the Estate of James A. Seiber, Deceased, and Erma I. Seiber, in her individual capacity, and Fairmount Park, Inc. (formerly known as Ogden Fairmount, Inc.), a Delaware Corporation.

2. On or around July 25, 2012, Erma I. Seiber passed away. Attached to this Motion is Ms. Seiber's Certificate of Death. *See* Exhibit A.

3. James A. Seiber Jr. is serving as the executor of the estate of Erma I. Seiber.

Attached to this Motion is a copy of Judge Browning's Order in the Commonwealth of Kentucky appointing James A. Seiber, Jr. as the executor of the estate of Erma I. Seiber. *See* Exhibit B.

4. Consequently, the Complainant desires to add Mr. James A. Seiber, Jr. to this proceeding as a defendant in his role as the executor of the estate of Erma I. Seiber, deceased, and James A Seiber, deceased. Complainant concurrently submits the Second Amended Formal Complaint to the Board with this Motion.

5. On February 26, 2013, Complainant properly served the Second Amended Formal Complaint upon Mr. James A. Seiber, Jr., the party defendant to be added. Complainant included the necessary language required in the notice pursuant to Section 103.204(f) of the Illinois Administrative Code. The proof of service is attached. *See* Exhibit C.

WHEREFORE, Complainant respectfully requests the Board grant its Motion for Leave to amend the First Amended Complaint to add James A. Seiber, Jr., the executor of the estate of Erma I. Seiber, deceased, and James A. Seiber, deceased, as an additional party defendant, and to award Complainant any such additional relief as the Board may deem appropriate.

Dated: February 26, 2013

Respectfully Submitted,

BRYAN CAVE LLP

By: 

Daniel Nester (ARDC No. 6208872)

Steven J. Poplawski (ARDC No. 6193897)

John R. Kindschuh (ARDC No. 6284933)

Christopher Blaesing (ARDC No. 6298240)

One Metropolitan Square
211 North Broadway Suite 3600
St. Louis, MO 63102
Telephone: (314) 259-2000
Telefax: (314) 259-2020

*Attorneys for E.R. 1, LLC, As Assignee
Of Caseyville Sport Choice, LLC*

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing response was electronically filed with the Office of the Clerk and was served upon the following parties via U.S. mail on the 26th day of February, 2013:

David J. Gerber
Attorney at Law
241 North Main Street
Belleville, IL 62025
Attorney for Caseyville Sport Choice, LLC

Donald W. Urban
Sprague and Urban
26 E. Washington Street
Belleville, IL 62220
Attorneys for Erma I. Seiber

Penni S. Livingston
Attorney At Law
5701 Perrin Road
Fairview Heights, IL 62208
Attorney for Fairmount Park, Inc.

A handwritten signature in black ink, appearing to read 'P. Livingston', is written over a horizontal line.

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Tennessee Code Annotated 68-3-101 et seq., Vital Records Act of 1977

8/10/2012
Date Issued

Exhibit A



COMMONWEALTH OF KENTUCKY
TODD DISTRICT COURT
CASE NUMBER 12-P-00047

ENTERED
AUG 14 2012
TODD CO CIRCUIT/DISTRICT
BY: _____

IN RE: THE ESTATE OF ERMA IRENE SEIBER, DECEASED

ORDER

THIS DATE came James A. Seiber, Jr, the named Executor under the Will of Erma Irene Seiber, deceased, and filed application requesting that he be appointed Executor of said estate. The Court considered said application, and thereby being sufficiently advised, should and hereby does ORDER AND ADJUDGE that James A. Seiber, Jr. be and hereby is appointed Executor of the Estate of Erma Irene Seiber deceased, and he shall execute bond in the sum of \$2,400,000.00, with decedent's daughter, Angela Silvia, as surety thereon.

THEREUPON, the said James A. Seiber, Jr. executed the aforesaid bond, with Angela Silvia as surety thereon, which bond is approved by the Court and after taking the proper oath as Executor, James A. Seiber, Jr. is now the qualified and acting Executor of the Estate of Erma Irene Seiber, deceased.

ENTERED this 14th day of August, 2012.

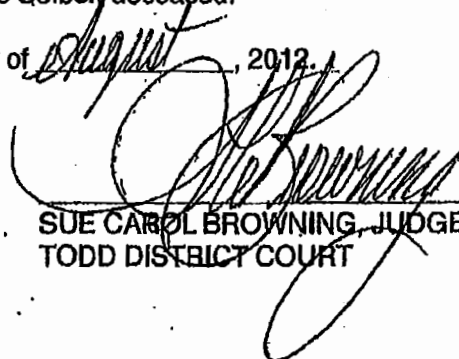

SUE CAROL BROWNING, JUDGE
TODD DISTRICT COURT

Exhibit B

AOC-805 Doc. Code: PPW
Rev. 3-01 or PWF
Page 1 of 2

Commonwealth of Kentucky
Court of Justice

KRS 394.145; KRS 395.015



Case No. 12-P-

Court District/Probate

County TODD

In re Estate of ERMA IRENE SEIBER Social Security No. 332-30-7124 Birth date of decedent 8-12-1937
Residence 2070 Rattlesnake Road Elkton Todd Ky. 42220
(street address) (city) (county) (zip)

who died ☒ testate ☐ intestate on July 25, 2012
(month / day / year)

PETITION FOR
☒ PROBATE OF WILL
☐ APPOINTMENT OF ADMINISTRATOR
☒ APPOINTMENT OF EXECUTOR

Petitioner states that the statements in the caption are true and that the names of the surviving spouse, heirs at law and next of kin known to petitioner are as follows:

Name	Relationship	Age	Address
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PER WILL

Deceased owned or had interest in the following listed Real Estate with estimated market values as follows:

Numerous tracts of real estate valued at approximately \$1,800,000.00

Deceased owned or had interest in the following listed Personal Property with estimated market values as follows:

Approximately \$600,000.00

There has been no previous administration in said decedent's estate in Kentucky or elsewhere.

Petitioner is indebted to or owes the decedent N/A

Petitioner applies for the probate of decedent's will which is filed herewith and which is the last will and testament of decedent. Petitioner prays that James A. Seiber, Jr. whose address is 508 Greenwood Place, Collinsville, IL 62234

be appointed as Executor-Administrator of said estate who offers as surety on the bond the following:

Angela Sylvia, 2070 Rattlesnake Road, Elkton, KY 42220

Petitioner says that all statements in the foregoing are true.

x James A. Seiber, Jr.
James A. Seiber, Jr. Petitioner

508 Greenwood Place, Collinsville, IL 62234
Address

Subscribed and sworn before me by petitioner on August 14, 2012

My commission will expire 3-13-2013

[Signature]
Notary Public, KY Name/Title State at Large

This certifies that the within petition was prepared or subscribed by the undersigned in accordance with the meaning and tenor of Kentucky Civil Rule No. 11.

(Attorney must prepare and present separate order of probate or complete order of probate on reverse side of this petition) (To be filed in duplicate)

[Signature]
Kenneth E. Dillingham Attorney
Dillingham & Traugher
Post Office Box 129, Elkton, Kentucky 42220-0129

Address

DISTRIBUTION: Case File, Revenue Cabinet

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E.R. 1, LLC, ASSIGNEE OF CASEYVILLE
SPORT CHOICE, LLC

Complainant,

v.

ERMA I. SEIBER, ADMINISTRATRIX OF
THE ESTATE OF JAMES A. SEIBER,
DECEASED, ERMA I. SEIBER,
INDIVIDUALLY, AND FAIRMOUNT PARK, INC

Respondents.

AFFIDAVIT OF SERVICE

I, Richard Harris do hereby state the following: I am over the age of 21 and am a disinterested party in the above listed cause.

On Tuesday 02-26-13 at approximately 3:05 PM I made Personal Service of a "Second Amended Formal Complaint" in the above titled matter to Mr. James A. Seiber, Jr.

Service was obtained at the residence of James A. Seiber, Jr. located at 608 Greenwood Place, Collinsville, Illinois 62234.

Affiant has nothing further to state at this time.


RICHARD HARRIS
SPECIAL PROCESS SERVER

Exhibit C