

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ONTARIO**

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RICHARD VANDEMORTEL AND DEB VANDEMORTEL,  
on behalf of themselves and all others similarly situated  
3098 Johnson Road  
Geneva, NY 14456

Plaintiffs,

v.

Index No.: 126121-2019

NEW ENGLAND WASTE SERVICES OF N.Y., INC.  
25 Greens Hill Lane  
Rutland, Vermont 05701

**VERIFIED ANSWER TO  
AMENDED COMPLAINT**

CASELLA WASTE SERVICES OF ONTARIO, LLC  
25 Greens Hill Lane  
Rutland, Vermont 05701,

Defendants.

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Defendants New England Waste Services of N.Y., Inc. (“NEWSNY”) and Casella Waste Services of Ontario LLC (“Casella Ontario”) (collectively the “Answering Defendants”), by and through their attorneys, The West Firm, PLLC, hereby responds to the Amended Complaint of Plaintiffs with the following Answer and Affirmative Defenses.

**ANSWERING DEFENDANTS PRELIMINARY STATEMENT**

The Answering Defendants through this Answer deny in material part Plaintiffs’ allegations in their Amended Complaint, including allegations that the Ontario County Landfill located at 1879 Route 5 and 20, Stanley, County of Ontario, State of New York (the “Landfill”) that is the subject of this action constitutes a nuisance, that the Answering Defendants were negligent, and that Plaintiffs’ allegations merit class action status under CPLR Article 9. The Landfill is closely regulated by New York State law and regulation and is actively monitored by

personnel of the Answering Defendants and the New York State Department of Environmental Conservation. The Answering Defendants diligently manages it operations to avoid and minimize the types of impacts alleged in the Amended Complaint, and have acted responsibly, reasonably, and with all due care in operating the Landfill.

### **INTRODUCTION**

1. Inasmuch as certain allegations contained in paragraph 1 of the Amended Complaint characterize the nature of the action commenced by Plaintiffs, the allegations do not require a response. Otherwise, the Answering Defendants admit that Casella Ontario operates the Landfill with the exception of the landfill gas-to-energy facility, which is separately operated by an unrelated entity, deny the remaining allegations in Paragraph 1, and deny that Plaintiffs Richard VanDeMortel and Deb VanDeMortel can bring a class action or that there is a putative class of plaintiffs, and deny that Plaintiffs are entitled to the relief they seek.

### **PARTIES**

2. The Answering Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 2 of the Amended Complaint.

3. Admit the allegations of Paragraph 3 of the Amended Complaint.

4. Deny the allegations of Paragraph 4 of the Amended Complaint but admit that Casella Ontario is a Domestic Limited Liability Company that may be served through the agent and address stated in that paragraph.

5. Admit the allegations of Paragraph 5 of the Amended Complaint but deny that the Answering Defendants operated, maintained and financed the landfill gas-to-energy facility.

6. Admit that the Answering Defendants share common officers and a registered agent and deny the remaining allegations of Paragraph 6 of the Amended Complaint.

7. Deny the allegations of Paragraph 7 of the Amended Complaint.

**JURISDICTION AND VENUE**

8. The allegations of Paragraph 8 of the Amended Complaint are conclusions of law that require no response, and the Answering Defendants respectfully refer all questions of law to the Court.

9. Inasmuch as the allegations contained in paragraph 9 of the Amended Complaint characterize the nature of the action commenced by Plaintiffs, the allegations do not require a response. Otherwise, the Answering Defendants deny the allegations in Paragraph 9 and deny that Plaintiffs are entitled to the relief they seek.

10. The Answering Defendants deny the allegations in Paragraph 10 of the Amended Complaint.

11. The Answering Defendants deny the allegations in Paragraph 11 of the Amended Complaint.

12. The allegations of Paragraph 12 of the Amended Complaint are conclusions of law that require no response, respectfully refer all questions of law to the Court, and otherwise deny the allegations in Paragraph 12 of the Amended Complaint.

**GENERAL ALLEGATIONS**

13. The Answering Defendants deny the allegations in Paragraph 13 of the Amended Complaint.

14. The Answering Defendants admit that the Landfill accepts waste from outside Ontario County and otherwise deny the allegations in Paragraph 14 of the Amended Complaint.

15. The Answering Defendants admit the allegations in Paragraph 15 of the Amended Complaint.

16. The Answering Defendants admit the allegations in Paragraph 16 of the Amended Complaint.

17. The Answering Defendants admit that certain materials deposited into the Landfill decompose and generate byproducts and otherwise deny the allegations in Paragraph 17 of the Amended Complaint.

18. The Answering Defendants deny the allegations in Paragraph 18 of the Amended Complaint.

19. The Answering Defendants deny the allegations in Paragraph 19 of the Amended Complaint.

20. The Answering Defendants deny the allegations in Paragraph 20 of the Amended Complaint.

21. The Answering Defendants admit the allegations in Paragraph 21 of the Amended Complaint except deny that it manages and operates the landfill gas-to-energy facility.

22. The Answering Defendants deny the allegations in Paragraph 22 of the Amended Complaint.

23. The Answering Defendants deny the allegations in Paragraph 23 of the Amended Complaint.

24. The Answering Defendants deny the allegations in Paragraph 24 of the Amended Complaint.

25. The Answering Defendants deny the allegations in Paragraph 25 of the Amended Complaint.

26. The Answering Defendants admit the allegations in Paragraph 26 of the Amended Complaint and affirmatively assert and allege that there are other odor sources within the designated class area.

27. The Answering Defendants deny knowledge or information sufficient to form a belief about who has contacted Plaintiff's counsel, and otherwise deny the allegations in Paragraph 27 of the Amended Complaint.

28. The Answering Defendants deny knowledge or information sufficient to form a belief about what statements Plaintiffs have made to Plaintiff's counsel, and otherwise deny the allegations in Paragraph 28 of the Amended Answer that any complaints made in statements by Plaintiffs are attributable to the Landfill or the Answering Defendants.

29. The Answering Defendants deny knowledge or information sufficient to form a belief about what statements Plaintiffs have made to Plaintiff's counsel, and otherwise deny the

allegations in Paragraph 29 of the Amended Answer that any complaints made in statements by Plaintiffs are attributable to the Landfill or the Answering Defendants.

30. The Answering Defendants deny the allegations in Paragraph 30 of the Amended Complaint.

31. In response to the allegations in Paragraph 31 of the Amended Complaint, the Answering Defendants admit that certain landfilling operations are used to control odorous emissions, affirmatively assert and allege that the Answering Defendants have utilized proper landfilling practices, and otherwise deny the allegations in Paragraph 31 of the Amended Complaint.

32. In response to the allegations in Paragraph 32 of the Amended Complaint, the Answering Defendants admit that operation of an adequate landfill gas collection system includes control of liquids in the system, affirmatively assert and allege that the Answering Defendants have utilized proper control practices, and otherwise deny the allegations in Paragraph 32 of the Amended Complaint.

33. The Answering Defendants deny the allegations in Paragraph 33 of the Amended Complaint.

34. The Answering Defendants deny knowledge or information sufficient to form a belief regarding the allegations in Paragraph 34 (a) and (b) of the Amended Complaint, deny the allegations in Paragraph 34 (c) of the Amended Complaint except admit that there have been Notices of Violation the content and scope of which speak for themselves and respectfully refer the Court to such Notices of Violation for their content and scope, and deny the allegations in Paragraph 34 (d) of the Amended Complaint except admit that there have been various reports the

content and scope of which speak for themselves and respectfully refer the Court to such reports for their content and scope. The next paragraph of the Amended Complaint is incorrectly numbered Paragraph "33". The Answering Defendants deny the allegations in this second Paragraph "33" of the Amended Complaint.

35. The Answering Defendants deny the allegations in Paragraph 35 of the Amended Complaint.

36. The Answering Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 36 of the Amended Complaint.

37. The Answering Defendants deny that Plaintiffs fit within the Class Definition, deny that the Class Area is proper, correct, or exists, and otherwise deny knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 37 of the Amended Complaint.

38. The Answering Defendants deny that there is a proper, correct and existing Class and Class Area, and otherwise deny knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 38 of the Amended Complaint.

39. The Answering Defendants deny the allegations in Paragraph 39 of the Amended Complaint, affirmatively assert and allege that there is not a proper, correct and existing Class and Class Area, and affirmatively assert and allege that no members of the "public" as described in Paragraph 39 have been harmed by the Landfill.

40. In response to the allegations in Paragraph 40 of the Amended Complaint, the Answering Defendants deny that the Public at-large is impacted by the Landfill, admit that the

Public does not suffer any damages, deny that Plaintiffs and what Plaintiff's counsel has termed a "putative class" have suffered any damages from the Landfill, and deny that there is a putative class.

41. The Answering Defendants deny the allegations in Paragraph 41 of the Amended Complaint.

42. The Answering Defendants deny the allegations in Paragraph 42 of the Amended Complaint.

### **CLASS ALLEGATIONS**

#### **A. Definition of the Class**

43. In response to the allegations in Paragraph 43 of the Amended Complaint, the Answering Defendants deny that this case is appropriate for class certification pursuant to CPLR Section 901, deny that there is a proper, correct and existing Class and Class Area, deny the geographic definitional boundary for a Class Area as described by Plaintiff's counsel, and otherwise deny the remaining allegations in Paragraph 43 of the Third-Party Complaint. The Answering Defendants further affirmatively assert and allege that Plaintiffs cannot meet their rigorous burden of satisfying each of the prerequisites for class action certification pursuant to New York CPLR Article 9, including numerosity, commonality, typicality, and adequacy of representation.

44. In response to the allegations in Paragraph 44 of the Amended Complaint, the Answering Defendants deny that this case is properly maintainable as a class action pursuant to and in accordance with CPLR Section 901 and deny the allegations in Paragraph 44 (a) through



(h) of the Amended Complaint. The Answering Defendants affirmatively assert and allege that class treatment is an inappropriate method of adjudication of this action because, among other things, on information and belief, Plaintiffs' proposed class is not ascertainable without extensive individualized fact-finding, common issues do not predominate, Plaintiffs' claims are not typical of any that may be held by the proposed class, and Plaintiffs cannot fairly and adequately protect the interests of the proposed class.

**B. Numerosity**

45. The Answering Defendants deny the allegations in Paragraph 45 of the Amended Complaint and deny that there is a proper, correct and existing Class.

**C. Commonality**

46. The Answering Defendants deny the allegations in Paragraph 46 of the Amended Complaint including the allegations in its sub-paragraphs (a) through (h) and deny that there is a proper, correct and existing Class.

**D. Typicality**

47. The Answering Defendants deny the allegations in Paragraph 47 of the Amended Complaint and deny that there is a proper, correct and existing Class.

48. The Answering Defendants deny the allegations in Paragraph 48 of the Amended Complaint and deny that there is a proper, correct and existing Class.

49. The Answering Defendants deny the allegations in Paragraph 49 of the Amended Complaint and deny that there is a proper, correct and existing Class.

**E. Adequacy of Representation**

50. The Answering Defendants deny the allegations in Paragraph 50 of the Amended Complaint and deny that there is a proper, correct and existing Class. Answering Defendants deny that the two Plaintiffs named in the Amended Complaint, who both reside at one property, could fairly and adequately protect the interests of the purported class, since there appear to be material conflicts between Plaintiffs and purported class members.

51. The Answering Defendants deny the allegations in Paragraph 51 of the Amended Complaint and deny that there is a proper, correct and existing Class.

**F. Class Treatment Is Not the Superior Method of Adjudication**

52. The Answering Defendants deny the allegations in Paragraph 52 of the Amended Complaint including the allegations in its sub-paragraphs (a) through (d) and deny that this case is appropriate for a class action.

53. The Answering Defendants deny the allegations in Paragraph 53 of the Amended Complaint, deny that there is a proper, correct and existing Class, and deny that this case is appropriate for a class action.

54. The Answering Defendants deny the allegations in Paragraph 54 of the Amended Complaint and deny that there is a proper, correct and existing Class.

**CAUSE OF ACTION I**

**PUBLIC NUISANCE**

55. In response to Paragraph 55 of the Amended Complaint, the Answering Defendants repeat and incorporate herein by reference their Answers to the allegations contained in Paragraphs “1” through “54” of the Amended Complaint as if they had been set forth herein.

56. The allegations of Paragraph 56 of the Amended Complaint are conclusions of law that require no response, respectfully refer all questions of law to the Court, and otherwise deny the allegations in Paragraph 56 of the Amended Complaint.

57. The Answering Defendants deny the allegations in Paragraph 57 of the Amended Complaint.

58. The Answering Defendants deny the allegations in Paragraph 58 of the Amended Complaint.

59. The Answering Defendants deny the allegations in Paragraph 59 of the Amended Complaint.

60. The Answering Defendants deny the allegations in Paragraph 60 of the Amended Complaint.

61. The Answering Defendants deny the allegations in Paragraph 61 of the Amended Complaint.

62. The Answering Defendants deny the allegations in Paragraph 62 of the Amended Complaint.

63. The Answering Defendants deny the allegations in Paragraph 63 of the Amended Complaint and deny that there is a proper, correct and existing Class.

64. The Answering Defendants deny the allegations in Paragraph 64 of the Amended Complaint.

65. The Answering Defendants deny the allegations in Paragraph 65 of the Amended Complaint.

66. The Answering Defendants deny the allegations in Paragraph 66 of the Amended Complaint.

67. The Answering Defendants deny the allegations in Paragraph 67 of the Amended Complaint and deny that there is a putative class.

68. The Answering Defendants deny the allegations in Paragraph 68 of the Amended Complaint.

**CAUSES OF ACTION II AND III**

**NEGLIGENCE AND GROSS NEGLIGENCE**

69. In response to Paragraph 69 of the Amended Complaint, the Answering Defendants repeat and incorporate herein by reference their Answers to the allegations contained in Paragraphs “1” through “68” of the Amended Complaint as if they had been set forth herein.

70. The Answering Defendants deny the allegations in Paragraph 70 of the Amended Complaint.

71. The Answering Defendants deny the allegations in Paragraph 71 of the Amended Complaint.

72. The Answering Defendants deny the allegations in Paragraph 72 of the Amended Complaint.

73. The Answering Defendants deny the allegations in Paragraph 73 of the Amended Complaint.

74. The Answering Defendants deny the allegations in Paragraph 74 of the Amended Complaint.

75. The Answering Defendants deny the allegations in Paragraph 75 of the Amended Complaint.

76. The Answering Defendants deny the allegations in Paragraph 76 of the Amended Complaint.

77. The Answering Defendants deny the allegations in Paragraph 77 of the Amended Complaint.

78. The Answering Defendants deny the allegations in Paragraph 78 of the Amended Complaint.

79. The Answering Defendants deny the allegations in Paragraph 79 of the Amended Complaint.

80. The Answering Defendants deny the allegations in Paragraph 80 the Amended Complaint.

81. The Answering Defendants deny the allegations in Paragraph 81 of the Amended Complaint.

**PLAINTIFFS' PRAYER FOR RELIEF**

82. The Answering Defendants repeat and incorporate herein by reference their Answers to the allegations contained in Paragraphs "1" through "81" of the Amended Complaint as if they had been set forth herein.

83. The Answering Defendants deny that Plaintiffs are entitled to the relief sought in subparagraphs A through G of their Prayer for Relief, for the reasons stated in Paragraphs 1 through 82 and the Affirmative Defenses set forth below in Paragraphs 84 through 111.

**AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

84. The Amended Complaint fails to state a cause of action or cognizable theory of recovery against the Answering Defendants.

**SECOND AFFIRMATIVE DEFENSE**

85. The claims asserted in the Amended Complaint are barred, in whole or in part, by the applicable statutes of limitations.

**THIRD AFFIRMATIVE DEFENSE**

86. The action is not appropriate for class certification pursuant to CPLR Article 9.

**FOURTH AFFIRMATIVE DEFENSE**

87. The putative class alleged in the action lacks numerosity, commonality, typicality, and adequacy of counsel.

**FIFTH AFFIRMATIVE DEFENSE**

88. Upon information and belief, Plaintiffs lack standing, capacity and/or authority to assert all or part of the claims in the Amended Complaint.

**SIXTH AFFIRMATIVE DEFENSE**

89. The claims asserted against the Answering Defendants in the Amended Complaint are barred in whole or in part by the equitable doctrines of waiver, estoppel, laches and/or unclean hands.

**SEVENTH AFFIRMATIVE DEFENSE**

90. Damages alleged to be incurred may not be recovered as they are too remote, speculative, and contingent

**EIGHTH AFFIRMATIVE DEFENSE**

91. Upon information and belief, any nuisance or negligence that caused damages respecting the properties at issue described in the Amended Complaint was the result of actions or inactions of persons other than the Answering Defendants.

**NINTH AFFIRMATIVE DEFENSE**

92. Any odors that might have been generated by the Landfill or caused by the Answering Defendants did not result in damages to the Plaintiffs.

**TENTH AFFIRMATIVE DEFENSE**

93. The acts and/or omissions of Plaintiffs and/or persons and/or parties other than the Answering Defendants, including but not limited to the other unnamed persons or parties, were the proximate, legal and/or actual cause(s) of the damages and/or injuries, if any, alleged in the Amended Complaint. No acts or omissions of the Answering Defendants were the proximate, legal and/or actual cause(s) of the damages and/or injuries, if any, alleged in the Amended Complaint.

**ELEVENTH AFFIRMATIVE DEFENSE**

94. The damages alleged in the Amended Complaint, if any, were avoidable consequences, and Plaintiffs' claims are barred to the extent that they failed to act to mitigate or reduce their damages.

**TWELFTH AFFIRMATIVE DEFENSE**

95. Plaintiffs' claims are barred in whole or in part by the doctrines of intervening cause or superseding cause.



**THIRTEENTH AFFIRMATIVE DEFENSE**

96. The amount of damages, if any, recoverable by Plaintiffs must be diminished in the proportion to which the culpable conduct attributable to other person or entities bear to the culpable conduct that allegedly caused the damages.

**FOURTEENTH AFFIRMATIVE DEFENSE**

97. The Answering Defendants' liabilities, if any, are barred or subject to reduction under the doctrines of equitable or statutory contribution, indemnity, offset or allocation to account for the liability of any and all persons or entities responsible for the alleged harm at the subject properties, including, but not limited to, non-parties to the litigation. The Answering Defendants reserve the right to amend this affirmative defense to name such parties and/or assert claims against them.

**FIFTEENTH AFFIRMATIVE DEFENSE**

98. Plaintiffs' claims are barred in whole or in part because the alleged odors alleged by Plaintiffs, and any damages allegedly resulting therefrom, was caused solely by acts or omissions of third parties over whom the Answering Defendants had no control in law or in fact and with whom the Answering Defendants had no contractual relationship.

**SIXTEENTH AFFIRMATIVE DEFENSE**

99. The Answering Defendants exercised due care in its operation and maintenance of the Landfill in light of all relevant facts and circumstances and took precautions against foreseeable acts or omissions and the consequences that could foreseeably result from such actions or omissions.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

100. Plaintiffs' claims are barred in whole or in part by the its failure to join all persons and/or parties necessary for a just and complete adjudication of this action.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

101. Plaintiffs' claims are barred in whole or in part because they include claims for damages that are speculative, uncertain, not ascertainable, and/or not measurable.

**NINETEENTH AFFIRMATIVE DEFENSE**

102. None of the Answering Defendants can be held liable for the acts or statutory liability of their corporate subsidiaries or of any other related corporate entities.

**TWENTIETH AFFIRMATIVE DEFENSE**

103. The Answering Defendants deny that they are liable for any claims relating to the properties at issue in the action. In the event that they are nonetheless found liable, the Answering Defendants are entitled to an offset against liability on their part for the greatest of, and any combination of: (1) any amounts actually paid by any person or entity heretofore and hereafter for any of the costs, damages , and expenses alleged in the Amended Complaint; (2) any amounts stipulated or otherwise agreed to in any release, order, agreement, or covenant not to sue with any person heretofore or hereafter for any of the costs, damages , and expenses alleged in the Amended Complaint; (3) the equitable share of the liability of any person or entity; and/or (4) the equitable share for any entity that no longer exists, is defunct, or is dissolved.

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

104. Plaintiffs' claims are barred, in whole or in part, by the doctrine of primary jurisdiction.

**TWENTY-SECOND AFFIRMATIVE DEFENSE**

105. Plaintiffs' claims are barred, in whole or in part, by the doctrines of assumption of risk or coming to the nuisance.

**TWENTY-THIRD AFFIRMATIVE DEFENSE**

106. Any odors alleged by Plaintiff, if any, did not constitute more than a slight inconvenience or petty annoyance to Plaintiffs.

**TWENTY-FOURTH AFFIRMATIVE DEFENSE**

107. To the extent Plaintiffs' Amended Complaint can be read to assert a claim for private nuisance, private nuisance cannot form the basis for a class action under New York Law.

**TWENTY-FIFTH AFFIRMATIVE DEFENSE**

108. The Answering Defendants owed no specific or general duty to Plaintiffs or the putative class members.

**TWENTY-SIXTH AFFIRMATIVE DEFENSE**

109. Plaintiffs' negligence claim is barred, in whole or in part, by the doctrine of contributory negligence.

**TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

110. The Answering Defendants reserve the right to adopt any and all affirmative defenses available under any United States or New York State statute, or under any regulation applicable to the averments contained within the Plaintiffs' Amended Complaint.

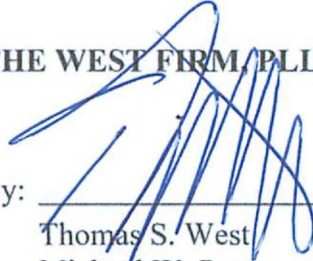
**TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

111. The Answering Defendants' defenses are based upon the facts known to them at this time. The Answering Defendants reserve the right to assert additional defenses that become available during discovery or at trial, and to amend and add such additional defenses to this set of defenses as the discovered facts warrant. The Answering Defendants also reserve their rights to add additional parties and assert counter-claims, cross claims, and direct claims as the discovered facts warrant.

**WHEREFORE**, the Answering Defendants respectfully request that this Court deny Plaintiffs' attempt to certify the proposed class pursuant to CPLR Article 9; dismiss Plaintiffs' Amended Complaint in its entirety; deny Plaintiffs compensatory and punitive damages, attorneys' fees and costs, and pre- and post-judgment interest; deny Plaintiffs injunctive relief not inconsistent with the Answering Defendants' state and regulatory obligations; enter judgment in the Answering Defendants' favor and against Plaintiffs; award the Answering Defendants their costs of suit and reasonable attorneys' fees; and award the Answering Defendants such further and other relief that the Court deems just and proper.

Dated: November 22, 2019  
Albany, New York

THE WEST FIRM, PLLC

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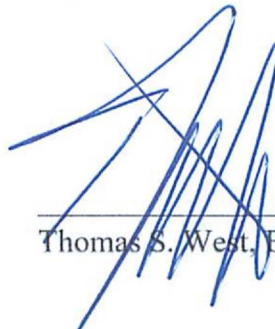
ATTORNEY VERIFICATION

I, THOMAS S. WEST, ESQ., an attorney duly admitted to the practice of law before the Courts of the State of New York, does hereby affirm under penalties of perjury pursuant to Rule 2106 of the CPLR:

I am the attorney for the Defendants in this action. I have personally reviewed the foregoing Answer to Amended Complaint with my clients, and upon the conclusion of said review as to the facts alleged therein, I believe same to be true, where made upon information and belief. As for all other allegations, Counsel has personal knowledge thereof and believes the within allegations to be true, to my person knowledge.

This verification is being used pursuant to the provisions of the CPLR Section 3020(d)(3) case law, due to the fact that Defendants and their counsel are in different counties, counsel having offices in the County of Albany and Defendants having offices in different counties.

Dated: Albany, New York  
November 22, 2019



Thomas S. West, Esq.