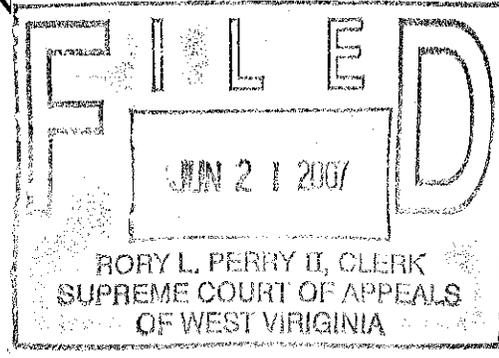


IN THE SUPREME COURT OF APPEALS  
STATE OF WEST VIRGINIA  
CHARLESTON

LONNIE HANNAH, Sheriff of  
Mingo County; MINGO OFFICE OF  
EMERGENCY SERVICES; and THE  
COUNTY COMMISSION OF MINGO  
COUNTY, of Whom LONNIE HANNAH,  
Sheriff of Mingo County,



Appellant/Defendant,

v.

Appeal No. 33382

MARCUM TRUCKING COMPANY,  
INC.; and 263 TOWING, INC.,

Appellees/Plaintiffs.

**BRIEF OF APPELLEES**

Submitted by:

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## STANDARD OF REVIEW

Appellant alleges three assignments of error, each of which raises a slightly different standard of review.

The first alleged error is the Circuit Court's order granting the remedy of mandamus. This Court has held that the standard of appellate review of a circuit court's order granting such relief is *de novo*. O'Daniels v. City of Charleston, 200 W.Va. 711, 715, 490 S.E.2d 800, 804 (1997). However, because the appellant bases this alleged error on the Court's underlying factual findings and conclusions of law, such findings and conclusions are reviewed under a **clearly erroneous standard**. Id. A finding is clearly erroneous when, although there is evidence to support the finding, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. In re the Interest of Tiffany Marie S., 196 W.Va. 223, 470 S.E.2d 177 (1996).

The second alleged error concerns the Circuit Court's award of attorney's fees against the Appellant. This Court has held that an award of attorney's fees in an action for mandamus is reviewed under an **abuse of discretion standard**. State ex rel. Board of Education v. McCuskey, 184 W.Va. 615, 617, 403 S.E.2d 17, 19 (1991) (per curiam). An abuse of discretion occurs when a material factor deserving significant weight is ignored, when an improper factor is relied upon, or when all proper and no improper factors are assessed but the evaluator makes a serious mistake in weighing them. Gentry v. Magnum, 195 W.Va. 512, n.6, 366 S.E.2d 171 (1995).

The final alleged error concerns the Court's award of interest due. Such an award, as a conclusion of law, should be reviewed under a **clearly erroneous standard**. O'Daniels, at 715.

## STATEMENT OF FACTS

The facts of these two cases are quite simple. The County Commission of Mingo County (“County Commission”) contracted with Marcum Trucking Co. (“Marcum”) and 263 Towing, Inc. (“263”) to perform emergency work during the spring floods of 2004. Marcum Amended Final Order Granting Writ of Mandamus (“Marcum Order”), Findings of Fact ¶ 1.

With respect to Marcum, the County Commission repeatedly approved invoices for payment in May, June and August of 2005 and, finally, in July of 2006. In all instances, the County Commission issued checks for the Sheriff’s signature with instructions for him to endorse the checks and pay the approved invoices. *Id.* at ¶ 3, 4; *see also* Transcript of August 29, 2005, p.14 (“They have decided that the bills presented by Marcum Trucking are under what the Prompt Pay Act would say legitimate and uncontested and are to be paid and in response to that a check was issued and expected the sheriff to sign that.”). In doing so, the County Commission represented that it, as the fiscal authority of the county, contracted, investigated and approved the subject payments on multiple occasions. Transcript of August 29, 2005, pg. 23 (“In an attempt to work this thing out with Mr. Callaghan and with the Sheriff and avoid this day, the Commission has reviewed information from Mr. Callaghan, has talked with workers, has talked with everybody that they thought was relevant to making this decision and they have, in a Commission Meeting, again approved this payment.”).

With respect to 263, the County Commission, after review, discussion, and a negotiated compromise with 263, approved and ordered payment of amounts due to 263 on September 26, 2006. 263 Towing Final Order Granting Writ of Mandamus (“263 Order”) Findings of Fact, ¶ 6. Again, counsel for the County Commission detailed the steps the county fiscal authority took to approve and order payment of the vendor. Transcript of October 2, 2006, p. 43 (“Took input,

talked with the employees, reviewed records, and what it's come down to, Your Honor, is a decision by the Commission that there should be a reduction with regard to, and this was no admission by the Defendants [sic].")

Despite issuing multiple proper orders for payments due under those contracts, the Sheriff of Mingo County, the Appellant in this case, refused to sign the checks, as ordered and required under his duties as Treasurer of Mingo County. Marcum Order, at ¶ 3; 263 Order, at ¶ 6. On the basis of the clear record below, the Sheriff could provide no justifiable reason for refusing to perform his duty, short of unsubstantiated innuendo and accusations. In all regards, when pressed for evidence of good cause to withhold payment, the Sheriff failed to produce any supporting evidence whatsoever. Marcum Order, ¶ 4; 263 Order, ¶ 7 ("The Court specifically inquired of the Respondent, Sheriff Hannah, if there was any information that would confirm the work was not done or was over billed, but no such information was provided."); see also Transcript of August 29, 2005, at pg. 17-18; Transcript of October 2, 2006, at pg 41-42, 49.

Finding that all of the necessary elements were satisfied, the Circuit Court granted the Writ of Mandamus and found that the Sheriff had failed to show good cause for failing to perform his duties. Marcum Order, Conclusions of Law ¶ 2-18; 263 Order, Conclusions of Law ¶ 2-17. Further, the Circuit Court found that the Sheriff willfully and deliberately refused to exercise his clear legal duty and failed to obey the law, resulting in an award of attorney's fees. Marcum Order, Conclusions of Law ¶ 19-24; 263 Order, Conclusions of Law ¶ 18-22 Further, the Circuit Court ordered the payment of interest on behalf of Marcum, as a consequence of the wrongful delay in payment. Marcum Order, Conclusion of Law ¶ 25.<sup>1</sup>

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<sup>1</sup> The Petitioner attempts to find support for his actions by the fact that prejudgment interest was awarded only to Marcum. However, this is merely because the order approving payment to 263 was not entered until September 26, 2006, which the Sheriff refused to sign.

**I. Appellant's Evidence Not Part of the Record and Further Misstatements of Fact**

In Maxwell v. Maxwell, 67 W.Va. 119, 67 S.E. 379 (1910), this Court addressed the issue of an appellate court's authority to review evidence not submitted to a lower tribunal:

[W]hat is appellate jurisdiction? Does it include the power to do other than to review upon the record made below? Does it not relate wholly to the consideration of that which has been acted upon by the court from whence comes the appeal? May [an appellate] court do an original thing, act upon something that has never been heard in the court below, and call that the exercise of appellate jurisdiction? We do not think so. It is not in reason so to hold....

... [An appellate] court cannot hear evidence other than that brought up for review, except in the exercise of original jurisdiction.... [This] means that [an appellate court] shall deal only with evidence taken below and brought up for the purpose of a review of an order or decree made upon it below. It means that in using our appellate powers we shall consider no other evidence[.]

Atkins v. Gatson, 218 W.Va. 332, 337, 624 S.E.2d 769, 774 (2005); *quoting Maxwell*, 67 W.Va. at 122-123, 67 S.E. at 380-381. "Accordingly, it is the parties' duty to make sure that evidence relevant to a judicial determination be placed in the record before the lower [tribunal] so that [it] may properly [be] consider[ed] ... on appeal." West Virginia Dep't. of Health and Human Res. ex rel. Wright v. Doris S., 197 W.Va. 489, 494 n.6, 475 S.E.2d 865, 870 n.6 (1996). *See also Pearson v. Pearson*, 200 W.Va. 139, 145 n.4, 488 S.E.2d 414, 420 n.4 (1997) ("This Court will not consider evidence which was not in the record before the circuit court."); Powderidge Unit Owners Assoc. v. Highland Props., Ltd., 196 W.Va. 692, 700, 474 S.E.2d 872, 880 (1996) ("[T]his Court for obvious reasons, will not consider evidence or arguments that were not presented to the circuit court for its consideration [.]").

As such, this Court should give no weight to Appellant's inappropriate references to proceedings initiated by the Appellant's counsel after the entry of the Final Orders at issue in this

case. App. Br. at 9. The same would apply to Appellant's references to Greg Smith, an issue that was never raised below. Id. at 14.

Further, Appellant's failure to cite record evidence to support his self-serving and conclusive statements requires some response, although ultimately, such statements are irrelevant to the determination of whether the sheriff can refuse to sign a valid order presented by the County Commission. Instead, these misstatements must be addressed because they appear to be intended to solely smear the reputation and character of the Appellees, without any evidentiary foundation, before this Court.

First, Appellant makes only one reference to the transcript in his Statement of Fact. Appellant incorrectly contends that the compromise between the Mingo County Commission and 263 regarding what amount of 263's bill constituted a concession of "overbilling." App. Bri. At 14. At best, Appellant's assertion mischaracterizes the agreement. As previously set forth in the Statement of Facts, the relevant transcript specifically provides that 263, by agreeing to the resolution, did not admit to wrongful action. Trans. of October 2, 2006. Instead, 263 agreed to reduce its rightful bill to expedite a process that had been dragging on for approximately two years.

Furthermore, the Appellant's reference to an indictment is without merit, wholly inappropriate, and appears to be raised here in an attempt to "poison the well." Appellant was an instrumental player in obtaining the indictment. The fact that the indictment was dismissed and that the Court "reviewed the minutes of the Grand Jury and also has found clearly defined irregularities with regard to the presentment of this matter before the Grand Jury, including the presence of an unauthorized person being present in the room, improper conversations between a witness and a Grand Juror, as well as other procedural irregularities" is a matter of public record.

Although these unfounded accusations are not a part of the record and, thus, are irrelevant to this Court's review, Appellees are compelled to defend their reputations. To suggest proof of guilt by the existence of a prior indictment returned as a result of Appellant's machinations, subsequently dismissed for prosecutorial misconduct, is inappropriate and irrelevant to this appeal. On the basis of the evidence below, the Circuit Court determined that there was no indication that an untainted indictment was forthcoming. Marcum Order, Findings of Fact ¶ 4 ("As of the time of this order the alleged investigation has been ongoing for over two and one half years and there is no indictment against the Plaintiff in this matter, nor any verifiable indication there will be.")

Finally, Appellant states that no determination was made regarding whether sufficient funds were available to pay the orders. App. Br. at 17 ("The fact is that one reads the findings of fact in both sets of final orders in a futile search for any finding or even a hint that these requirements were satisfied. ... This is a matter the court below let go essentially unexamined by default.") This statement is simply false. In fact, the Circuit Court addressed this very issue on the record. The availability of sufficient funds was undisputed by all the parties present, including the Appellant. See Transcript of August 29, 2005, pg. 10 ("THE COURT: And I take there is no dispute that there is money and there's no dispute that they are signed. Are we on the same page there?").<sup>2</sup>

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<sup>2</sup> In an astonishing statement, the Appellant also contends that, "This is why the payment process was strung out over multiple years; the County simply did not have the money in the budget to pay these bills." App. Br. at 17. Not only is this factually incorrect based on the uncontested record below, it raises serious questions about the behavior of the Sheriff over the last two and one-half years, whose unsupported allegations have damaged the Appellees' reputations in both print newspapers and on the radio. If the allegations of fraud and refusal to sign checks was an attempt to "string out" the payments as the Appellant now states, the Sheriff's actions certainly constitute an outrageous abuse of power.

## **II. Additional Misstatement of Fact in Amicus Brief**

In addition to reliance on Appellant's briefing and the misstatements therein, the Amicus Brief filed by the West Virginia Sheriff's Association contains a misstatement of fact that should be cleared up prior to a discussion of the relevant case and statutory law. In its brief, the Association states that, with regard to the Court's award of attorney's fees, there was "no indication in the trial court's order that the factors discussed in Bennett were considered." West Virginia Sheriff's Assoc. Br. at 7, *citing* Bennett v. Adkins, 194 W.Va. 372, 380, 460 S.E.2d 507, 515 (1995), *quoting* State ex rel. West Virginia Highlands Conservancy, Inc., et al. v. W. Va. DEP and Callaghan, et al., 193 W.Va. 650, 458 S.E.2d 88 (1995). Again, this is simply untrue. The court discussed and applied the factors in both Orders. *See* Marcum Order, Conclusions of Law ¶ 19-24; 263 Order, Conclusions of Law ¶ 18-22.

### **ARGUMENT**

The Appellant's brief raises three assignments of error. They will be discussed in turn. Thereafter, the issues raised by the Amicus brief will be addressed.

#### **I. The Circuit Court did not err by granting the Writ of Mandamus.**

This Court has held that "[A] writ of mandamus will not issue unless three elements coexist – (1) a clear legal right in the petitioner to the relief sought; (2) a legal duty on the part of the respondent to do the thing which the petitioner seeks to compel; and (3) the absence of another adequate remedy." Wampler Foods, Inc. v. Workers' Compensation Division, 216 W.Va. 129, 602 S.E.2d 805 (2004), *citing* Syllabus Pt. 2, State ex rel. Kucera v. City of Wheeling, 153 W.Va. 538, 170 S.E.2d 367 (1969).

**A. Petitioner's legal right to the relief sought was clear.**

Article 9, Section 11 of the West Virginia Constitution states that "The county commissions... shall also, under such regulations as may be proscribed by law, have the superintendence and administration of the internal police and fiscal affairs of their counties... with authority to lay and disburse the county levies..." W.Va. Const. Art. 9, Sec. 11. Additionally, the West Virginia Legislature not once, but twice, has unequivocally declared that the County Commission has superintendence and administration of the fiscal affairs and business of the County. See, W.Va. Code § 7-1-3; W.Va. Code § 7-1-5.

West Virginia Code § 7-5-1 states that "[t]he sheriff shall be ex officio treasurer" of the county. Further, West Virginia Code § 7-5-4 states that "[n]o money shall be paid by the sheriff out of the county treasury except upon an order signed by the president and clerk of the county court, and properly endorsed..." A county of West Virginia has **no other mode** of paying claims against it except by orders drawn upon the treasury and directed to the sheriff, the ex officio treasurer. Damron v. Ferrell, 149 W.Va. 733, 776, 143 S.E.2d 469, 471 (1965).<sup>3</sup> The sheriff of a county, in making payment of such expenditures upon a proper order of payment by the county court, is acting in an administrative capacity and has **no discretion** with regard to making such payment if the order of payment is legal. Id. (emphasis added). The duty is clear, for were it otherwise, as argued by Appellant, the Sheriff would have an unfettered veto power over all county fiscal decisions and could always refuse to sign a proper pay order from the county commission by citing an "investigation" with no evidentiary or basis perceptible on

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<sup>3</sup> The Amicus brief attempts to cite this case for the proposition that a sheriff need not sign a properly executed order from the county commission on the basis of the sheriff's belief that some crime underlay the approved payment. Amicus brief, at pg. 9. The case is distinguished, however, by the fact that in Damron, the county commission had not pre-approved the expenditures at issue. Such is not the case in this appeal and the Amicus brief's reliance on the same is misplaced. Clearly in this case, legal orders, properly approved and signed, were presented to the Sheriff for execution.

review. Obviously, the Sheriff should not be permitted to usurp the clear constitutional authority of the county commission to contract, approve, and issue orders for payment of the county's vendors.

As discussed in the Statement of Facts, the Circuit Court found that proper orders for payment had been issued for payment to the petitioners which the Sheriff refused to sign. 263 Order, Findings of Fact ¶ 7; Marcum Order, Findings of Fact ¶ 4. Thus, a clear legal right was established. Although the Circuit Court inquired and found that the Sheriff had no evidence to support that the orders were illegal, those questions were only relevant to the determination of the award of attorney's fees. A respondent's intention, state of mind or good faith are immaterial to a mandamus proceeding. Syl. Pt. 3, Bennett v. Atkins, 194 W.Va 374, 460 S.E.2d 507 (1995).

Finally, to address the argument that "contested invoices need not be paid" made by the Appellant, the Appellees note that such an interpretation would not only usurp the authority of the County Commission as the county's fiscal authority, but would also render the penalty provision of the Prompt Pay Act superfluous. W.Va. Code § 7-5-7(d). The Prompt Pay Act states that an agency responsible for a delay in payment shall be subject to an interest penalty. Id. Appellant's interpretation of the statute would result in any agency subject to the Act being able to avoid the interest penalty by claiming that they, the agency subject to the penalty, "contest" the orders. Instead, a more rational reading would suggest that the fiscal authority of the county would be the arbiter of which invoices were legitimate and uncontested.

The only party "contesting" the invoices here is the Appellant. The Circuit Court found Appellant's position to be without any evidentiary support. The Appellant is not the fiscal authority of Mingo County. The fiscal authority of Mingo County determined that the subject invoices were legitimate and uncontested.

**B. The Sheriff's duty to sign the checks was clear.**

The Appellant now argues that he had no duty to sign the checks at issue on the basis of insufficient funds. That funds were available was uncontested in the proceeding below. *See* Tr. of August 29, 2005, pg. 10 ("THE COURT: And I take there is no dispute that there is money and there's no dispute that they are signed. Are we on the same page there?"). As previously stated, the sufficiency of funds was not an issue in the proceedings below. The Sheriff remained silent with regard to this issue. Therefore, this cannot be considered error on the part of the Circuit Court. The Circuit Court below specifically inquired whether there were sufficient funds and it was uncontested by the parties that sufficient funds were available.

**C. There was no other adequate remedy for petitioner.**

The Appellant cites Ratliffe v. County Court, 36 W.Va. 202, 14 S.E. 1004 (1892) for the proposition that the Appellees had a remedy against the Sheriff and his personal bond personally. Such a position, however, ignores Eureka Pipe Line Co. v. Riggs, Sheriff, 75 W.Va. 353, 83 S.E. 1020 (1914), which was cited in the Circuit Court's Orders. 263 Order, Conclusions of Law ¶ 11; Marcum Order, Conclusions of Law ¶ 12.

In fact, in Eureka, this Court stated:

**We are of [the] opinion, therefore, that relator may properly resort to mandamus, and is not limited to the remedy by action on respondent's official bond.**

But remedy by mandamus requires a clear legal right. **As we have already intimated the orders of exoneration made by the county court gave that clear right**, unless annulled by the subsequent order made at the subsequent special term. What, then, was the effect of that subsequent order, if any, on the relator's right to the exemption? As we have already said, those orders of exoneration were regularly obtained by due proceedings under the statute, and **while there is some intimation in the record that undue influence may have been exerted upon members of the court or the officers of the court, rendering the orders**

**fraudulent, there is no plea and no evidence competent to support such a claim, and this court cannot indulge the presumption that fraud, not proven, entered into the action of the court. Those orders having been properly obtained entitled the relator to a refund of the taxes exonerated; they constituted property or property rights, which could not be taken away except by some proper judicial process.**

Eureka, at 1022 (emphasis added). So, contrary to Appellant's position, the County Commission's orders gave the Appellees a clear right to payment and, Appellant's unsubstantiated and unsupportable accusations notwithstanding, the Appellees were entitled to the remedy of mandamus.

Finally, to the extent that Appellant suggests that the remaining monies due to Appellees should have been levied against his personal bond, the Appellees assert that such an alleged error, if it were such, has been mooted by the Appellant's pledging of that bond against any remaining post-appeal monies due as consideration for Appellees withdrawing their objection to a stay without the posting of a bond. *See* Nov. 29, 2006 Order of Stay.

**II. The Circuit Court did not commit clear error when granting an award of interest.**

The Circuit Court cited two statutes for the proposition that Marcum was entitled to interest.<sup>4</sup> The first, W.Va. Code § 56-6-31, provides that, where an obligation is based upon a written agreement, it shall bear prejudgment interest until the date the judgment or decree is entered. The second, W.Va. Code § 7-5-7(d) provides that the agency responsible for a delay in payment of a legitimate, uncontested invoice will be responsible for interest on the claim. The Circuit Court found that Appellees had a clear right to payment. Further, the Court held that the Sheriff failed to perform his duty and was responsible for the delay in payment to Appellees, despite being advised of his legal duty and having no basis for refusal. Accordingly, mandamus

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<sup>4</sup> Contrary to Appellant's assertion, Marcum was awarded interest on the basis of the much earlier approval and order for payment date.

was appropriate. On the basis of the relevant statutory law, the Circuit Court did not err by ordering interest to be paid by the agency responsible for the delay in payment of a proper order.

**III. The Circuit Court did not abuse its discretion by awarding attorney's fees.**

The Appellant argues that the Sheriff's "honesty and good faith" weigh against the award of attorney's fees in the cases below. In doing so, by implication, the Appellant must be arguing that the Circuit Court's findings of fact and weighing of factors related to the award were clearly erroneous,<sup>5</sup> and that the award was an abuse of discretion. However, on the basis of the clear record and the relevant case law, the Circuit Court was correct in awarding attorney's fees for the Appellant's deliberate and willful refusal to perform his legal duty.

Costs and attorney's fees may be awarded in mandamus proceedings involving public officials because citizens should not have to resort to lawsuits to force government officials to perform their legally prescribed nondiscretionary duties. Syl. Pt. 1, State ex rel. West Virginia Highlands Conservancy, Inc. v. W. Va. Div. of Environ. Pro., 193 W.Va. 650, 458 S.E.2d 88 (1995). Attorney's fees may be awarded to a prevailing petitioner in a mandamus action in two general contexts: (1) where a public official has deliberately and knowingly refused to exercise a clear legal duty, and (2) where a public official has failed to exercise a clear legal duty, although the failure was not the result of a decision to knowingly disregard a legal command. Id. at Syl. Pt. 2.

In the first context, where a public official has deliberately and knowingly refused to exercise a clear legal duty, a presumption exists in favor of an award of attorney's fees; unless extraordinary circumstances indicate an award would be inappropriate, attorney's fees will be allowed. Id. at Syl. Pt. 3. In both cases below, the Circuit Court found that the Appellees had a

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<sup>5</sup> Bizarrely, the Amicus brief argues that the award factors were not discussed in the Circuit Court's Orders. As discussed previously, both the willful disobedience and the factor test were applied and both were found to justify the award of attorney's fees.

clear legal right to payment and that, despite being advised that it was his duty to sign the approved checks, the Sheriff intentionally failed to exercise his duty. Marcum Order, Conclusions of Law ¶ 21; 263 Order, Conclusions of Law ¶ 20. As such, a presumption in favor of attorney's fees existed and it was not an abuse of discretion to award them.

In the second context, where a public official has failed to exercise a clear legal duty, although the failure was not the result of a decision to knowingly disregard a legal command, there is no presumption in favor of an award of attorney's fees. *Id.* at Syl. Pt. 4. Rather, the court will weigh the following factors to determine whether it would be more fair to leave the costs of litigation with the private litigant or impose them on the taxpayers: (a) the relative clarity by which the legal duty was established; (b) whether the ruling promoted the general public interest or merely protected the private interests of the petitioner or a small group of individuals; and (c) whether the petitioner has adequate financial resources such that petitioner can afford to protect his or her own interests in court and as between the government and petitioner. *Id.* In both cases below, the circuit court found that (1) the legal duty was clearly established; (2) that the ruling promoted the general public interest, since the refusal to sign a legitimate order exposed the taxpayers to additional interest;<sup>6</sup> and (3) small local businesses who have not been paid on legitimate orders for over two years do not have adequate resources to pay attorney's fees when they were entitled to payment from the beginning. Marcum Order, Conclusions of Law ¶ 21; 263 Order, Conclusions of Law ¶ 20. As such, under both standards, the Circuit Court found that an award of attorney's fees was warranted. Further, by applying these standards, the Circuit Court did not abuse its discretion.

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<sup>6</sup> The Appellees would add that the general public has an interest in the County Commission being able to contract with vendors for services, especially during emergencies, without requiring prior approval from the Sheriff. Further, the general public has an interest in being able to obtain services during an emergency and should not have to pay higher rates to vendors due to the risk of a sheriff's "veto."

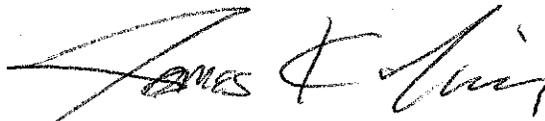
Finally, this Court has also held that, where a sheriff fails to perform a legal duty, the sheriff's department will be responsible for the payment of attorney's fees. Bennett v. Atkins, 194 W.Va. 372, 380, 460 S.E.2d 507, 515 (1995). Again, such an award by the Circuit Court was not an abuse of discretion. Further, Bennett held that Appellees forced to defend an appropriate award of attorney's fees on appeal is entitled to fees related to such defense before this Court. Id. at 380. As such, these Appellees request that such fees incurred during this litigation be awarded.

### CONCLUSION

On the basis of the clear record, statutory, constitutional and case law, Appellant's appeal should be denied and the Appellant ordered to pay the monies due to the Appellees, including an award of attorney's fees incurred in responding to this appeal. A remand for the sole purpose of determining the amount of additional attorney's fees due to the Appellees is appropriate.

**263 TOWING, INC. and  
MARCUM TRUCKING, INC.**

By: Counsel for Appellees



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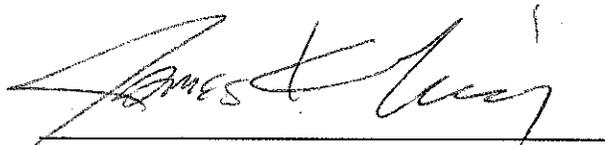
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**CERTIFICATE OF SERVICE**

I, James K. Tinney, counsel for Appellees, hereby certify that on the 21st day of June, 2007, the foregoing "**Brief of Appellees**" was served upon the parties by depositing a true and exact copy in the United States Mail, postage paid and sealed in an envelope, as follows:

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