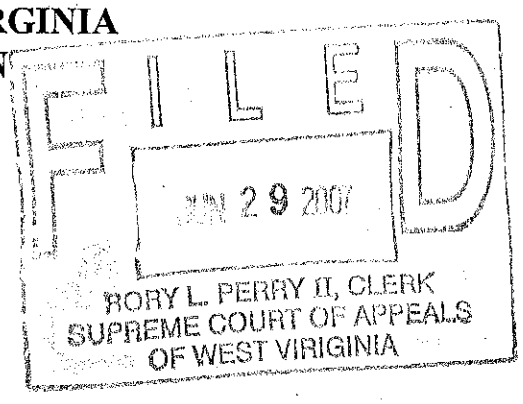
IN THE SUPREME COURT OF APPEALS
STATE OF WEST VIRGINIA
CHARLESTON



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

Lonnie Hannah, Sheriff of Mingo County, Appellant/Defendant-Below,

v. **Appeal No. 33382**

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

Appellees/Plaintiffs-Below.

APPELLANT'S REPLY TO THE BRIEF OF THE MINGO COUNTY COMMISSION

Submitted By:

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CORRECTION OF MISSTATEMENT OF FACTS CONTAINED IN THE BRIEF OF THE MINGO COUNTY COMMISSION

Appellant, Lonnie Hannah, Sheriff of Mingo County, takes issue with many of the facts and representations made in the Brief submitted to this Honorable Court by the Mingo County Commission (hereinafter referred to as the Commission).

Initially, be it clearly known that the $739,360.00 paid to Marcum's Trucking and 263 Towing was paid from the Mingo County Treasury without reimbursement from any governmental agency. On page 1. of the Commission's brief, it incorrectly implies that only the award of attorney fees and interest would be an expenditure of county funds.

While it is true that no subsequent indictments have been returned by a grand jury as stated on Page 6, Footnote 5 of the Commission's Brief, Ms. Rose Medina, an official with the United States's Office of Homeland Security is conducting an on-going investigation regarding the 263 Towing and Marcum's invoices and other questionable activities that occurred during the May, 2004 flood cleanup.

Sheriff Hannah did share his concerns regarding the validity of the 263 Towing and Marcum's invoices with the Mingo County Prosecuting Attorney and counsel for the Commission. Based upon many of the concerns raised by Sheriff Hannah, 263 Towing's invoices were significantly reduced. The reduction of 263 Towing's invoices included reductions to invoices that had previously been approved and paid by the Commission.

The transcripts from the Writ hearing of 263 Towing and Marcum's Trucking reflect that Sheriff Hannah repetitively acquainted the circuit judge the problems in the invoices, including, but not limited to, the fact that neither company could prove or substantiate that they had

employees to perform the work for which they billed the Mingo County Commission. Further, it was the Mingo County Commission who refused to provide Sheriff Hannah with any representation at the Writ hearings and thus, the Sheriff's *pro se* representation should not be held against him.

The Commission's brief further argues that pursuant to the Prompt Pay Act § 7-5-7(b) interest on the 263 Towing bill was accruing at $2,281.43 per month and interest on the Marcum's Trucking bill was accruing at $817.59 per month. The Commission's Brief, p. 8. If in fact the Prompt Pay Act applies to the Marcum's Trucking bills, then the Mingo County Commission should have been ordered by the circuit court to pay interest on the Marcum's Trucking bills sixty (60) days after they were submitted in July and August of 2004.[1] Instead, the circuit court chose to erroneously punish Sheriff Hannah by awarding Marcum's Trucking interest on its bills only after he refused to sign the check. The Commission cannot argue that it contested the Marcum's Trucking bills. Further, the Prompt Pay Act does not assess interest on a vendor's invoices from the time the commission approves payment, but rather from sixty (60) days after receipt of a legitimate uncontested invoice.

With regard to the 263 Towing bills, interest could not have been accruing on those invoices as they were ultimately reduced and reductions made on invoices previously paid. If, as suggested by the Commission, interest on the 263 Towing bills was indeed accruing, then the circuit court should have ordered the commission pay interest on those bills beginning sixty (60) days after they were submitted.

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[1]§ 7-5-7(b) gives the county or agency sixty (60) days to pay a legitimate uncontested invoice before interest begins to accrue. Any check issued after such sixty days shall include interest at the current rate, as determined by the state tax commissioner.

CONCLUSION

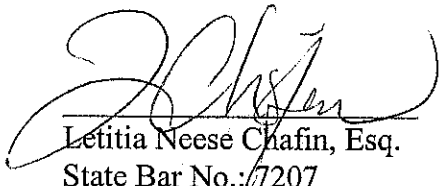
For the reasons set out above and in Appellant's Brief, Appellant, Sheriff Lonnie Hannah respectfully asks this Honorable Court to disapprove and vacate the orders entered below regarding (a) the issuance of the writ of mandamus; (b) the award of attorney's fees; and (c) the award of prejudgment interest.

Lastly, Sheriff Hannah asks the Court to remand the matter to a trial court with instructions to remand and/or assign the entire matter to the Office of Inspector General, Fraud and Abuse Investigations Division so that the truth of the invoices in question may be inspected and authoritatively determined.

Respectfully submitted,

LONNIE HANNAH, Sheriff of Mingo County

By Counsel



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June 27, 2007

CERTIFICATE OF SERVICE

I, Letitia Neese Chafin, Esq., counsel for the Apellant Lonnie Hannah, Sheriff of Mingo County, do hereby certify that I served the foregoing APPELLANT'S REPLY TO THE MINGO COUNTY COMMISSION'S BRIEF , by causing a true and correct copy of the same to be deposited in the U.S. Mail, First Class postage prepaid, addressed as follows, on this 28th day of June, 2007:

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