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IN THE CIRCUIT COURT OF WOOD COUNTY, WEST VIRGINIA

WEST VIRGINIA DEPARTMENT OF  
TRANSPORTATION, DIVISION OF  
HIGHWAYS, et al.

Petitioner,

v.

Civil Action No. 04-C-710  
Honorable Jeffrey B. Reed

PARKERSBURG INN, INC., a West  
Virginia corporation, WESBANCO BANK,  
INC., a West Virginia banking corporation,  
JOE D. CAMPBELL and W. JAMES REED,  
Trustees, MONONGAHELA POWER  
COMPANY, a West Virginia corporation,  
HOPE GAS, INC., a West Virginia corporation  
formerly known as CONSOLIDATED GAS  
SUPPLY CORPORATION, and S. F. GREINER,  
Sheriff of Wood County, West Virginia,

Respondents.

ORDER

RE: REMAINING GROUNDS FOR MOTION TO SET ASIDE VERDICT

On April 30, 2007, came the parties for hearing on Respondent's Motion to Set Aside Verdict and Award a New Trial. The Respondent, Parkersburg Inn, Inc., moved the Court to set aside the verdict and award a new trial on the following general bases:

1. The Court erred by giving the Respondent's Instruction No. 2.
2. The Court erred by overruling the Holiday Inn's objection to opinion testimony offered by three of the DOH appraisers who were not qualified to testify as to hotel management.
3. The Court erred by sustaining the DOH's objection to Jim Cochrane offering opinion testimony timely given in a deposition.

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CAROLE JONES  
CLERK CIRCUIT COURT

4. The Court erred by sustaining the DOH's objection to admitting into evidence the dates and amounts of three appraisals done on the Holiday Inn which were done in the regular course of business and refusing to admit the report of Randy Reed.

1. This Court previously heard the first ground with reference to Respondent's Instruction No. 2. For reasons stated in its Order dated June 27, 2007, the Court DENIED the respondent's motion upon that basis.

The Court then rescheduled for hearing the respondent's motion based on the other grounds. The issues were fully briefed by both parties, and both parties appeared and presented oral argument at said hearing on September 5, 2007. The Court, after due consideration of the parties' briefs, the arguments on the motions and the trial record, FINDS as follows:

2. The Court finds that Rodney Meers and the DOH appraisers were qualified to offer the opinions to which they testified with respect to hotel management issues. Petitioner also claimed Mr. Meers' opinions were based on inadmissible evidence. However, the Court further finds that the basis for Mr. Meers' opinion was adequate to express his opinions, regardless of the Court's ruling that statistics from the County Clerk's Office were inadmissible, and Mr. Meers' referenced to the inadmissible evidence, if any, was nominal and did not constitute a violation of the Court's Order banning evidence of the hotel/motel tax collections. Therefore, for the above reasons and for the reasons set forth by the Court during the trial and on the record at the hearing, the Court finds this ground to be without merit and the motion is DENIED.

3. The Court sustained the DOH's objection to respondent's witness, Jim Cochrane offering expert opinion evidence at the trial. The Court finds that at the witness' deposition he stated he was not offering expert testimony. The Court finds that it was respondent's responsibility to clarify and clear up any confusion with respect to whether Mr. Cochrane was offering opinion evidence at the trial. The record does not reflect and did not reflect that Mr. Cochran was going to be offered as an expert. The Court finds that Mr. Cochrane was not adequately identified as an expert and could not be called to give opinion evidence at the trial. Therefore, for the above reasons and for the reasons set forth by the Court during the trial and on the record at the hearing, the Court finds this ground to be without merit and the motion is DENIED.

4. The respondent called Randy Reed as a witness who testified to his opinions as to the value of the property and as to the bases of his opinions. The Court sustained the DOH's objection to the report being admitted as an exhibit. The Court finds that the witness had an opportunity to present his opinions and to demonstrate any graphs or tables supporting his opinions; therefore, the jury heard his opinions and the respondent was not denied the opportunity to further develop his testimony. The Court finds that admitting into evidence the expert's report would potentially cause confusion for the jury because of the complex nature of the witness' testimony and further overemphasize that witness' testimony for the jury. The Court does not find in the record where reports of other witnesses were offered.

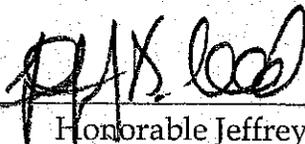
Therefore, for the above reasons and for the reasons set forth by the Court during the trial and on the record at the hearing, the Court finds this ground to be without merit and the motion is DENIED.

The Court, having considered all of respondent's bases for setting aside the verdict and awarding a new trial, hereby ORDERS that same are hereby DENIED.

The Respondent's objections are hereby noted.

The Clerk is directed to forward a copy of this Order to all counsel of record.

ENTERED this 9<sup>th</sup> day of Oct, 2007.

  
Honorable Jeffrey B. Reed

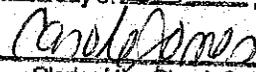
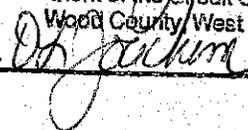
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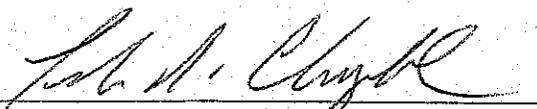
STATE OF WEST VIRGINIA,  
COUNTY OF WOOD, TO-WIT:

I, CAROLE JONES, Clerk of the Circuit Court of Wood County, West Virginia, hereby certify that the foregoing is a true and complete copy of an order entered in said Court, on the 9<sup>th</sup> day of Oct, 2007, as fully as the same appears to me of record.

Given under my hand and seal of said Circuit Court, this the 9<sup>th</sup> day of Oct, 2007.

  
Clerk of the Circuit Court of  
Wood County, West Virginia  
By: , Deputy

Approved by:

  
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