

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

JACOB FREDERICK JOCHUM, and
JACOB F. JOCHUM, JR., d/b/a
JACK JOCHUM TRUCK SERVICE,

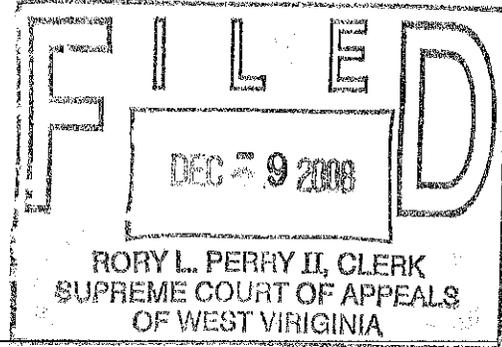
Plaintiffs-Appellants,

v.

WASTE MANAGEMENT OF
WEST VIRGINIA, INC, ET AL.,

Defendants-Appellees,

Appeal No.: 34264
Hon. Martin J. Gaughan
Circuit Court of Ohio County, WV
Civil Action No.: 06-C-415



**REPLY BRIEF OF JACOB FREDERICK JOCHUM,
and JACOB F. JOCHUM, JR., d/b/a JACK JOCHUM TRUCK SERVICE
TO "REPLY BRIEF ON BEHALF OF AMERICAN DISPOSAL SERVICES OF WEST
VIRGINIA, INC., D/B/A ROHRIG SANITATION, SHORT CREEK LANDFILL,
ALLIED WASTE SERVICES OF WHEELING, BFI WASTE SYSTEMS OF NORTH
AMERICA, INC., ALLIED WASTE SERVICES OF NORTH AMERICA, LLC AND
JEFF BROWN"**

NOW COME Jacob Frederick Jochum, and Jacob F. Jochum, Jr., d/b/a Jack Jochum Truck Service, and per Appellate Rule 10, reply to ADS's brief in response to the Jochums' appellate brief, as follows:

In response to the Jochums' statement that "Due to delays caused by American Disposal Services, a competitor which opposed the Agreement, the PSC didn't approve the transfer until December, 2005," ADS responded that it didn't cause any delays. ADS Reply Brief, at 2.

The facts prove otherwise:

In March and April, 2004, the Jochums filed applications to transfer their motor carrier certificates to Waste Management. Complaint, at ¶ 22; ADS Answer, at ¶ 22.

ADS protested the transfers not long after, and they were referred to the Division of

Administrative Law Judges. EXHIBIT 1, pertinent parts of December 28, 2005 PSC Decision, at 2.

The Commission Staff requested that the ALJ's decision due date be extended until February 28th, 2005 to allow for one hearing on the applications. The Jochums and Waste Management moved for an evidentiary hearing to resolve ADS' protest. See EXHIBIT 2. The transfer "should have been a straightforward and simple procedure" and the Jochums were eager to resolve it and complete the sale for health-related reasons. *Id.*

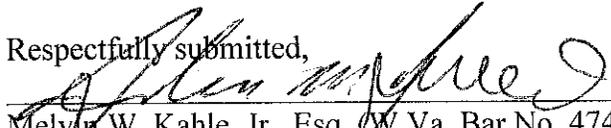
In the meantime, ADS served discovery on the Jochums and Waste Management that sought information which wasn't relevant to a certificate transfer case. Complaint, at ¶ 28; Waste Management's Answer, at ¶ 28 (admitting the allegation as to Waste Management).

The hearing occurred in December, 2004. The ALJ issued a Recommended Decision granting transfer. See EXHIBIT 1, at 13. The Commission Staff filed exceptions based in part on the hearing. EXHIBIT 3. ADS filed exceptions as well.

The PSC denied ADS's exceptions, denied and granted the Commission Staff's exceptions, and granted the Jochums' applications to transfer. EXHIBIT 1, at 1, 13.

ADS's filing of inappropriate discovery and unsuccessful protest necessitated the evidentiary hearing and ALJ decision, resulting in the filing of exceptions and delaying the PSC's approval of the transfer.

Respectfully submitted,


Melvin W. Kahle, Jr., Esq. (W.Va. Bar No. 4743)

Frank X. Duff, Esq. (W.Va. Bar No. 1065)

John M. Jurco, Esq. (W.Va. Bar No. 9535)

SCHRADER BYRD & COMPANION, PLLC

The Maxwell Centre

32-20th Street, Suite 500

Wheeling, West Virginia 26003

(304)233-3390

COUNSEL FOR THE APPELLANTS

CERTIFICATE OF SERVICE

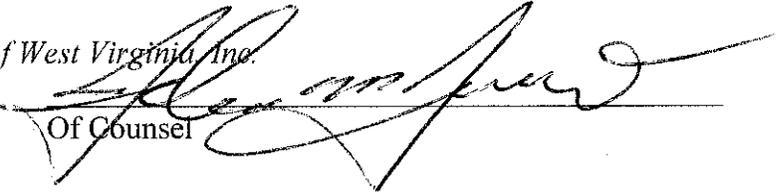
I, the undersigned counsel, caused the foregoing **REPLY BRIEF** to be served on the defendants on this 8th day of December, 2008, at the law offices of their attorneys, as follows:

Samuel F. Hanna, Esq.
Hanna Law Office
P. O. Box 2311
Charleston, W. V. 25328

Counsel for: American Disposal Services of West Virginia, Inc., d/b/a Rohrig Sanitation, Short Creek Landfill, and Allied Waste Services of Wheeling, Allied Waste Services of North America, LLC, and Jeff Brown

Edward J. George, Esq.
Matthew S. Casto, Esq.
Robinson & McElwee PLLC
400 Fifth Third Center
700 Virginia Street
P.O. Box 1791
Charleston, WV 25301

Counsel for Waste Management of West Virginia, Inc.


Of Counsel

EXHIBITS
ON
FILE IN THE
CLERK'S OFFICE