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J. Cassell

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, WEST VIRGINIA

TODD BALDAU,

Plaintiff,

vs.

Civil Action No. 07-C- 354

**HERBERT JONKERS, an individual,
LOUIS B. ATHEY, an individual, and
EUGENE CAPRIOTTI, an individual,**

Defendants.

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NOV 30 2009

JEFFERSON COUNTY
CIRCUIT COURT

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ORDER DENYING DEFENDANTS' POST-TRIAL MOTIONS

On a previous day came the Defendants by and through their legal counsel and timely filed motions pursuant to R.C.P., Rules 50, 59(a) and requested a stay of enforcement. This Court has considered the procedural history of this case, previous court orders in the case, the evidence adduced at trial, the Court's instructions of law, the verdict form, the parties' memoranda and now finds the following as set forth below.

It is useful to first review the history of this matter as the totality of this case spans three civil actions: 1) The first removal action, Civil Action No. 06-C-244 filed in the Circuit Court of Jefferson County, West Virginia by the Defendants ["Baldau I"]. The allegations in Baldau I were personally verified by the Defendants. Baldau I was dismissed without prejudice by order entered on October 5, 2006. The Defendants did not appeal the dismissal of Baldau I; 2) The second removal petition, Civil Action No. 06-C-373, filed in the Circuit Court of Jefferson County, West Virginia by the Defendants ["Baldau II"]. The allegations in Baldau II were personally verified by the Defendants. This revised removal petition was dismissed by unanimous order of a three judge panel entered on August 20, 2007. All of the relief sought by the Defendants in Baldau II

was denied after a full hearing upon the merits. In denying the relief sought, the three judge panel unanimously concluded:

16. The Respondent, in the exercise of his duties as one (1) of nine (9) members of the JCPC has obviously acted in good faith, and within the law, as he exercised his votes, aforementioned, in accordance with his laymen's understanding of state law and the Jefferson County Subdivision Ordinance, the advice of JCPC's counsel, and his rights, duties and obligations therein established.

17. The votes of other members of the JCPC were, in most instances, the same as the Respondent's votes; however, only the Respondent has been singled out for removal by the Petitioners. No reasonable, logical or rational explanation was presented by the Petitioners as to why they seek to remove only the Respondent from the JCPC.

19. There is not a scintilla of evidence in this case to support any of the allegations within the Petition that the Respondent, in the performance of any of his duties as a member of the JCPC or at the Jefferson County Public Service District meeting, to which he was invited, violated the law or his oath of office. If the Respondent did anything at the Jefferson County Public Service District meeting he simply exercised his constitutionally guaranteed right of free speech. For that the Respondent cannot and should not be removed from his appointed office as a member of the Jefferson County Planning Commission.

Accordingly, the Court, in consideration of all of the aforementioned, unanimously concludes that there is no clear and convincing evidence at all in this case which supports, to any degree, any factual or legal conclusion that the Respondent, has, in any manner, in the performance of any of his duties as a member of the Jefferson County Planning Commission, committed multiple acts of official misconduct, engaged in malfeasance in office, is incompetent or has neglected any of his official duties. To the contrary, the Respondent clearly appears to be an informed, smart and conscientious, unpaid citizen member of the Jefferson County Planning Commission.

The Defendants did not appeal the decision in Baldau II.

The instant case is the third civil action. The Plaintiff herein alleged, among other things, that “[t]he Defendants and others with whom the defendants conspired, specifically their legal counsel at the time, verified, filed, and litigated Baldau I and Baldau II with actual malice and without reasonable or probable cause.” *Complaint*, ¶ 14.

The Defendants filed their Answer but importantly did not assert the affirmative defense of qualified immunity, allege the *Noerr-Pennington* doctrine, nor claim good faith reliance upon

advice of counsel. No cross-claims were asserted by the Defendants who instead chose to present a unified defense through the same counsel who had represented them in Baldau I and Baldau II, notwithstanding the Plaintiff's assertion that each of the Defendants was severally liable to the Plaintiff.

After the close of discovery the Defendants for the first time asserted the affirmative defense of qualified immunity by way of a cross-motion for summary judgment that was untimely filed. This Court granted the Plaintiff's motion for partial summary judgment by order entered on November 18, 2008.

On December 8, 2008, more than ten days after the entry of partial summary judgment and only one day before the scheduled trial of this case, the Defendants filed a motion to amend their answer to include a defense of qualified immunity predicated upon the *Noerr-Pennington* doctrine and the defense of good faith reliance upon advice of counsel without citing any rule of procedure, statute, or case authority for the proposition that a Rule 15(a) amendment to the pleadings should be allowed after judgment has been entered where that judgment has not been set aside or vacated. The Defendants' motion to amend was denied for the reasons detailed in this Court's Order Denying Defendants' Motion to Amend Answer entered on February 6, 2009. See in particular paragraphs 12 - 14 wherein the Defendants' effort to re-litigate this case is noted.

The trial of the matter was continued from December 9, 2008 for various reasons and reassigned to this judge due to the retirement of Judge Steptoe.

On December 19, 2008 the Defendants filed a motion requesting that this Court reconsider its ruling upon the Defendants' motion for a stay of proceedings pending appeal of the order granting partial summary judgment to the Plaintiff. As set forth in this Court's Pre-Trial Conference Order later entered on April 30, 2009, the Court was prepared to rule upon the Defendants' motion for

reconsideration during a conference call held on February 10, 2009. However, Defendants' counsel requested that the Court defer ruling until oral argument could be heard. Oral argument was set for the date of the pretrial conference without objection from the Defendants. The motion was heard on April 20, 2009 during the pretrial conference. Prior to the pretrial conference the Defendants filed with the West Virginia Supreme Court of Appeals "Defendants' Motion to Stay Proceedings Pending Appeal of Court's Final Judgment on the Merits." In that motion the Defendants asserted that the order granting partial summary judgment to the Plaintiff was a final appealable order. During oral argument before this Court upon the motion for reconsideration the Plaintiff noted that if the Defendants were correct in their assertion before the West Virginia Supreme Court that the partial summary judgment order was a final appealable order, then the passage of more than four months since the November 19, 2008 entry of that order rendered the appeal untimely. Whereupon counsel for the Defendants contradicted his stance before the West Virginia Supreme Court and now contended that it was not a final appealable order. There is no indication in the record that the Defendants informed the West Virginia Supreme Court of the reversal of their position. Nonetheless, on April 22, 2009 the West Virginia Supreme Court denied the Defendants' motion to stay proceedings.

The trial of this malicious prosecution action began on April 23, 2009. The central and predominating issue at trial was whether the Defendants' conduct toward the Plaintiff was done with "actual malice." The Court defined "actual malice" in its instructions to the jury as "a sinister or corrupt motive such as hatred, personal spite, a desire to injure the Plaintiff or a conscious disregard of the rights of others." However, the Court was persuaded by the Defendants' argument that notwithstanding the Court's finding of inferred malice in its order granting partial summary judgment, it was still essential to the recovery of punitive damages that

the Plaintiff prove that the alleged wrongful acts of the Defendants "must have been done maliciously, wantonly, mischievously, or with criminal indifference to civil obligations." *Instructions*, p. 4. The Court further instructed the jury that "a wrongful act, done under a *bona fide* claim of right, and without malice in any form, constitutes no basis for such damages." *Id.*

The issue of whether the Defendants acted under a *bona fide* claim of right opened the door to the Defendants to present all or very nearly all of the evidence that they had previously presented during the trial of Baldau II and which was thoroughly rejected by the unanimous decision of three judge panel in its holding quoted *infra*. The Court allowed the Defendants, over the Plaintiff's objection, to introduce as evidence voluminous records that the Defendants contended established a *bona fide* claim of right to file the two removal actions. The Court also allowed the testimony of Defendants¹ Jonkers and Athey, as each allegation in the two removal petitions was displayed on a large illuminated screen, to explain, one by one to the jury, the alleged basis for each of those allegations and to testify that they subjectively believed the allegations in the two removal petitions to be true. The jury also had read to them the deposition testimony of Defendant Capriotti which the Plaintiff argued evidenced Defendant Capriotti's complete and total lack of any basis for bringing the removal charges against Mr. Baldau and the falsity of his verifications of the same.

Having considered all of this evidence, the arguments of counsel, and the Court's instructions, the jury unanimously answered "YES" to the following special interrogatory specifically requested by the Defendants: "A wrongful act, done under a *bona fide* claim of right, and without malice in any form, constitutes no basis for Punitive Damages. Do you find the

¹ Defendant Capriotti did not appear at the trial of this case. He likewise did not appear at the trial of Baldau II. As a consequence, this Court and the three judge panel relied upon his deposition testimony.

Defendant(s) acted maliciously, wantonly, mischievously, or with criminal indifference to the rights of Todd Baldau such as to justify an award of Punitive Damages?"

Although this Court has previously found that the Defendants waived their untimely claim of qualified immunity based upon the *Noerr-Pennington* doctrine and does not herein reconsider its decision to deny Defendants' motion to amend their answer [because the defendants have failed to provide any meritorious reason for this Court to reverse its previous holdings and erroneously conclude that no prejudice would flow to the Plaintiff by not being permitted discovery upon those newly asserted defenses] the Court will digress here for a moment to address several points about the doctrine.

The Noerr-Pennington doctrine of immunity is derived from *Eastern R.R. Presidents Conference v. Noerr Motor Freight Inc.*, 365 U.S. 127 (1961) and *United Mine Workers of America v. Pennington*, 381 U.S. 657 (1965) two anti-trust cases in which the United States Supreme Court recognized federal anti-trust immunity where the alleged anti-competitive conduct was petitioning for government action.

In *Noerr*, the plaintiff trucking company alleged that the defendant railroads had engaged in a fraudulent lobbying effort the intended purpose of which was to destroy trucking as a competitor to railroads. The United States Supreme Court held that no violation of the Sherman Act "can be predicated upon mere attempts to influence the passage or enforcement of laws." *Id.* at 133-36. In *Pennington*, the United States Supreme Court further reiterated that "*Noerr* shields from the Sherman Act a concerted effort to influence public officials regardless of intent or purpose." *Pennington* at 670.

Although the *Noerr-Pennington* doctrine is derived from two United States Supreme Court anti-trust decisions cited above dating from 1961 and 1965 respectively, it has never been

held to be applicable in West Virginia to causes of action for malicious prosecution. The West Virginia Supreme Court has issued controlling decisions regarding the tort of malicious prosecution subsequent to 1965 such as *Preiser v. MacQueen*, 177 W. Va. 273, 352 S.E.2d 22 (1985) (summarizing and setting forth the elements of the tort of malicious prosecution) and *Morton v. Chesapeake and Ohio Ry. Co.*, 184 W. Va. 64, 399 S.E.2d 464 (1990) (holding that issues of malice and probable cause become questions for the court where there is no conflict of evidence or where there is only one inference to be drawn by reasonable minds) without ever incorporating the *Noerr-Pennington* doctrine into the tort of malicious prosecution.

The West Virginia Supreme Court has spoken to the *Noerr-Pennington* doctrine only twice. In *Webb v. Fury*, 167 W. Va. 434, 282 S.E.2d 28 (1981) the Court sought to apply the *Noerr-Pennington* doctrine but did so incorrectly: the Court wrongly concluded that those engaged in petitioning activity are absolutely immune from suit. See Justice Neeley's dissent criticizing the majority for having overstated the *Noerr-Pennington* doctrine. 167 W. Va. at 461, 282 S.E.2d at 43. Consequently, *Webb v. Fury* was overturned by the decision in *Harris v. Adkins*, 189 W. Va. 465, 432 S.E.2d 549 (1993). In *Harris v. Adkins* the defendant, Adkins, read a statement to a town council in which he alleged that an elected official was engaged in unethical conduct and unsavory business practices. *Id.* at 551. In this instance, the Court relied upon the United States Supreme Court decision in *McDonald v. Smith*, 472 U.S. 479, 105 S.Ct. 2787, 86 L.Ed.2d 384 (1985) in holding that an "actual malice" standard, and not a purported "absolute immunity" under the *Noerr-Pennington* doctrine, should apply to all First Amendment claims.

The Defendants have not presented any compelling argument as to why, for example, when Defendant Capriotti's testimony exemplified the lack of subjective basis for seeking to remove Mr. Baldau from office, and the three judge panel's unanimous decision objectively

found the removal action to be devoid of even a "scintilla of evidence in this case to support any of the allegations within the Petition"² to support the Defendants claims, West Virginia's elements of proof for malicious prosecution are somehow inadequate to the task of balancing the Defendants presumed constitutional rights. Indeed, the first element of proof of malicious prosecution in West Virginia is "(1) That the prosecution was malicious." Syl. pt. 1, *Lyons v. Davy-Pocohontas Coal Co.*, 75 W.Va. 739, 84 S.E. 744 (1915); *Finney v. Zingale*, 95 S.E. 1046 (W.Va. 1918); *Preiser v. MacQueen*, 177 W.Va. 273, 275, 352 S.E.2d 22, 24 (W.Va.,1985) citing *Van Hunter v. Beckley Newspapers Corporation*, 129 W.Va. 302, 40 S.E.2d 332 (1946).

It is a grave mistake, however, to presume that there is a constitutional right to advance frivolous litigation. There is not, of course, any right to engage in baseless litigation. *See Bill Johnson's Restaurants, Inc.*, 461 U.S. 731, 103 S.Ct. 2161 (1983):

Although it is not unlawful under the Act to prosecute a meritorious action, the same is not true of suits based on insubstantial claims-suits that lack, to use the term coined by the Board, a "reasonable basis." Such suits are not within the scope of First Amendment protection:

The first amendment interests involved in private litigation-compensation for violated rights and interests, the psychological benefits of vindication, public airing of disputed facts-are not advanced when the litigation is based on **intentional falsehoods or on knowingly frivolous claims**. Furthermore, since sham litigation by definition does not involve a bona fide grievance, it does not come within the first amendment right to petition.

Bill Johnson's Restaurants, Inc., 461 U.S. at 743, 103 S.Ct. at 2170 [boldface added]. *See also Federal Prescription Service, Inc. v. American Pharmaceutical Ass'n*, 663 F.2d 253, 263 (DC Cir. 1981) (Attempts to influence governmental action through overtly corrupt conduct, such as bribes (in any context) and misrepresentation (in the adjudicatory process), are not normal and

² This phrase is verbatim from the three judge panel's unanimous decision of August 20, 2007.

legitimate exercises of the right to petition, and activities of this sort have been held beyond the protection of Noerr) and cases cited at footnote 7 by the District of Columbia Circuit Court.

Yet, despite the removal actions having been filed without any subjective basis as testified to by Defendant Capriotti, or any objective basis as already determined by the final order of a court of law, and thus by definition being a "knowingly frivolous" claim and not entitled to any First Amendment protection, Defendants would have this Court now graft onto the controlling precedent of the West Virginia Supreme Court a requirement that a plaintiff in a malicious prosecution claim must first prove that a Defendant's suit was objectively and subjectively baseless, and then also prove the elements of malicious prosecution itself. This Court need not and indeed, shall not redefine the tort of malicious prosecution as already defined by the West Virginia Supreme Court.

In rebuttal to Defendant Jonkers' protestations of subjective good faith, this Court allowed the Plaintiff to call Dr. Richard Latterell,³ a Jefferson County resident who had been wrongfully sued by Defendants Jonkers and Capriotti due to his opposition to one of their land development projects and who were represented in that action by the same legal counsel representing them herein. At the Defendants' behest the Court granted a Rule 404(b) hearing outside the presence of the jury. The Court took judicial notice of an order entered by Judge Wilkes and the findings therein granting summary judgment⁴ to Professor Latterell as against the claims made by Defendants Jonkers and Capriotti. That summary judgment was not appealed by Messrs. Jonkers and Capriotti. This evidence was determined to be relevant because the plaintiff alleged in the *Complaint* that the verifications filed by Jonkers and Capriotti in support of the removal petitions

³ The plaintiff identified Richard Latterell as a witness in his final witness list timely served on October 2, 2008. The defendants apparently chose not to depose Dr. Latterell presumably because they and their counsel were already knowledgeable about the lawsuit they had filed against him and the basis for its dismissal.

⁴ The plaintiff identified this order from Civil Action No. 04-C-191 as an exhibit in his timely filed Pre-Trial Conference Memorandum, p. 3, item 4.

were false and sworn to in bad faith. *Complaint*, ¶s 8, 12. Judge Wilkes' order granting summary judgment to Dr. Latterell as well as the testimony of Dr. Latterell tended to establish a plan or scheme by the Defendants to intimidate and harass those who opposed their development projects and was thus relevant to Defendants' claim of subjective good faith in filing the removal petitions at issue herein. *Cf. McKenzie v. Carroll Intern. Corp.*, 216 W. Va. 686, 610 S.E.2d 341 (2004) (holding that it was error to prevent six witnesses from testifying about their own alleged experiences with age discrimination by the defendant employer) *citing, inter alia, Stair v. Lehigh Valley Carpenters Local Union No. 600 of United Bhd. of Carpenters & Joiners of America*, 813 F. Supp. 1116, 1119 (E.D.Pa.1993) ("[E]vidence of past conduct or prior incidents of alleged discrimination has a tendency to make the existence of a fact that is of consequence-the defendant's discriminatory motive or intent-more probable than it would be without the evidence, and therefore such evidence is, as a general rule, relevant."). *McKenzie*, 216 W.Va. at 691, 610 S.E.2d at 346. *See generally* Rule 404(b) wherein the basic rule of exclusion does not bar evidence of other acts when offered in civil cases to prove such specific points as intent, knowledge, scheme, plan, and so forth. At the conclusion of the Rule 404(b) hearing the Court deemed the testimony admissible; however, the Court provided a limiting instruction to the jury that because Defendant Athey had not been a party to the action against Dr. Latterell, the testimony of Dr. Latterell was only relevant to the conduct of Defendants Jonkers and Capriotti.

For essentially the same reason discussed above, the Court allowed the admission of an order⁵ entered by Judge Steptoe in an action filed by Defendant Athey to prevent Mr. Baldau from being reimbursed for his attorney's fees and costs incurred in Baldau I. The fees and costs were petitioned for by Mr. Baldau after the appeal period for Baldau I had expired and before

⁵ The plaintiff identified this order from Civil Action No 06-C-416 in his timely filed Pre-Trial Conference Memorandum, p. 3, item 7.

Defendants filed Baldau II. Defendant Athey was represented in that failed endeavor, which he did not appeal, by the same counsel representing him herein and with whom Defendants Athey, Jonkers, and Capriotti are business partners in various housing development projects. Again, this evidence was probative and relevant to the plan or scheme of the Defendants to hector Mr. Baldau into resigning from the Jefferson County Planning Commission in furtherance of their scheme to squelch any opposition to their development projects.

The Court turns next to the Defendants' allegations regarding the payment of most of Mr. Baldau's attorney's fees and costs. First, Mr. Baldau testified and the jury credited his testimony, as evidenced by the verdict form, that he was not reimbursed for all of his attorney's fees. Specifically, he testified that he was not reimbursed a \$1,000.00 retainer that he paid to his legal counsel. That is the amount the jury awarded him for attorney's fees.

Next, all of the Defendants' arguments about the County Commission and its eventual payment of Mr. Baldau's attorney's fees after he established the requisite elements of *Warner v. Jefferson County Comm'n*, 198 W. Va. 667, 671-2, 482 S. E.2d 652, 656-7 (1996) are moot: the jury did not award Mr. Baldau any of those fees in its verdict.

Mr. Baldau testified that he unilaterally offered to repay the Jefferson County Commission attorney's fees and costs awarded by a jury and recovered by Mr. Baldau, less a proportionate share of fees and costs. This unilateral offer was made in a letter dated November 26, 2008 that was admitted into evidence. The Defendants stipulated that the Jefferson County Commission paid legal fees and expenses in Baldau I on or about December 14, 2006 and stipulated that attorney fees and costs for Baldau II were paid on or about September 20, 2007. The Defendants argument that somehow the payment of fees and costs in 2006 and 2007 was a *quid quo pro* for

Mr. Baldau's unilateral offer in 2008 makes no sense because the payment had already been made.

Defendants contend that the Court's dismissal of one juror and her substitution by an alternate legally qualified juror who had served through the entirety of the trial somehow warrants a new trial. The Defendants do not explain how they might have been harmed by the removal of a juror whose relatives had signed one of the removal petitions. The signatures, although not admitted into evidence, had been accidentally displayed several times by the Defendants on screen during the trial of this matter. The juror's relative was named in the three judge panel decision in Baldau II that was admitted into evidence, and the juror's relative was represented by Defendants' legal counsel herein. The Defendants do not cite to any authority or provide any valid reason why the Court's decision in this regard was in error and the Court finds this objection to be devoid of any merit.

The Defendants have asserted many errors without providing argument. *See e.g.*, pages 16, 19-20 of the Defendants' motions [e.g., "F. The Circuit Court erroneously instructed the jury on punitive damages in the bifurcated phase 2 of the trial." p. 20.] Such issues are not preserved and should be disregarded. The West Virginia Supreme Court has held:

In Syllabus Point 2 of *State ex rel. Cooper v. Caperton*, 196 W.Va. 208, 470 S.E.2d 162 (1996), this Court stated, "To preserve an issue for appellate review, a party must articulate it with such sufficient distinctiveness to alert a circuit court to the nature of the claimed defect." The Court further explained that "[t]he rule in West Virginia is that parties [seeking to preserve an issue for appellate review] must speak clearly in the circuit court, on pain that, if they forget their lines, they will likely be bound forever to hold their peace." *Cooper*, 196 W.Va. at 216, 470 S.E.2d at 170.

Miller v. Triplett, 203 W.Va. 351, 354, 507 S.E.2d 714, 717 (W.Va.1998). Simply quoting a syllabus point or making a declaration of error is not sufficient to preserve an alleged error. The Court denies all assertions of error lacking argument.

The Defendants' *Garnes* arguments are seriously flawed and denied for the following reasons. The ratio of punitive damages to actual damages in this case is well within constitutional standards. The jury awarded \$15,000 punitive damages per Defendant and \$7,700 compensatory damages. The ratio of punitive damages to compensatory damages is not quite 2 to 1.

Defendants erroneously assert that no evidence of grievous harm was introduced. To the contrary, there was evidence from multiple witnesses about the fear of job loss and consequent inability to support his family, stress, and upset that lasted over a protracted time period. So much so, that the Plaintiff's wife urged psychological counseling upon the Plaintiff which he eventually received.

The Defendants' conduct committed with the assistance their business partner and legal counsel was truly reprehensible. It was an attack upon the functioning of county government to gain undue economic advantage. The Defendants singled out one volunteer member of the county's Planning Commission without any basis whatsoever for doing so (as directly admitted by Defendant Athey during his testimony at trial) and pursued Mr. Baldau through two utterly frivolous removal actions that subjected the Plaintiff to the risk of great pecuniary loss and loss of his career as a high ranking civil servant in the Federal government. The Defendants made no effort whatsoever to make amends for their conduct; indeed, the Defendants refused to engage in mediation.⁶

The Defendants and their same legal counsel and business partner engaged in similar conduct in the past by suing citizens who appealed a LESA scoring (as testified to by Dr. Latterell), and they even attempted to stop Mr. Baldau from recovering his attorney's fees and costs after Baldau I by filing a court action seeking to enjoin Mr. Baldau's legal counsel from

⁶ See Plaintiff's *Motion for Rule to Show Cause and Request for Relief from Order to Mediate* served on October 8, 2008, which relief was granted.

negotiating a check issued by the Jefferson County Commission after duly considering and voting upon the same.

While the Defendants did not actually profit from their scheme, had they succeeded the profits would have been enormous: no citizen would dare speak out about the Defendants' housing development projects and no volunteer planning commissioner would dare vote against a project, no matter if the project failed to meet the requirements of the county's land-use ordinance or how injurious to the public, for fear of being charged with malfeasance in office, just as the Defendants charged Mr. Baldau. As a result of this case, volunteers will understand that they can continue to serve the public and will only face removal proceedings for the grounds set forth at law – not as a strategy to “win.”

Defendants have pursued SLAPP litigation against other parties and have still not paid the resulting \$100,000 settlement/judgment for their behavior.

For all of the above reasons, the Defendants are deserving of the punishment meted them from the impartial jurors who served.

The Court rejects and denies the remainder of the Defendants' alleged errors as lacking any merit. For example, Defendants allegation that Plaintiff's counsel's reference to a three judge panel hearing as a “trial” constituted error is baseless; had there been an objection and a ruling, the supposed error could readily have been addressed.

The Plaintiff's counsel shall file their petition for attorney's fees and costs within ten days. Thereafter, Defendants are required to post a bond in the full amount of this judgment with interest accrued to date, plus attorney's fees and costs awarded within twenty days of the entry of the fee and cost award. If the required appeal bond is posted the Plaintiff may not execute upon this judgment pending appeal. If the Defendants do not post the required bond within twenty

days of the award of fees and costs, the Plaintiff may proceed to execute upon his judgment, but not until the twenty days have elapsed.

The Court notes the objections of the Defendants for the record.

The Clerk is directed to enter this Order and transmit copies of this Order to all *pro se* parties and counsel of record.

Entered: 11/30/09



The Honorable David H. Sanders
Judge of the Twenty-Third Judicial Circuit
Jefferson County, West Virginia

A TRUE COPY
ATTEST:

LAURA E. RATTENI
CLERK, CIRCUIT COURT
JEFFERSON COUNTY, W.VA.

BY Aditya Wimer
DEPUTY CLERK

acc
- D. Hammer
- J. Caspell
12/1/09
AW