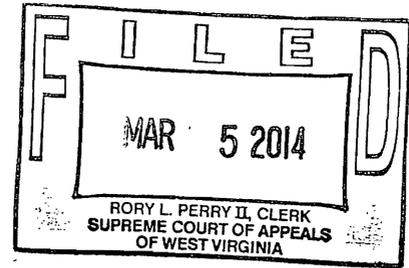


**IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA**

**DOCKET No. 13-0932**



**CHRISTOPHER D. ADKINS,**

**Plaintiff Below, Petitioner,**

**v.**

**Appeal from a Final Order of the Circuit  
Court of Kanawha County (11-C-307)**

**AMERICAN MINE RESEARCH, INC.,**

**Defendant Below, Respondent.**

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**PETITIONER'S REPLY BRIEF**

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Comes now the Petitioner, Christopher D. Adkins, by and through his counsel, J. Michael Ranson and G. Patrick Jacobs, pursuant to the September 17, 2013 Order of this Court permitting a Reply Brief to be filed pursuant to Rule 10g of the Revised Rules of Appellate Procedure of the West Virginia Supreme Court of Appeals, and in and for his Reply Brief, Petitioner states as follows:

### **ASSIGNMENTS OF ERROR**

- A. The Circuit Court's holding that Adkins earned his commission payments upon shipment of the product instead of upon sale of the product is in direct conflict with all existing case law and contrary to the holdings cited by the Circuit Court.
- B. The Circuit Court erred in holding AMR's changes to commission based payments in the 2010 Commission schedule applied retroactively based on existing course of conduct between the parties absent a written agreement.
- C. The Circuit Court erred in holding the Respondent did not violate the West Virginia Wage and Payment Collection Act ("WPCA") by failing to pay Adkins all commissions earned on the sale of tracking units for AMR.

### **SUPPLEMENTAL RESTATEMENT OF THE CASE FOR THE PURPOSES OF THE REPLY BRIEF**

Petitioner adds, rebuts or re-emphasizes the following events and facts, which are intended to correct inaccuracies and omissions appearing in Respondent's February 14, 2014 Brief in Support of its Response to Petitioner's Opening Brief.

Petitioner Christopher Adkins ("Adkins") served as a sales representative for Respondent American Mine Research, Inc. ("AMR") for approximately 10 years. (J.A. 2). Adkins separated from "AMR" in August 2010, due to AMR's refusal to compensate him fully for completed sales. During his tenure, Adkins was the primary sales

representative for AMR, a supplier of Carbon Monoxide (CO) monitoring systems and accompanying equipment. (J.A. 26, 29). Traditionally, AMR would re-evaluate Adkins' compensation plan (including commissions) near the end of the fiscal year. While the changes to the compensation plan were prospective, AMR had on occasion applied the new commission structure to pending commission payments giving Adkins something akin to a bonus. Commissions that were paid on orders that were cancelled or where payment was never received were reimbursed to AMR. (J.A. 36:20-37:9). Other than the November 2009 decrease in Adkins' commission structure, Adkins' compensation (including commissions) always increased with each re-evaluation. (J.A. 65). **The compensation agreement between AMR and Adkins was not in writing, and did not clearly state that commissions were earned upon shipment as opposed to upon sale.** Furthermore, AMR did not reserve a right to adjust retroactively Adkins' compensation or commission structure.

Prior to the sale of the tracking units, AMR would ship products no more than a few weeks after orders were submitted. (J.A. 34-37). A given month's commission payment was calculated based upon goods shipped the month before. (J.A. 33:16-21) Adkins' commission payments were paid in the month after the goods were shipped. (J.A. 33:11-15). Adkins' commission structure was not changed between 2006 and 2009. (J.A. 56). In fiscal year 2008-2009, Adkins began selling and accepting orders for tracking systems. Shipment of the tracking systems was delayed due to MSHA approval of the safety mechanism. (J.A. 42-43). Despite the delay, AMR considered the sales generated by Adkins to be complete orders.

- Q: When did you-all get approval?  
A: September 2009.  
Q: Were you selling the system mines subject to the approval prior to September of 2009?  
A Yes.  
Q: So what would you tell a mine owner?  
A: That once we got approval, we would be able to supply them with an approved system.  
Q: So you would ship once you got approval?  
A: Yes.  
Q: Okay. My understanding is that in September of 2009 your IS system was approved by MSHA; is that right?  
A: Yes.  
Q: Okay. So you've already got it sold to customers?  
A: Right.

(J.A. 43-44). Adkins was authorized to continue selling the tracking system, even though shipment of tracking systems was conditioned upon approval by MSHA. He generated approximately \$15,000,000.00 in sales. (J.A. 4). The parties relied on pay sheets that reflected the compensation schedule (including applicable commissions). (See J.A. 59). Upon approval of its tracking system, AMR shipped some orders in September and October 2009. (J.A. 60:9-12). As previously stated, under the 2006-2009 commission plan, Adkins was due 3% commissions on \$15,000,000 in completed sales. (J.A. 4). After AMR delivered the tracking units, its sales increased from an average of \$6,000,000 per year to \$14,000,000 per year. (J.A. 62).

To date, Adkins has not received full compensation for his commission on the \$15,000,000.00 in sales. In November 2009, after the sales were completed and after some tracking units had shipped, AMR through its General Manager Robert Saxton ("Saxton"), informed Adkins that his commission compensation was being restructured.

Saxton, along with AMR owner Bob Graff and his son David Graff, apparently met in September 2009 to devise a plan to deprive Adkins of his earned commissions.

Q: When did you-all meet to decide to change Chris' commission in the 2009 time period? What month would you have met?

A: It was probably September, I would assume, that Bob, David and I had conversations with that.

(J.A. 61:4-8). Management spent two months attempting to reconfigure Adkins' commissions' structure so as to reduce his overall earned compensation. (J.A. 65). For the first time in his tenure with AMR, Adkins commission structure was decreased and he was denied the actual commission payment on his sales of the tracking system.

Q: Okay. Why didn't you increase his commission rather than reduce them?

A: That was -- we think he made a fair amount of money for what he did. It wasn't only him that helped sell these systems just because it was his territory. I was heavily involved with the majority of the sales, so was our engineering manager, so was the owner of the company, so were several of the engineers. There were a lot of people involved in acquiring some of these sales, in particular, from Consol Energy in northern West Virginia and Pennsylvania.

Q: So if you hadn't sold these tracking systems, would you have changed his commission?

A: I can't answer that. His commission plan changed three or four times in the time period he was there.

Q: Did you ever reduce it prior to 2010?

A: No.

Q: Okay. Was there a time period where Chris did not get any commission in 2009; in other words, his commission check just wasn't given to him?

A: That would have probably been in October of 2009 when we were still coming up with a plan that would work for him and the other employees that were under the same type of structure as he was.

(J.A. 65, 70-71). Without notice and contrary to all prior commission history, Adkins was informed by Mr. Saxton that AMR decided to reduce his overall commission

compensation with a maximum cap of \$85,000. (J.A. 67, 167). **This compensation scheme was used to recalculate his October 2009 commission's payment, which was payment for orders that shipped prior to the November 2009 restructuring.** (See J.A. 60:9-12). Adkins objected to the commission rate presented to him at the November 2009 meeting being applied retroactively to commission earned on sales of the tracking units he already sold as well as those that had already shipped. (J.A. 49). Adkins expressed his discontent with Mr. Saxton and Mr. Graff. (J.A. 171).

### **STATEMENT REGARDING ORAL ARGUMENT AND DECISION**

Oral argument is necessary pursuant to the criteria in Rule 18(a) as all parties have not waived oral arguments. It is clear that the decisional process would be significantly aided by oral argument. In addition, as this case involves assignment of error in the application of settled law, it should be scheduled as a Rule 19 argument. Finally, this case is appropriate for a memorandum decision.

### **STANDARD OF REVIEW**

This Court has previously held that "a circuit court's entry of summary judgment is reviewed *de novo*." Saunders v. Tri-State Block Corp., 207 W.Va. 616, 619, 535 S.E.2d 215, 218 (W.Va.,2000) per curiam (citing Syl. Pt. 1, Davis v. Foley, 193 W.Va. 595, 457 S.E.2d 532 (1995); Syl. Pt. 1, Painter v. Peavy, 192 W.Va. 189, 451 S.E.2d 755 (1994)). The Court has further indicated in Syllabus Point 3 of Aetna Cas. & Sur. Company v. Fed. Ins. Co. of N.Y., 148 W.Va. 160, 133 S.E.2d 770 (1963) that "[a] motion for summary judgment should be granted only when it is clear that there is no genuine issue of fact to be tried and inquiry concerning the facts is not desirable to

clarify the application of the law.” Id. Further, this Court held in syllabus point two of Williams v. Precision Coil, Inc., that

[s]ummary judgment is appropriate if, from the totality of the evidence presented, the record could not lead a rational trier of fact to find for the nonmoving party, such as where the nonmoving party has failed to make a sufficient showing on an essential element of the case that it has the burden to prove.

194 W.Va. 52, 59-60, 459 S.E.2d 329, 336 - 337 (W.Va.1995)(citing Celotex Corp. v. Catrett, 477 U.S. 317 (1986)). This Court further held that even though a reviewing court must consider “underlying facts and all inferences” in the light most favorable to the nonmoving party, “the nonmoving party must nonetheless offer some ‘concrete evidence from which a reasonable ... [finder of fact] could return a verdict in ... [its] favor’ or other ‘significant probative evidence tending to support the complaint.’” Id. (citing Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256 ( quoting First Nat’l Bank of Arizona v. Cities Serv. Co., 391 U.S. 253, 290 (1968))).

## ARGUMENT

- I. The Circuit Court’s grant of summary judgment in favor of Respondent (Defendant below) should be reversed as the Court erred in its failure to distinguish between when commissions are earned versus when commissions are paid.

The issue at the heart of this dispute revolves around **when** commissions are **earned**, and not when they are paid as asserted by Respondent AMR. There is a complete absence of existing case law in West Virginia on this specific issue. However, a review of case law across the country establishes a general consensus explaining the difference between **when** commissions are **earned** versus **when** commissions are

**paid.** This distinction is crucial to making a correct determination in this case and requires very close attention. In Vector Eng'g and Mfg. Corp v. Pequet, the Court held “[a]s a general rule, a person employed on a commission basis to solicit sales orders is entitled to his commission **when the order is accepted** by his employer.” 431 N.E. 2d 503, 505 (Ind. App. 1982) (***emphasis added***) See also, Oken v. Nat’l Chain Co. 424 A.2d 234, 235 (R.I. 1981); see also Davis v. All American Siding, 897 N.E.2d 936 (Ind. App. 2008). The Vector Court further held that “entitlement to commissions is not affected by the fact that payment for those orders may be delayed until after they have been shipped.” Id. (citations omitted). Similarly, in Oken, the Rhode Island Supreme Court held that the fact that commissions were not paid until shipment was made, was not proof of an intent that commissions were **earned** at shipment. The Oken Court determined that the employer “could have provided for such a contingency in clear and unambiguous language.” 424 A.2d at 235-236. Furthermore, the Oken Court held that “this arrangement was but a manifestation of National’s accounting procedure in regard to when commissions would be paid.” Id. at 236. (citing Weick v. Rickenbaugh, 303 P.2d 685, 688 (Colo 1956)). The Oken Court further explained that

“National’s practice of paying its salesmen upon shipment appears to reflect sound account practice rather than an agreement that a commission was not earned until shipment. It is the nature of commissions that payment be delayed until the goods are shipped...Otherwise, National would have received the value of Oken’s procurements and servicing of accounts without fully compensating him for his labor.”

Id. (citing Lundeen v. Cozy Cab Mfg. Co., 179 N.W.2d 73, 75 (Minn 1970)). In addition, in Little v. USSC Group, Inc., the United States District Court for the Eastern District of Pennsylvania held that under

Pennsylvania contract law, the terms of the contract determine when commissions are computed and paid. Where a contract is silent or ambiguous, Pennsylvania law generally will not divest an employee's right to an earned commission. Unless there is a contract provision to the contrary, an employee selling on a commission basis is entitled to his or her commission on a sale when the sale is made and accepted by the employer. "The entitlement to commissions is not affected by the fact that payment may be delayed...." 404 F.Supp.2d 849, 854 (E.D. PA 2005).

The general rule for determining when commissions are **earned** is directly applicable, despite Respondent's continued reference to Mr. Adkins receipt of commission payments after items were invoiced or shipped. **Payment of commissions upon invoice or shipment was merely an accounting practice utilized by AMR.** To adopt the rule suggested by Respondent would create an untenable situation with earnings subject to the whim of employers who do not want to pay successful salespeople just compensation. The commissions' compensation structure did not expressly provide that commissions were **earned** upon shipment. Moreover, Adkins' entitlement to commissions did not change merely because shipment of the tracking units was delayed. During the course of Adkins' sales of the tracking units, AMR could have entered into a new commission compensation structure regarding those units. Unlike previous products sold by AMR, the tracking units were not shipped immediately nor within a few weeks of the sale. (J.A. 35-36). MHSA required all units be inspected prior to delivery and installation in the mines. (J.A. 43-44). This delayed shipment until September or October 2009 at the earliest. (J.A.60:9-12) By the time the tracking units began to ship, Adkins had been selling units for over

a year. In general, other products sold by AMR did not pose the same issue with delayed shipment.

Adkins' commission package remained virtually unchanged during the time he sold the tracking units. Significantly, Adkins' commission structure was unchanged between 2006 and 2009. (J.A. 56). It was not until after tracking units began to ship and Adkins' was due commission earnings that his commission package was restructured as to deprive him of his earned compensation. (J.A. 69:21-70:4). Respondent incorrectly rely on Geary v. Telular Corp, 341 Ill.App.3d 694 (Ill.App.2003) to justify its change of Adkins compensation. In Geary, the parties had a written compensation scheme which clearly explained when and how commissions were to be earned and paid. Id. Per the Geary written agreement, commissions were earned upon shipment of the product. Id. The written agreement in Geary, was a clear and unambiguous departure from the general rule. See id. The modification gave employees notice of the change, and did not relate back to work that had already been completed. The commission plan change in Geary was not retroactive it was prospective. Id.

Unlike the change made in Geary, AMR improperly and retroactively decreased Adkin's commissions and his overall compensation for work and sales already completed. At the time of the implementation of the November 2009 commission structure, some of the tracking systems had already shipped or begun to ship. In fact, according to deposition testimony of Robert Saxton, General Manager at AMR, tracking

units began shipping between September and October 2009. (J.A. 60:9-12). Adkins' October 2009 commission payment had been withheld because management was "still coming up with a plan that would work for him and the other employees that were under the same type of structure as he was." (J.A. 69:21-70:4). In actuality, Adkins was the only employee under a commission structure. Three other employees, who were also adjusted, were on a bonus profit plan. (J.A. 71). Management began meeting in September 2009 to discuss Adkins' commissions, when it became clear he was entitled to a significant commission which was more than AMR was willing to pay. (J.A. 61:4-8). Simply put, the less Adkins made in commissions, the more money in the pot for profit plan bonuses.

Moreover, because there is no West Virginia case law relevant to evaluating entitlement to commission earnings reliance on West Virginia's adoption of the Uniform Commercial Code as it relates to **Sales** provides logical guidance on the issue of commission entitlement. Specifically, **West Virginia Code § 46-2-204** states as follows:

(1) A contract for sale of goods may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of such a contract.

(2) An agreement sufficient to constitute a contract for sale may be found even though the moment of its making is undetermined.

**West Virginia Code § 46-2-301** further establishes "the obligation of the seller is to transfer and deliver and that of the buyer to accept and pay in accordance with the contract." In Schuyten v. Superior Systems, Inc., the First Circuit Court of Appeals of Louisiana held that

under La. C.C. art. 2456, a sale is complete "between the parties as soon as there is an agreement on the thing and the price is fixed, even though the thing sold is not yet delivered nor the price paid. Generally, when sale commissions are at issue, the inquiry of whether a wage was actually earned focuses on what work associated with the sale remained at the time of the employee's discharge. Where only collection of the fee is outstanding and collection is beyond the control of the employee, the employee has earned his commission pursuant to La. R.S. 23:634.

952 So.2d 100, 103 (L.A. 1st Ct.App. 2007) (*internal citations omitted*). Applying the holding from Schutyen, under the law in West Virginia, there was a valid sales contract upon Mr. Adkins' completion of the purchase order for the tracking systems. Therefore, Adkins earned his commission once a sales contract for tracking systems was consummated.

- II. The Circuit Court erred in granting summary judgment to the Respondent (Defendant below), as it misapplied existing case law finding a course of conduct between the parties warranting a departure from the general rule regarding commission earnings.

Respondent AMR and the Court below erroneously rely on the presence of a course of conduct between Adkins and AMR to justify departure from the general rule of commissions being **earned** upon sale. In its Response Brief, AMR incorrectly relies on the payment of commissions upon shipment as establishing a course of conduct between the parties warranting a departure from the general rule. **See** Response Brief p. 13 citing J.A. 105:23-106:1). To further bolster its point, AMR refers to the fact that Adkins would not be paid commissions for orders that were canceled. (Id. citing J.A. 148:24-149:2). As discussed above, the delay in commission payments is merely an accounting practice and not a course of conduct with the intent of altering when

commissions were **earned**. This is supported by the fact that commissions were reimbursed if an order was cancelled or payment was never received. (J.A. 36:20-37:9).

In Vector, the Court held that “the general rule regarding commissions earnings may be altered by a written agreement by the parties or by the conduct of the parties which clearly demonstrates a different compensation scheme.” 431 N.E.2d at 503, 505 (Ind.App.,1982). Citing Vector, the Davis court held that the general rule for commission entitlement could be altered either by a written agreement by the parties “or by conduct of the parties *which clearly demonstrates a different compensation scheme.*” Davis,897 N.E.2d at 940. (emphasis added). In Davis, the plain language of the employment contract did not provide for a different scheme of earning commissions. The court determined commissions were earned once the orders were submitted to All American -- regardless of when they were paid. Id. Conversely, in the Geary case, the parties had a written compensation agreement that expressly provided for when commissions were earned. Id. The Geary court found the plaintiff did not earn commissions until products were shipped per the written agreement. Id. Unlike the Davis and Geary cases, there was no written agreement between Adkins and the Respondent. In addition, Respondents never reserved an express contract provision that permitted it to readjust compensation already earned, when it renegotiated Adkins’ compensation package including commission structure. (J.A.52). Everything Respondent offers as evidence of course of conduct, only refers to when Adkins was paid commissions and not when the commissions were **earned**.

Furthermore, the Circuit Court below incorrectly determined there was an established course of conduct between the parties as AMR had previously made new compensation agreements retroactive. (J.A. 365). Such an assumption is erroneous as the prior changes provided Adkins with an increase in compensation and functioned at times as a bonus. (See J.A. 79-80). His overall compensation had never been decreased. Id. AMR attempted to **reduce retroactively** Adkins' earned commissions, prior to the shipment and invoicing of the MSHA approved tracking units because AMR felt he "earned enough for what he did". (J.A. 65). **Retroactively increasing** an employee's compensation does not create a clear course of conduct between the parties allowing the employer to **retroactively decrease** compensation at some unforeseen and otherwise unknown point in the distant future. Respondent's assertion that there was a course of conduct between the parties is simply incorrect.

Again, Mr. Adkins does not dispute that AMR could **prospectively** change his commissions compensation structure. In Geary, the court held that "when an employment agreement is terminable at will, it may be modified by the employer as a condition of its continuance." 341 Ill.App.3d at 698, 793 N.E.2d at 131. The Geary court held that as the "Plaintiff" continued to work after the commission plan changed, he was deemed to have accepted it. Id. Likewise, in Malone v. Am. Bus. Info., Inc., 264 Neb. 127, 135, 647 N.W.2d 569, 575 (Neb. 2002) the Nebraska Supreme Court explained "[u]nder either an at-will employment relationship or a contractual arrangement that allows employer modification at will, an employer can alter the terms of compensation, provided the employer has given notice of the alteration to the employee and the

employee thereafter continues his or her employment.” The court further held that an employer could not unilaterally alter compensation for work that has already been completed in an attempt to deny accrued commissions. Id.

Unlike the arrangement expressed in Malone, AMR never attempted to give Adkins notice of intent to change the compensation structure at any point prior to or during sales of the tracking units. There was never any attempt to adjust Adkins’ commission compensation structure until the tracking units began to ship and it became apparent how much money Adkins’ would earn. Accordingly, AMR wrongfully denied Adkins’ commissions payments under the existing commission structure. Adjustment to a previously earned benefit is impermissible except where there is a written agreement or there was a clear course of conduct between the parties permitting such readjustment. As commissions were already earned, changes applied to units already sold was a retroactive change and explicitly impermissible. As neither condition is present in this case, Adkins is entitled to full commission payments on tracking systems sold prior to the November 2009 compensation structure.

Finally, the position of the Circuit Court and Respondent that the presence of writing is irrelevant should not be adopted by this Court. A writing is the clearest way of communicating the intent of two or more parties. Respondent cannot justify its failure to clarify terms of employment and compensation in writing, by subsequently arguing that a writing is irrelevant. The general rule concerning commission payments must be applied, as there was no writing and no clear course of conduct between the parties.

III. The Circuit Court erred in finding the “WPCA” was not violated, as the Petitioner has not been paid all commissions earned during the course of his employment.

Respondent and the Circuit Court have incorrectly applied the holding from the Gregory v. Forest River, Inc., 369 Fed.App. 464 (4th Cir. 2010). In Gregory the United States Fourth Circuit Court of Appeals issued an unpublished opinion holding “the WPCA regulates the timing of payment of wages. However, it does not regulate the amount of wages, and it does not establish how or when wages are earned. Rather, these are matters that arise from the employment agreement.” Id. (*internal citations omitted*). The Court in Gregory held that “although an employer is free to set the terms and conditions of employment and compensation, it must pay earned wages to its employees,” (*internal citations omitted*). Id. at 465. Applying West Virginia case law, the United States Fourth Circuit Court of Appeals held the employment agreement in Gregory did not violate the “WPCA” as it merely established the amount of commissions and when they are earned. Id. In Gregory, the employer FRI established a “Commission Payment Policy” which expressly provided for when commissions would be paid, and what portion of commissions would be paid upon employment separation. Id. at 466. Respondent’s position that it has complied with the “WPCA” has been is flawed and advances an intentional misapplication of existing case law regarding when commissions are **earned**. The facts in Gregory are completely different from this case as there was a written contract that clearly stated when and how commissions were earned. The only information Respondent provided regarding commissions is when they were paid. Existing case law consistently distinguishes between when commissions were **earned** and when commissions were paid, a fact the Respondent continues to ignore. AMR’s retroactive application of the November 2009 commission

structure expressly and improperly deprived Adkins of earned compensation. Therefore, AMR violated the "WPCA" by failing to pay Adkins all compensation due in the manner prescribed by statute.

## CONCLUSION

Christopher Adkins respectfully requests this Court reverse the lower's Court. grant of summary judgment to the Respondent. The absence of a written agreement or clear course of conduct between the parties warranting a departure from the general rule concerning commissions being **earned** upon sale of goods not shipment is clearly erroneous. Adkins was employed as an AMR salesman for approximately 10 years without a written contract or other clear course of conduct which would alter his right to commissions **earned** upon completed sales. Obviously, Mr. Adkins is entitled to payment under the commission rate structure in effect at the time he made the sale. AMR has not paid Adkins just compensation based on what he earned for completed tracking system sales, nor has AMR paid Mr. Adkins based on what was shipped prior to the November 2009 change in commission structure. Respondent is estopped from claiming the commission structure was a "regular business decision", as AMR delayed paying October 2009 commissions even for shipped goods until they had reconfigured Adkins' compensation scheme. Respondent never informed Mr. Adkins, at any point he was selling the systems that his commissions structure would be adjusted or decreased and that he would not receive compensation for his sales. An employer cannot retroactively deprive an employee of earnings without prior written notice of the change and before the earnings are earned. To condone such conduct by an employer would be akin to permitting thievery.

Finally, Circuit Court undoubtedly erred in finding AMR did not violate the "WPCA." AMR has deprived and continues to deprive Mr. Adkins of approximately \$300,000.00 in commissions for tracking units sold during the relevant period of consideration. AMR failed to compensate Mr. Adkins for commissions earned upon sold tracking systems prior to his separation from the company and subsequently did not tender payment of all outstanding earnings after separation from AMR – both actions are in direct violation of the "WPCA."

### RELIEF SOUGHT

For the foregoing reasons, the Petitioner respectfully requests this Court reverse the Circuit Court and remand this case for further proceedings consistent with the legal determinations herein.

Signed: 

J. Michael Ranson, Esquire (WVSB #3017)  
Counsel of Record for Petitioner

**CERTIFICATE OF SERVICE**

I hereby certify that on this 5<sup>th</sup> day of February, 2014, true and accurate copies of the foregoing *Petitioner's Reply Brief* were deposited in the U.S. Mail contained in postage-paid envelope addressed to counsel for all other parties to this appeal as follows:

**Lawrence E. Morhous, Esquire**  
Brewster, Morhous, Cameron, Caruth, Moore, Kersey  
418 Bland Street  
P.O. Box 529  
Bluefield, WV 24701-0529

Signed: \_\_\_\_\_

A handwritten signature in black ink, appearing to read 'J. Michael Ranson', written over a horizontal line.

J. Michael Ranson, Esquire (WVSB #3017)  
Counsel of Record for Petitioner