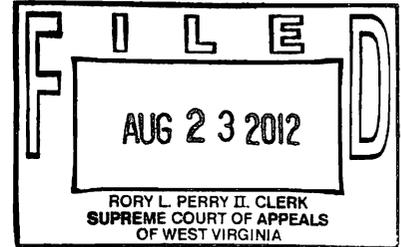


IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

DOCKET NO.: 11-1564

**CAVALRY SPV I, LLC, CAVALRY SPV II, LLC;
CAVALRY INVESTMENTS, LLC; and
CAVALRY PORTFOLIO SERVICES, LLC,**



Defendants Below, Petitioners

v.

**CIVIL ACTION NO. 10-C-994
Kanawha County Circuit
Court**

**STATE OF WEST VIRGINIA, ex rel.
DARRELL V. McGRAW, JR.,
ATTORNEY GENERAL,**

Plaintiff Below, Respondent.

**STATE'S RESPONSE TO PETITIONER'S PETITION FOR
APPEAL AND BRIEF**

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STATE'S RESPONSE TO PETITIONER'S PETITION FOR APPEAL AND BRIEF

I. ASSIGNMENTS OF ERROR

The trial court did not make any errors that warrant acceptance of this appeal or reversal of the decision below.

II. STATEMENT OF THE CASE

In January, 2010, the Attorney General opened an investigation of the Petitioners (collectively "Cavalry") after receiving complaints and other information disclosing that three of the Petitioners, Cavalry SPV I, LLC, Cavalry SPV II, LLC, and Cavalry Investments, LLC were collecting debts without a license and surety bond as required by the West Virginia Collection Agency Act ("Collection Agency Act"), specifically, W.Va. Code § 37-16-2(b) and W.Va. Code § 47-16-4(a) & (b). Inasmuch as these companies are engaged in the business of buying charged-off consumer debts for collection, they meet the definition of "collection agency" as defined by the Collection Agency Act. See *also* State Tax Department's Administrative Notice 2010-1a, attached as Exhibit A to the Complaint. App. at 58. The Attorney General also had received complaints indicating that Cavalry may also be engaging in other debt collection practices that are prohibited by the West Virginia Consumer Credit and Protection Act ("WVCCPA"), such provisions to be found generally in W.Va. Code § 46A-2-122 through W.Va. Code § 46A-2-129a.

After informal efforts to secure Cavalry's compliance were not successful, on January 25, 2010, the Attorney General issued an investigative subpoena ("Subpoena") as authorized by W.Va. Code § 46A-7-104 directing Cavalry to produce all documents and records requested therein to the Attorney General on or before February 19, 2010. A copy of the Subpoena, which is the subject of this appeal, is attached as Exhibit B to

the State's Complaint. App. at 60. See also App. at 10. After a brief extension was granted, Cavalry filed a written response asserting 32 general objections and failed to produce a single document in response to the Subpoena. App. at 22.

In light of Cavalry's refusal to cooperate with the Attorney General's investigation, and its continued refusal to become licensed and bonded as required by the Collection Agency Act, the Attorney General commenced a civil action by filing a Complaint against Cavalry and its principals in the Circuit Court of Kanawha County on June 3, 2010. App. at 46. In its Complaint, the Attorney General asked that Cavalry be temporarily and permanently enjoined from continuing to collect debts in West Virginia without a license and surety bond as required by the Collection Agency Act and that they be enjoined from engaging in other violations of the WVCCPA. The Attorney General also asked that the Court enter an order at its first hearing compelling Cavalry to respond in full with the Subpoena. See Complaint, First Cause of Action and Prayer, App. at 6, 9.

After consideration of extensive briefing by the parties, oral argument, and an opportunity to present evidence at hearings on August 22 and 23, 2011, and September 9, 2011, the trial court entered its Order Granting Temporary Injunction Against Certain Defendants and Denying Motions to Dismiss ("Order") on October 7, 2011.¹ App. at 4. In its Order, the trial court compelled the four Cavalry collection agencies to comply in full with the Attorney General's Subpoena within 60 days after entry of its Order. As of this date, approximately eight months after full compliance was due, Cavalry has not complied with the Order compelling compliance with the Subpoena even though the

¹ The trial court actually granted the Attorney General's motion to compel Cavalry to comply in full with the Subpoena from the bench at the September 9, 2011 hearing. App. at 665.

Order has never been stayed. For this reason, the Attorney General has not been able to complete the investigation of Cavalry that began prior to the filing of the Complaint.

Since entry of the Order compelling compliance with the Subpoena, Cavalry has attempted to “game the system” by stating at times that it intended to substantially comply with the Subpoena (though it never did so), by filing motions to dissolve or modify intended to delay enforcement or extend the time to appeal, and by filing two motions to stay, neither of which have been granted (the motions are not in the Appendix).

On the eve of the Attorney General’s first motion to compel compliance with the Order, Cavalry’s counsel approached the Attorney General and indicated that Cavalry intended to substantially comply with the Subpoena. App. at 697. This representation, which is reflected in an order entered March 20, 2012, resulted in further delay of enforcement of the Subpoena purportedly to give the parties an opportunity to see if an agreement to comply with the Subpoena could actually be reached. App. at 464. As it turns out, no agreement was ever reached and, in fact, Cavalry did not comply with the Subpoena.

After Cavalry failed to comply with the Subpoena, notwithstanding its promise to do so, the State filed an Amended Petition for Contempt (“Amended Petition”) on July 5, 2012. The exhibits to the Amended Petition contained correspondence from Cavalry promising compliance, as well as the Affidavit of Michael Fleming, confirming Cavalry’s noncompliance.²

² The Amended Petition was not included in the Appendix, although the undersigned counsel expressly asked that it be. The Amended Petition, including all of its exhibits, is attached to State’s Motion To Supplement The Appendix that is being filed contemporaneously with State’s response brief.

In summary, the State has filed a proper Subpoena requesting documents and information from Cavalry intended to assist the State in investigating possible violations of the WVCCPA of which it was aware, as well as violations that were not known to it at the time. To this day Cavalry has refused to comply with the Subpoena although it has been granted full due process at a subpoena enforcement hearing conducted by the trial court. Cavalry has engaged in all available means to delay enforcement of the Subpoena through its filings in the trial court and now by the filing of the appeal to this Court. Despite the fact that the Order Compelling Compliance with the Subpoena has never been stayed, Cavalry's failure to comply with the Subpoena continues. As explained herein below, the trial court did not commit any reversible error in the subpoena enforcement proceedings below, nor has Cavalry presented any lawful excuse for failing to comply with the Subpoena before the trial court or in its petition for appeal with this Court.

III. SUMMARY OF ARGUMENT

Cavalry makes a frivolous challenge to the fundamental power that the Legislature conferred upon the Attorney General to issue subpoenas in order to investigate alleged violations of the WVCCPA and take enforcement action when necessary to restrain such conduct. Cavalry provides no legal authority whatsoever for this challenge to the Attorney General's subpoena power. In fact, Cavalry's challenge runs contrary to the principles established by federal courts and adopted by this Court that an administrative agency's subpoena must be enforced almost without restriction. Perhaps Justice Cleckley said it best in this Court's seminal case on enforcement of administrative subpoenas, *State ex rel. Hoover v. Berger, infra*: "[A]s long as the

agency's assertion of authority is not obviously apocryphal...a procedurally sound subpoena must be enforced." In adopting the principle established by the United States Supreme Court in *Morton Salt, infra*, this Court held that an administrative agency's powers are analogous to an investigative grand jury, which does not depend on a case or controversy for power to get evidence "but can investigate merely on suspicion that the law is being violated, or even just because it wants assurance that it is not." *State ex rel. Palumbo v. Graley's Body Shop, infra*.

In addition to employing all manner of procedural and substantive methods to delay or thwart enforcement of the Subpoena, culminating in this appeal, Cavalry also argues that the filing of the Complaint rendered the Subpoena moot and terminated the Attorney General's investigation. Cavalry failed to produce a single case in support of this position because there are none. As explained herein below, it is well settled that commencement of a civil action does not terminate an administrative agency's investigative authority nor moot its administrative subpoena. See *National Labor Relations Board v. Bacchi, infra*, and numerous other cases cited below.

Perhaps most puzzling of all is Cavalry's argument that the Attorney General may only issue a subpoena within the context of an administrative hearing in accordance with a non-existent administrative procedure. Cavalry's counsel has made this argument on behalf of clients almost too numerous to recount in a relentless effort to find still another way to obstruct the Attorney General's investigative powers. This argument is contrary to any logical reading of the WVCCPA and makes no more sense today than when it was first made many years ago.

Finally, when all else fails, one can always argue that a subpoena was not properly served. This argument, also, has no merit. The Subpoena in question was expressly targeted to encompass all four Cavalry collection agencies and was served through the West Virginia Secretary of State, among others, upon Christian Parker, who is the general counsel for all the Cavalry entities, and Michael Godner, who was an officer of the three Cavalry debt buyer entities. The four Cavalry entities and their principal's home responded and objected to this Subpoena and have been represented in those proceedings by the same lawyer, Leah Macia, from the very beginning up to the present. The Cavalry entities have been and currently are headquartered at the same address and are interconnected by corporate affiliation and common officers and members. There is no question that all four Cavalry entities have received proper notice of the Subpoena seeking documents and information from all of them within the meaning of fundamental standards of due process. It is only in a desperate search for still another straw to avoid compliance with the Subpoena that Cavalry makes this argument at all.

IV. STATEMENT REGARDING ORAL ARGUMENT AND DECISION

The trial court did not make any error that warrants acceptance of this appeal or reversal or modification of the Order compelling compliance with the Subpoena entered below. Thus, Petitioner's appeal should be rejected. In the event this Court decides to hear the appeal, this case should be selected for oral argument under Rule 20 of the West Virginia Rules of Appellate Procedure because it involves a challenge to the Attorney General's statutory authority to use its subpoena power to investigate and enforce the WVCCPA, which is an issue of fundamental public importance. It may also

serve to put to rest what the State perceives to be frivolous challenges to the Attorney General's subpoena power. A ruling rejecting Cavalry's arguments will enable the Attorney General to more effectively enforce the WVCCPA and prevent targets of investigation from raising such issues to obstruct investigations in the future.

V. ARGUMENT

A. **The Court's Role In A Proceeding To Enforce An Administrative Subpoena Is Strictly Limited**

Since at least 1991, the West Virginia Supreme Court of Appeals has followed the strong public policy established by the U.S. Supreme Court that administrative agency subpoenas must be enforced almost without restriction. This public policy was articulated by the court in *Federal Trade Commission v. Texaco, Inc.*, 555 F.2d 862, 871-72 (D.C. Cir. 1977) wherein it held: "The Supreme Court has made it clear that the court's role in a proceeding to enforce an administrative subpoena is a strictly limited one" (emphasis added), *citing Endicott Johnson v. Perkins*, 317 U.S. 501 (1943). The court's limited role in enforcement proceedings of administrative agency subpoenas has also been adopted by the Fourth Circuit Court of Appeals in *United States v. American Target Advertising, Inc.*, 257 F.3d 348 (4th Cir. 2001) wherein the court affirmed the district court's enforcement of a subpoena issued by the U.S. Postal Inspection Service against direct mail companies. In rejecting the company's allegations of abuse of administrative process, the court observed that the administrative agency's subpoenas need only "withstand the appropriately narrow level of judicial scrutiny." *Id.* at 351. The court also observed "A district court's role in enforcing administrative subpoenas is sharply limited." *Id.*, *citing* its earlier case of *EEOC v. Lockheed Martin Corp., Aero & Naval Systems*, 116 F.3d 110, 113 (4th Cir. 1997)(emphasis added). The court also

held “the scope of inquiry is necessarily much narrower in a subpoena enforcement proceeding. Such proceedings are designed to be summary in nature.” *American Target Advertising* at 353 (internal citations omitted)(emphasis added). The Fourth Circuit recently confirmed again that the court’s role in administrative subpoena enforcement proceedings “is strictly limited.” *Solis v. Food Employees Labor Relations Association*, 644 F.3d 221, 226 (4th Cir. 2011).

In *West Virginia Human Rights Commission v. Moore*, 411 S.E. 2d 702, 707 (W. Va. 1991), a subpoena enforcement proceeding, the Court noted:

The Federal cases that have addressed this issue [subpoena enforcement] make it clear that agencies that are vested with subpoena power must have latitude in pursuing investigations in furtherance of their objectives and purposes.

The Court in *Moore* expressly adopted a three-part test previously articulated by the Ninth Circuit in *Equal Employment Opportunity Commission v. Children’s Hospital Medical Center*, 719 F. 2d 1426 (9th Cir. 1983) “in determining whether a subpoena issued by the Human Rights Commission should be enforced”:

(1) whether Congress has granted the authority to investigate; (2) whether procedural requirements have been followed; and (3) whether the evidence is relevant and material to the investigation.

Moore, 411 S.E. 2d at 777. The Court in *Moore* also noted, importantly, “It is inappropriate to interfere with an administrative investigation by exploring substantive defenses to a later adversarial proceeding” (emphasis added). *Id.* at 707, citing *Johnson Corp. v. Perkins*, 317 U.S. 501 (1943).

In *State ex rel. Palumbo v. Graley’s Body Shop*, 425 S.E. 2d 177 (W. Va. 1992), the Court, in enforcing the Attorney General’s subpoena in an antitrust investigation, clarified that “the investigatory power of the Attorney General... is best compared to the

authority of an administrative agency to investigate prior to making any charges of a violation of the law.” *Id.* at 182, n. 2, citing *United States v. Morton Salt*, 338 U.S. 632, 642 (1950). The Court in *Graley* then explained that the Attorney General’s investigative powers are analogous to the Federal Trade Commission when investigating unlawful trade practices. In doing so, *Graley* adopted the principles of *Morton Salt* in defining the extent of the Attorney General’s subpoena power:

The only power that is involved here is the power to get information from those who best can give it and are most interested in not doing so. Because judicial power is reluctant if not unable to summons evidence until it is shown to be relevant to issues in litigation, it does not follow that an administrative agency charged with seeing that the laws are enforced may not have and exercise powers of original inquiry. It has the power of inquisition, if one chooses to call it that, which is not derived from the judicial function. It is more analogous to the [Investigative] Grand Jury, which does not depend on a case or controversy for power to get evidence but can investigate merely on suspicion that the law is being violated, or even just because it wants assurance that it is not. When investigative and accusatory duties are delegated by statute to an administrative body, it, too, may take steps to inform itself as to whether there are probable violations of the law.

Graley, *Id.* at 182, quoting *United States v. Morton Salt*, 338 U.S. at 642 (emphasis added).

The issue in *Graley* was whether subpoenas had been lawfully issued under the West Virginia Antitrust Act, which allows the Attorney General to issue subpoenas “if the attorney general has probable cause to believe that a person has engaged in an act which is subject to action by the attorney general under any of the provisions of this article[.]” This language is identical to the language found in W. Va. Code § 46A-7-104(1) pertaining to consumer protection investigations; thus, the Court’s commands in *Graley* should also apply to the Attorney General’s powers to issue subpoenas under the WVCCPA.

The Court's incorporation of the *Morton Salt* principles when defining a state agency's subpoena power was further solidified in *State ex rel. Hoover v. Berger*, 483 S.E. 2d 12 (W. Va. 1996), a case that examined whether to enforce a subpoena issued by the West Virginia Board of Medicine. Citing the seminal U.S. Supreme Court cases of *United States v. Powell*, 379 U.S. 48, 57-58 (1964), *Morton Salt, supra*, and *Oklahoma Press Publishing Company v. Welling*, 327 U.S. 186, 208 (1945), the Court held that a state administrative agency, "in order to obtain judicial backing" of a subpoena, must show:

(1) the subpoena is issued for a legislatively authorized purpose, (2) the information sought is relevant to the authorized purpose, (3) the information sought is not already within the agency's possession, (4) the information sought is adequately described, and (5) proper procedures have been employed in issuing the subpoena. If these requirements are satisfied, the subpoena is presumably valid and the burden shifts to those opposing the subpoena to demonstrate its invalidity. The party seeking to quash the subpoena must disprove through facts and evidence the presumed relevance and purpose of the subpoena.

Hoover, Id. at 18. Importantly, the Court also held "these standards... apply to subpoenas issued by other agencies." The *Hoover* Court's reliance upon such federal standards in subpoena enforcement is particularly appropriate because the Legislature has commanded that the courts, when construing the WVCCPA, "be guided by the interpretation given by federal courts to the various federal statutes dealing with the same or similar matters." W. Va. Code § 46A-6-101.

Notwithstanding the *Hoover* Court's recitation of a specific formal standard for enforcement of a state agency's subpoena, Justice Cleckley, writing for a unanimous Court, restated the applicable showing in a simpler manner for courts to follow:

Subpoena enforcement proceedings are designed to be summary in nature, and an agency's investigations should not be bogged down by premature challenges to its regulatory jurisdiction. As long as the

agency's assertion of authority is not obviously apocryphal...a procedurally sound subpoena must be enforced. Similarly, the initial determination of what information is relevant for its investigation... is left to the administrative agency. To this extent, the circuit court has authority to enforce the subpoena unless the agency is obviously wrong...therefore,...judicial review is very restricted.

Hoover, *Id* at 19-20 (emphasis added).

Most recently, this Court made it clear that the approach to administrative subpoena enforcement enumerated in *Hoover*, and thus the incorporation of principles established by federal courts decades ago, applies to enforcement of subpoenas issued by the Attorney General. See *State ex rel. McGraw v. Bloom*, No. 35716 (W.Va. Supreme Court, Feb. 7, 2011)(memorandum decision)(“As long as the agency’s assertion of authority is not apocryphal...a procedurally sound subpoena must be enforced...,” *citing Hoover*), slip op. at 3-4.

In this case, the State thoroughly briefed the trial court on the applicable standards for enforcement of subpoenas, including the sharply limited role of the court in a summary subpoena enforcement proceeding. The State also presented detailed testimonial evidence on its basis for initiating the investigation of Cavalry, the potential violations of the WVCCPA, and what it has been able to learn about the scope of its unlawful activities in West Virginia despite Cavalry’s refusal to comply with the subpoena or otherwise cooperate with the State’s investigation.³ See generally testimony of Angela B. White, Paralegal, transcript of August 22, 2011 hearing, App. at 474-480; oral argument of State’s counsel, Norman Googel, transcript of August 22, 2011 hearing, App. 481-490.

³ The State is not required to prove that a target of its investigation in fact violated the WVCCPA at a summary enforcement hearing; thus, the evidence presented by the State far exceeded what would be necessary to obtain judicial backing for a subpoena.

At the continuation of the hearing on August 23, 2011, the State's counsel commenced a detailed item by item explanation of the basis for and relevancy of each item of the subpoena, including the Instructions and Definitions sections of the Subpoena (to which Cavalry also objected). See oral argument of Norman Googel, transcript of August 23, 2011 hearing, App. 590-598. The hearing was recessed before its conclusion due to the illness of Ms. Macia's mother, and was continued until September 9, 2011. At that time, the State's counsel resumed the detailed explanation of the basis for and relevancy of each item of the Subpoena. See oral argument of Norman Googel, transcript of September 9, 2011 hearing, App. 625-652. At the conclusion of this explanation, the State made it clear that although it decided to proceed with the suit in order to obtain a temporary injunction, its investigation of Cavalry was not complete: "There are many more [violations] that we do not know, but we suspect. We hope we won't, but we suspect that we may learn of new violations when the subpoena is complied with, and we would ask the Court to order Cavalry to comply with the subpoena." *Id.*, App. at 652.

When it was time for Cavalry to make argument in support of its voluminous objections to the Subpoena, Cavalry's counsel merely reiterated the same conclusory arguments that it raises again in this appeal. As was the case before the trial court, and is the case again now, Cavalry has failed to produce any court cases or other legal authority in support of its position that the trial court erred by enforcing the State's Subpoena. See oral argument of Leah P. Macia, transcript of September 9, 2011 hearing, App. at 652-661. It is also noteworthy that Cavalry failed to present any testimony or evidence in support of its objections to the State's Subpoena, although it had a full opportunity to do so. In reviewing Cavalry's formal written objections to the

Subpoena filed with the Attorney General prior to institution of this proceeding, App. at 22, it is apparent that Cavalry merely made generalized, formulaic, “boilerplate” objections that could be (and in fact have been) filed in response to any Attorney General subpoena. In fact, Cavalry’s counsel has filed almost identical objections to Attorney General subpoenas on behalf of numerous targets of investigation over the years. But courts have repeatedly held that such objections are not sufficient.

Although the civil rules do not apply to subpoena enforcement proceedings, decisions of courts in considering objections to civil discovery are analogous to objections to administrative subpoenas. Just as the civil rules require that a party object to discovery “with specificity,” WVRCP 33(b)(4), the same principle would apply when objecting to requests for documents or information made by administrative subpoenas.

In *Lynn v. Monarch Recovery Mgmt, Inc.*, 2012 WL 2445046 (D.Md.), the court observed: “Objections to interrogatories must be specific, non-boilerplate, and supported by particularized facts where necessary to demonstrate the basis for the objection.” *Id.* at *2, citing *Hall v. Sullivan*, 231 F.R.D. 468, 470 (D.Md. 2005); *Thompson v. U.S. Dep’t. of Hous. & Urban Dev.*, 199 F.R.D. 168, 173 (D.Md. 2001); and *Marens v. Carrabba’s Italian Grill, Inc.*, 196 F.R.D. 35, 38-39 (D.Md. 2000). The court in *Monarch Recovery Mgmt.* also noted: “The failure to state with specificity the grounds for an objection may result in waiver of the objection....” *Id.* at *2. The court in *Momah M.D. v. Albert Einstein Medical Center*, 164 F.R.D. 412 (E.D. Pa. 1996) held that: “[m]ere recitation of the familiar litany that an interrogatory or a document production request is overly broad, burdensome, oppressive and irrelevant will not suffice.” *Id.* at *417 (internal quotations and citations omitted). These same principles have been adopted and applied by federal courts in resolving discovery disputes in

West Virginia. See, i.e., *Stevens v. Federal Mutual Insurance Company*, 2006 WL 2079503 (N.D.W.Va.)(the court disapproved the practice of asserting general objections to particular requests for discovery; “general objections are worthless for anything beyond delay of the discovery”), *id.* at *4; *Hager v. Graham*, 267 F.R.D. 486, 492 (N.D.W.Va. 2010)(general objections to discovery, without more, do not satisfy the party’s burden to justify objections to discovery because they cannot be applied with sufficient specificity to enable courts to evaluate their merits).

In this case, Cavalry has filed voluminous general objections to the Attorney General’s subpoena without ever including enough details or specificity for the trial court to evaluate their merit. When given the opportunity in court to specify, Cavalry failed to do so, falling back instead on its arguments that the filing of the suit moots the subpoena and that the Attorney General failed to hold an administrative hearing allegedly required by the APA. As explained below, these arguments have no merit.

Based upon the evidence of record, including the legal authority presented to the trial court through memoranda of law and in oral argument, there is no question that the Subpoena issued by the Attorney General meets the federal standards adopted by *Moore* and *Hoover* for review of subpoenas issued by West Virginia administrative agencies. Moreover, there is no basis for finding that the trial court erred by ordering Cavalry to comply in full with the State’s Subpoena.

B. The Commencement of Civil Proceedings Does Not Terminate An Administrative Agency’s Investigative Authority Nor Moot Its Administrative Subpoena

Cavalry argues that the trial court erred by enforcing the Attorney General’s Subpoena because, it asserts, the filing of the complaint terminated the Attorney General’s investigative authority and rendered its administrative subpoena moot.

Cavalry failed to provide any court cases or other legal authority in support of its position because none exist. In fact, federal courts have universally held precisely the opposite.

In *National Labor Relations Board v. Bacchi*, 2004 WL 2290736 (E.D.N.Y.), the respondents argued that it was improper for the National Labor Relations Board (“Board”) “to issue investigative subpoenas after it has filed a complaint.” *Id.* at *4. But the court held:

[I]t is well settled that the commencement of civil proceedings does not terminate an administrative agency’s investigative authority nor moot its administrative subpoena. (Citations omitted.) Given that the commencement of an actual lawsuit does not terminate the Board’s investigative authority, the issuance of an administrative complaint cannot affect the Board’s ability to issue an administrative subpoena.

Id., (emphasis added) *citing In re McVane*, 44 F.3d 1127, 1141 (2nd Cir. 1995); *RTC v. Walde*, 18 F.3d 943, 949-50 (D.C. Cir. 1994); *Linde Thomson Langworthy Kohn & Van Dyke v. RTC*, 5 F.3d 1508, 1518 (D.C. Cir. 1993); and *United States v. Frowein*, 727 F.2d 227, 231-32 (2nd Cir. 1984).

This principle has also been applied in challenges to enforcement of investigative subpoenas by state administrative agencies after commencement of enforcement proceedings. In *American Microtel, Inc. & Others v. The Secretary of State of the Commonwealth of Massachusetts*, 1995 WL 809575 (Mass. Super), Microtel challenged the issuance of two investigative subpoenas by the Director of the Securities Division because the Director had already initiated adjudicatory proceedings. In rejecting this position, the Court in *Microtel* noted: “Courts have upheld the use of investigative subpoenas in analogous situations,” citing several federal court opinions in support of its position. *Id.* at *10. See, *i.e.*, *FTC v. Browning*, 435 F.2d 96, 102-04 (DC Cir.

1970)(upholding post-complaint subpoena power of the Federal Trade Commission); *Porter v. Mueller*, 156 F.2d 278, 279-80 (3rd Cir. 1946)(upholding post-complaint subpoena power of Price Administrator under the Emergency Price Control Act of 1942); *Bowles v. Bay of New York Coal & Supply Corp.*, 152 F.2d 330, 331 (2nd Cir. 1945)(same); *Sutro Bros. & Co. v. S.E.C.*, 199 F.Supp. 438, 439 (S.D.N.Y. 1961)(institution of public proceedings against brokerage firm did not restrict S.E.C.'s investigative powers). *Id.*

Cavalry argues that by instituting a civil action the Attorney General “extinguished his ability to enforce the investigative Subpoenas.” Cavalry brief at 8. Cavalry similarly argued that by opting to file suit against the Petitioners “he forfeited the right to concurrently pursue his earlier investigation.” Cavalry brief at 11. Again, Cavalry failed to provide any legal authority in support of this position. In fact, such a position has been soundly rejected by the numerous courts that have upheld the enforceability of subpoenas and continuation of the administrative agency’s investigative authority after commencement of civil actions or institution of other types of adjudicatory proceedings.

In an early case, the court in *Sutro Bros. & Co. v. S.E.C.*, *supra*, the court rejected the precise argument Cavalry makes, holding:

Whether to continue its investigation...is a decision resting exclusively within the discretion of the Commission [S.E.C.] and not reviewable by a court. Not only may such investigation reveal further evidence for use in the pending proceeding, but evidence of other violations with which the Commission is charged by statute with the duty to investigate. The purpose of this statute would be severely frustrated were the power conferred on the Commission to be terminated by the institution of public proceedings against one of the alleged violators. (Citation omitted.)

Sutro Bros., 199 F.Supp. at 438 (emphasis added). In finding that the initiation of a civil suit against former officers or directors of failed financial institutions did not moot the

Subpoena or terminate the RTC's investigation, the Court in *Resolution Trust Corp. v. Walde, supra*, explained the "filing of civil charges in no way affects the continued vitality of the RTC's subpoena because ongoing investigation might reveal information to underpin further charges." 18 F.3d at 950, *citing Linde Thomson, supra*, 5 F.3d at 518 (emphasis added).

In holding that the U.S. Department of Energy ("DOE") may enforce a subpoena two years after issuance of a formal notice of probable violation, the court explained: "Even though the DOE has managed to make some factual determinations without the requested documents, the agency continues to have a legitimate interest in obtaining all records pertinent to its civil investigation" (emphasis added). *United States v. Merit Petroleum, Inc.*, 731 F.2d 901, 905 (Temp. Emer. Ct. App. 1984). "The mere pendency of a related civil action does not automatically preclude [the Environmental Protection Agency's] use of other authorized law enforcement techniques such as the *ex parte* application for an administrative search warrant." *National-Standard Company v. Adamkus*, 881 F.2d 352, 363 (7th Cir. 1989).

Numerous courts have held that the commencement of a civil action or other adjudicatory proceeding does not render an investigative subpoena moot nor terminate the administrative agency's investigation. *See, i.e., In re McVane*, 44 F.3d 1127, 1141 (2nd Cir. 1995)(the initiation of civil proceedings does not moot an administrative subpoena); *Dept. of Toxic Substances Control v. Superior Court of Los Angeles County, et al.*, 44 Cal. 1418, 1425 (1996)(pending litigation does not prohibit the California Department of Toxic Substances Control from continuing to investigate the company it has sued); *Reich v. Hercules, Inc.*, 857 F.Supp. 367, 369 (D.N.J. 1994)("when an

administrative agency issues a subpoena pursuant to broad statutory authorization, a supervening civil proceeding does not render the subpoena moot.”).

Cavalry also argues that, having chosen to file a civil action, “the Attorney General was bound...to the West Virginia Rules of Civil Procedure.” Cavalry fails to provide any legal authority for this proposition and, in fact, federal courts that have considered this issue have soundly rejected this position. In *State of Connecticut Dept. of Transportation v. Electrical Contractors, Inc., et al.*, 2001 WL 506736 (D.Conn.), the defendants argued that the filing of a lawsuit by the state agency divested it of its investigative authority under state law and confined its request for information to the civil rules, but the court disagreed. The court found “the powers of commissioner of the Department of Transportation...as set forth in [statute] are not limited by the initiation of a civil action or subject to the discovery limitations set forth in the Federal Rules of Civil Procedure.” *Id.* at *1. Similarly, the court in *United States v. Thriftyman, Inc.*, 704 F.2d 1240, 1247-48 (Temp. Emer. Ct. App. 1983) rejected Thriftyman’s position that the DOE’s commencement of an administrative enforcement proceeding necessarily demonstrated that its civil investigations “are complete.” Importantly, the court also rejected Thriftyman’s argument that “the DOE is bound...to secure further information only by discovery.” *Id.* at *1247. In fact, the argument that an administrative agency may only seek information through discovery under the rules of civil procedure after the filing of a civil action was rejected as early as 1945 by the court in *Bowles v. Bay of New York Coal & Supply Corp.*, *supra*, wherein the court held “the rules of civil procedure do not apply to restrict or control administrative subpoenas.” *Id.* 152 F.2d at 331. This principle was also applied by this Court in its review of a dispute arising from the

Attorney General's filing of subpoena enforcement proceedings against eight Internet payday lenders, wherein it held "the rules of civil procedure do not apply to subpoena enforcement proceedings at the investigative stage." *State ex rel. McGraw v. Bloom*, No. 35716 (W.Va. Supreme Court, Feb. 7, 2011)(memorandum opinion), Slip Op. at 3.

C. The Attorney General's Power To Issue An Investigative Subpoena Is Derived From Statute And Does Not Require The Holding Of An Administrative Hearing

The power of the Attorney General to investigate alleged violations of the WVCCPA and, towards that end, to issue investigative subpoenas is derived from statute and not from the rules of civil procedure or the West Virginia Administrative Procedures Act ("APA"), W.Va. Code § 29A-1-1 *et seq.*. Specifically, W.Va. Code § 46A-7-104(1) provides:

If the attorney general has probable cause to believe that a person has engaged in an act which is subject to action by the attorney general, he may, and shall upon request of the commissioner, make an investigation to determine if the act has been committed and, to the extent necessary for this purpose, may administer oaths or affirmations, and, upon his own motion or upon request of any party, may subpoena witnesses, compel their attendance, adduce evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition and location of any books, records, documents or other tangible things and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of admissible evidence.

(Emphasis added.) The procedure for enforcement of the Attorney General's subpoena is also set by statute. W.Va. Code § 46A-7-104(2) provides that "[u]pon failure of a person without lawful excuse to obey a subpoena...the attorney general may apply to the circuit court of the county in which the hearing is to be held for an order compelling compliance" (emphasis added).

In this case, the Attorney General issued an investigative subpoena for documents and information from Cavalry as authorized by W.Va. Code § 46A-7-104(1). When Cavalry failed “without lawful excuse” to comply with the Subpoena, the Attorney General commenced a summary subpoena enforcement proceeding in the precise manner contemplated by W.Va. Code § 46A-7-104(3). Nowhere in this statutory scheme is there a requirement, stated or implied, that the Attorney General must conduct an administrative hearing before it can issue an investigative subpoena or petition a circuit court to enforce a subpoena. To read such a requirement into this statute as Cavalry argues in this appeal would require such a strained reading of its plain meaning as to defy all logic. Moreover, such a reading would render the Attorney General's investigative powers virtually ineffective, something the Legislature certainly did not intend.

The essence of Cavalry's argument is that the APA governs all administrative powers of the Attorney General, even when the WVCCPA clearly states otherwise. But that is an incorrect reading of the APA that was rejected long ago by this Court. This Court in *Moore, supra*, explained:

This State's Administrative Procedures Act provides that an agency may have the power to issue subpoenas.

* * * * *

Under no circumstances shall this chapter [APA] be construed as granting the power to issue subpoenas or subpoenas duce tecum to any agency or to any member of the body of any agency which does not now by statute expressly have such power. [Citing W.Va. Code § 29A-5-1(b)]

* * * * *

The State Administrative Procedures Act does not, in and of itself, grant the authority to agencies to issue subpoenas. Rather, such authority is recognized if it is expressly granted by statute.

Moore, 411 S.E.2d at 705 (emphasis added). Since the APA does not grant the authority to agencies to issue subpoenas, it cannot be the source of any limitation on the Attorney General's authority to issue subpoenas.

While it is true the APA applies to certain administrative actions taken by the Attorney General, it merely governs procedures: it is not the source of the Attorney General's statutory power to issue investigative subpoenas or to enforce them in circuit court. The WVCCPA itself specifies that the APA applies to and governs all administrative actions taken by the Attorney General "[e]xcept as otherwise provided" (emphasis added). W.Va. Code § 46A-7-105. The Attorney General's power to issue an investigative subpoena and to enforce it in court is a prime example of the APA's limitation, "except at otherwise provided," as the Attorney General's investigatory powers are clearly enumerated elsewhere in W.Va. Code § 46A-7-104, as excerpted herein above.

The WVCCPA empowers the Attorney General to promulgate "reasonable rules and regulations" in accordance with the APA "as necessary and proper to effectuate the purposes of this chapter and to prevent circumvention or evasion thereof." See W.Va. Code § 46A-7-102(1)(e). In those rare instances when the Attorney General has sought to promulgate rules and regulations, the APA has been followed. The WVCCPA also affords the Attorney General the option of issuing a cease and desist order to prohibit the creditor or other person from engaging in violations of the WVCCPA "after notice and hearing." However, the Attorney General did not issue a cease and desist order

here nor has it ever done so with respect to any other target of an investigation. Instead, the Attorney General has found that the WVCCPA may be enforced more effectively by using its other option of bringing a civil action in court to restrain unlawful conduct as authorized by W.Va. Code § 46A-7-108.

There is no question that the administrative procedures established by the APA would apply if the Attorney General opted to issue cease and desist orders rather than initiating civil enforcement actions in court. Because the Attorney General has not elected to do so, no such procedures have ever been established nor are any intended to be established at this time. In addition to misconstruing the interplay between the WVCCPA and the APA, Cavalry's argument that the Attorney General cannot issue an investigative subpoena unless it first holds an administrative hearing under non-existent procedures is both illogical and nonsensical.

The power of the Attorney General to issue subpoenas and to obtain judicial backing has long been established by the decisions of this Court in which it adopted the federal principles enunciated by the United States Supreme Court for enforcement of administrative agency subpoenas in *Oklahoma Press Publishing Company v. Walling*, *supra*, and *United States v. Morton Salt Co.*, *supra*. Not once has this Court ever held that the Attorney General must hold an administrative hearing before it may issue an investigative subpoena or enforce it in court. This Court has reviewed the Attorney General's power to issue investigative subpoenas in three recent cases. *See, i.e., State ex rel. McGraw v. King*, 2012 WL 2203449; *State of West Virginia ex rel. Payday Financial, LLC v. Honorable Louis H. Bloom*, Docket No. 11-1582; and *State of West Virginia ex rel. Darrell V. McGraw, Jr. v. Honorable Louis H. Bloom*, *supra*.

In *Payday Financial*, a South Dakota-based Internet payday lender filed a petition for writ of prohibition challenging Judge Bloom's order enforcing the Attorney General's investigative subpoena after a summary enforcement proceeding much like the one that occurred here. Payday Financial argued that the trial court had no jurisdiction to act because it was entitled to tribal sovereign immunity; it never argued that the Attorney General must hold an administrative hearing as Cavalry argues here. The Court declined to issue the rule by order entered February 9, 2012.

In *State of West Virginia v. King*, the State filed a petition for writ of prohibition challenging Judge King's refusal to enforce the Attorney General's investigative subpoena. The target of the investigation, Fast Auto Loans, argued that the Attorney General could not subpoena records from a company based out of state unless it domesticated the subpoena in the foreign jurisdiction and petitioned the court in that state under its rules of civil procedure. This Court declined to issue the writ of prohibition or reach the merits because it held that the State should have filed an appeal rather than challenge Judge King's order by means of a petition for writ of prohibition. While Fast Auto Loans argued that the Attorney General's investigative subpoena was procedurally flawed, as Cavalry argues here, it did not argue that the Attorney General must hold an administrative hearing before a subpoena can be issued. In her dissent, in which she argued that the Court should have reached the merits and strongly hinted that she would have granted the writ, Justice Workman observed "[t]he Legislature has clearly vested the Attorney General with investigatory powers which are critical to the protection of West Virginia citizens." *Id.* at *6.

Finally, in *State v. Bloom*, the Court granted a petition for writ of prohibition filed by the State after Judge Bloom issued an order *sua sponte* severing the eight respondent Internet payday lenders such that the Attorney General's enforcement proceeding was divided into eight miscellaneous actions rather than one. Neither this Court nor any of the parties who contested enforcement of the Attorney General's subpoena after remand argued that the Attorney General must hold an administrative hearing before he can issue an investigative subpoena.

D. Cavalry Waived Its Objections By Failing To Petition The Circuit Court To Quash The Subpoena.

Although the APA clearly does not require the Attorney General to conduct an administrative hearing before issuing an investigative subpoena, it does outline a procedure that may be followed when the target of an investigative subpoena seeks relief from the subpoena as was the case with Cavalry here. Specifically, W.Va. Code § 29A-5-1(b) provides that a party seeking relief from an administrative subpoena may do so by filing a motion in the circuit court "promptly and in any event before the time specified in [the] subpoena duces tecum for compliance therewith..." Since W.Va. Code § 46A-7-1 *et seq.* does not "otherwise provide" a specific procedure for challenging an investigative subpoena issued by the Attorney General, the procedure set forth in the APA would apply. But Cavalry did not utilize this procedure; instead, Cavalry merely filed its written objections with the Attorney General. App. at 22.

By failing to seek relief from the subpoena in court, Cavalry has arguably waived its right to object to enforcement of the subpoena. Many courts have so concluded when the targets of administrative subpoenas fail to follow statutory procedures for challenging the subpoena. *See, i.e., State ex rel. Lance v. Hobby Horse Ranch Tractor*

and Equipment Co., 929 P.2d 741 (Idaho 1996)(Hobby Horse waived its objections to the attorney general's subpoenas by failing to petition the court within the specified period); *Attorney General v. Biometric Profiles*, 533 N.E.2d 1364 (Mass. 1989)(Biometric waived its right to object to the attorney general's subpoena by failing to move to quash in court; the fact that Biometric had previously objected to the subpoenas in a letter was not sufficient once the attorney general commenced an enforcement action).

E. All Four Cavalry Collection Agencies Were Properly Served With The Subpoena

Almost as an afterthought, Cavalry also argues that the Subpoena should only be enforced against Cavalry SPV I and Cavalry SPV II because, it argues, they are the only entities who were properly served with the Subpoena. A review of the record shows that this is not the case.

As Cavalry readily admits, the Instructions Section of the Investigative Subpoena defined the parties to whom the Subpoena was directed as including the following:

Cavalry SPV I, LLC; Cavalry SPV II, LLC; Cavalry Investments, LLC; Cavalry Portfolio Services, LLC; Michael Godner; Steven Anderson; Christian Parker; Don Strauch; and their predecessors; successor(s); parent corporations, corporate subsidiaries, affiliates, associates, agents, officers, directors, managers, members, partners, owners, and employees.

See Instructions Section of State's Subpoena, App. at 11. The Subpoenas were duly served upon SPV I and SPV II to the attention of Michael Godner and Christian Parker at Cavalry's headquarters in Hawthorne, New York. The Subpoenas were signed for by Lewis Harper, Cavalry's mail clerk, at its headquarters on February 3, 2010. See testimony of Anne Thomas, compliance counsel for Cavalry Portfolio Services, transcript of August 22, 2011 hearing, App. at 528. See also service of process records

on file with the West Virginia Secretary of State, Online Data Services, attached hereto as Exhibits A and B and incorporated by reference herein.

In considering whether all four of the Cavalry entities were properly served, it must be noted that all four Cavalry entities were headquartered at the same address which, at the time of the Complaint, was 7 Skyline Drive, Hawthorne, New York, 10532. See Complaint, App. at 47. After the Complaint was filed, the four Cavalry entities collectively moved to Valhalla, New York, where they continued to share the same business address. See testimony of Anne Thomas, App. at 502-503. When describing the operations of the three Cavalry debt buyers, Cavalry SPV I, Cavalry SPV II, and Cavalry Investments, Ms. Thomas explained “The debt buyers do not have employees; they do not take any action in their own name, other than filing suits.” *Id.*, App. at 494, 495. During cross examination, Ms. Thomas testified that Michael Godner, Donald Strauch, and Steven Anderson are all officers of Cavalry SPV I, Cavalry SPV II, and Cavalry Investments. *Id.*, App. at 502, 504, and 505. Public records from the West Virginia Secretary of State’s Online Data Services list Steven Anderson as the “organizer” of Cavalry Portfolio Services and disclose that Cavalry Investments is the sole member of Cavalry Portfolio Services. See Exhibit C attached hereto and incorporated by reference herein. Although Christian Parker is not listed as an officer or a member of any of the four Cavalry entities, he is the general counsel for Cavalry Portfolio Services and, upon information and belief, he serves in that capacity for all the Cavalry entities. See Complaint, App. at 48.

Cavalry has never disputed that the Subpoena was served upon Michael Godner and Christian Parker at the address for all four Cavalry entities, then at 7 Skyline Drive,

Third Floor, Hawthorne, New York, 10532. The licensing records of the West Virginia State Tax Department confirm that Michael Godner signed the collection agency bond for Cavalry SPV I, Cavalry SPV II, and Cavalry Investments. See exhibits to State's Supplemental Memorandum of Law in Support of State's Motion for Temporary Injunction and Enforcement of Investigative Subpoena, App. at 281-288. Inasmuch as the four Cavalry entities are completely interconnected by corporate affiliation, common address and at least one common officer or member in each one, there is no question that service of the Subpoena on Michael Godner and Christian Parker constituted valid service of the Subpoena upon the four Cavalry entities.

F. Cavalry Has Unclean Hands

As stated herein above, as of this date Cavalry has failed to comply with the Subpoena as ordered by the trial court even though full compliance was due approximately eight months ago and the Order in question has never been stayed. It is well settled that a party that has willfully failed to comply with an order may be barred by the equitable doctrine of unclean hands from seeking relief from that order. See *Goldstein v. FDIC*, 2012 WL 1819284 (D.Md.) *14 ("The unclean hands doctrine states that courts of equity will not lend their aid to anyone seeking their active interposition, who has been guilty of fraudulent, illegal, or inequitable conduct in the matter with relation to which he seeks assistance.")(internal quotations omitted). These principles have been adopted by this Court in West Virginia. See, *i.e.*, *Bias v. Bias*, 155 S.E. 898 (W.Va. 1930) and *Gardner v. Gardner*, 110 S.E.2d 495, 502 (W.Va. 1959)("[T]he rule is that equity will not entertain persons with unclean hands....").

As one of its “excuses” before the trial court below, Cavalry has argued that if it were to comply with the Subpoena it would lose the opportunity to obtain the relief they seek, reversal of the order on appeal. However, that is a misstatement of the law. Prior to 1992, some federal courts (including the Fourth Circuit Court of Appeals) were of the view that compliance with an administrative subpoena would moot the appeal. However, this split of authority was resolved by the ruling in *Church of Scientology of California v. U.S.*, 509 U.S. 9 (1992), wherein the Court rejected the proposition that compliance with such an order would make it impossible for the court to grant any effectual relief whatsoever to the prevailing party. In *Church of Scientology*, the Court held:

Even though it is now too late to prevent, or to provide a fully satisfactory remedy for, the invasion of privacy that occurred when the IRS obtained the information on the tapes, a court does have power to effectuate a partial remedy by ordering the Government to destroy or return any and all copies it may have in its possession. The availability of this possible remedy is sufficient to prevent this case from being moot.

Id., at 450 (emphasis added). The Fourth Circuit officially adopted the *Church of Scientology* standard in *Reich v. National Engineering & Contracting Co.*, 13 F.3d 93 (4th Cir. 1993). The Fourth Circuit reiterated this standard in *U.S. v. American Target Advertising, Inc.*, *supra*, wherein it held that the appeal of the order requiring compliance with the subpoena issued by the U.S. Postal Inspection Service was not moot even though the subpoenaed documents had already been produced. Accordingly, Cavalry’s argument that compliance with the subpoena would moot its appeal is without merit. Inasmuch as Cavalry has willfully failed to comply with the subpoena without any just cause, Cavalry should not be granted any relief from the Order by way of this appeal or through any other means.

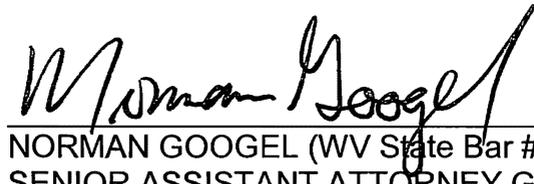
VI. CONCLUSION

WHEREFORE, for the reasons set forth herein above, the State prays that this Court enter an Order declining to hear Cavalry's petition for appeal from the Order enforcing the State's investigative subpoena.

Respectfully submitted,

STATE OF WEST VIRGINIA ex rel.
DARRELL V. McGRAW, JR.,
ATTORNEY GENERAL

By Counsel



NORMAN GOOGEL (WV State Bar #1438)
SENIOR ASSISTANT ATTORNEY GENERAL
Consumer Protection/Antitrust Division
P.O. Box 1789
Charleston, WV 25326-1789
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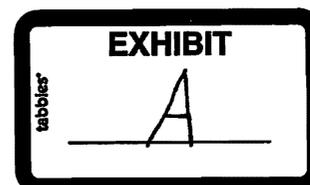
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| Service Information | |
|-------------------------|---|
| Civil Action | MISC0004M |
| Defendant | Cavalry SPV, I, LLC |
| Agent | |
| City/State/Zip | Hawthorne , NY 10532 |
| Country | US - United States of America |
| County | Kanawha |
| Service Date | 1/29/2010 |
| Delivery Information | |
| Certified Number | 9171923790001000208265 |
| Delivered Date | 2/3/2010 11:32:00 AM |
| Delivered | YES |
| Status Details | DELIVERED (Complete list of USPS status descriptions) |
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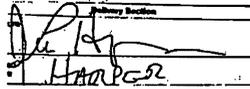
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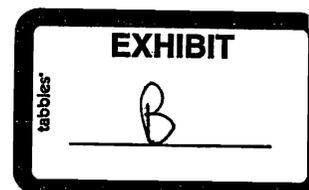
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| Service Information | |
|-------------------------|---|
| Civil Action | MISC0004N |
| Defendant | Cavalry SPV, II, LLC |
| Agent | |
| City/State/Zip | Hawthorne , NY 10532 |
| Country | US - United States of America |
| County | Kanawha |
| Service Date | 1/29/2010 |
| Delivery Information | |
| Certified Number | 9171923790001000208272 |
| Delivered Date | 2/3/2010 11:32:00 AM |
| Delivered | YES |
| Status Details | DELIVERED (Complete list of USPS status descriptions) |
| USPS Notice | <i>USPS requires a signature for non-delivered, returned to sender certified letters. If the signature below is that of either Kathy Thomas, Deanna Karlen, State of West Virginia or Central Mailing Office, this letter has not been served and was returned to the clerk of the appropriate court.</i> |



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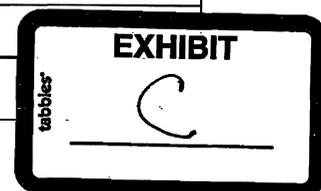
Business Organization Detail

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CAVALRY PORTFOLIO SERVICES, LLC

| Organization Information | | | | | | | |
|---------------------------------|----------------|-------------|---------|--------|----------|------------------|--------------------|
| Org Type | Effective Date | Filing Date | Charter | Class | Sec Type | Termination Date | Termination Reason |
| LLC Limited Liability Company | 6/25/2002 | 6/25/2002 | Foreign | Profit | | | |

| Organization Information | | | |
|---------------------------|----|-----------------------|-------|
| Business Purpose | | Capital Stock | |
| Charter County | | Control Number | 48759 |
| Charter State | DE | Excess Acres | |
| At Will Term | A | Member Managed | MBR |
| At Will Term Years | | Par Value | |
| Authorized Shares | | | |



| Addresses | |
|----------------------------------|--|
| Type | Address |
| Designated Office Address | 707 VIRGINIA ST. EAST CHARLESTON, WV, 25301 USA |
| Notice of Process Address | CT CORPORATION SYSTEM 5400 D BIG TYLER ROAD CHARLESTON, WV, 25313 USA |
| Principal Office Address | 500 SUMMIT LAKE DRIVE VALHALLA, NY, 10595 USA |
| Type | Address |

| Officers | |
|------------------|--|
| Type | Name/Address |
| Manager | 10532 |
| Member | CAVALRY INVESTMENTS 500 SUMMIT LAKE DR. SUITE 400 VALHALLA, NY, 10595 USA |
| Organizer | STEVE ANDERSON 6059 E. SPRING RD. SCOTTSDALE, AZ, 85254 USA |
| Type | Name/Address |

| Annual Reports | |
|-----------------------|-----------|
| Date | Filed For |
| 4/9/2012 | 2012 |
| 6/6/2011 | 2011 |
| 4/29/2010 | 2010 |
| 2/19/2009 | 2009 |
| 3/10/2008 | 2008 |

| | |
|------------------|------------------|
| 3/12/2007 | 2007 |
| 4/3/2006 | 2006 |
| 3/21/2005 | 2005 |
| 2/5/2004 | 2004 |
| 3/11/2003 | 2003 |
| Date | Filed For |

| Images | | | | |
|---------------|---------------------------------|-------------------|-----------------------|-----------------------|
| View | Name | Date Added | Date Effective | Type |
| View | CAVALRY PORTFOLIO SERVICES, LLC | 7/2/2002 | 6/25/2002 | S - Company Formation |
| View | Name | Date Added | Date Effective | Type |

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Sunday, August 19, 2012 — 9:03 PM

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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

DOCKET NO.: 11-1564

CAVALRY SPV I, LLC, CAVALRY SPV II, LLC;
CAVALRY INVESTMENTS, LLC; and
CAVALRY PORTFOLIO SERVICES, LLC,

Defendants Below, Petitioners

v.

CIVIL ACTION NO. 10-C-994
Kanawha County Circuit
Court

STATE OF WEST VIRGINIA, ex rel.
DARRELL V. McGRAW, JR.,
ATTORNEY GENERAL,

Plaintiff Below, Respondent.

CERTIFICATE OF SERVICE

I, NORMAN GOOGEL, Assistant Attorney General, hereby certify that a copy of the foregoing **State's Response To Petitioner's Petition For Appeal And Brief** was served by personal delivery this 23rd day of August, 2012, upon the following:

Leah P. Macia, Esquire
Bruce M. Jacobs, Esquire
Spilman Thomas & Battle, PLLC
PO Box 273
Charleston, West Virginia 25321


Norman Googel