

12-0418

IN THE CIRCUIT COURT OF CLAY COUNTY, WEST VIRGINIA

**MULTIPLEX, INC., a West Virginia
corporation; ART R. POFF and
PAMELA POFF,**

Plaintiffs,

v.

**CIVIL ACTION NO. 10-C-62
Judge Facemire**

**TOWN OF CLAY; BOYLES &
HILDRETH; and UNITED STATES
SURETY COMPANY,**

Defendants.

ORDER

This Court referred certain issues in this matter to Special Commissioner Elliot G. Hicks for findings and recommendations in a series of orders, the last of which was entered on February 5, 2011. Special Commissioner Hicks has issued a report that is appended hereto, and made a part hereof.

This Court, by this order, receives the report made by Special Commissioner, adopts all of the recommendations contained in the report, and incorporates those findings and recommendations into this order. More specifically, this Court orders the following:

1. The Town of Clay is entitled to such proceeds of the injunction bond posted by Multiplex as the Town of Clay proved to this Court that it suffered an expense resulting from Multiplex's filing a Complaint for a Temporary Injunction, and then abandoning the Complaint before the Court could determine the merits of the Complaint.

2. The amount of the bond posted by Multiplex is determined to have been set at \$25,000.

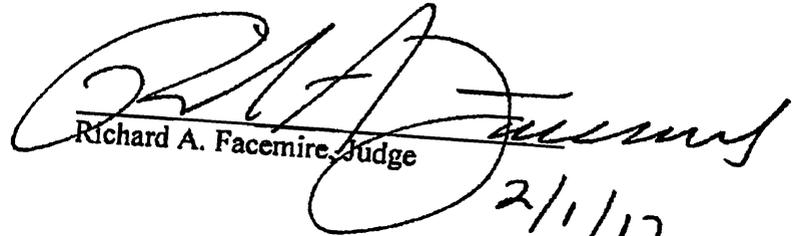
3. Any recompense to the Town of Clay shall be limited to the amount of the Multiplex injunction bond, as Multiplex has not been shown to have acted in bad faith that additional sanctions should be imposed beyond that of said bond.

4. The Town of Clay shall *submit a complete list of any damages* it claims to have suffered as a result of the abandoned temporary injunction to the Court, and shall serve the same on Multiplex for consideration by the Court's appointed Special Commissioner to determine whether all or part of the injunction bond should be forfeited. The Town shall address the factors listed in *Aetna v. Pitrolo* in submitting its claim for attorney's fees. *The schedule for submission of such a list shall be that the Town shall submit its list before February 24, 2012 and Multiplex shall submit its response or objections to such damages on or before March 12, 2012*

5. Following the Town's submission of its costs, fees and any other expense, Special Commissioner Hicks shall make a finding of such costs referenced in Paragraph 1, above, and submit that finding to the Court as a further recommendation.

6. At the same time as Special Commissioner Hicks submits his findings on any expenses due and payable against the injunction bond he shall submit his own invoice for his time and expense in acting as Special Commissioner, which shall be paid by such parties, or either of them, as is ordered to make such payment by this Court within 30 days after such recommendations are filed.

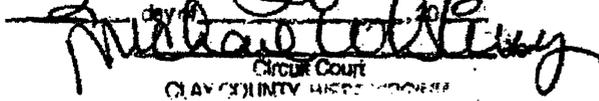
Ordered this 1st day of ~~November~~ February, 2011.


Richard A. Facecure, Judge
2/1/12

STATE OF WEST VIRGINIA
COUNTY OF CLAY, SS

I, MICHAEL W. ASBURY, Clerk of the Circuit Court of said County and in said State, do hereby certify that the foregoing is a true copy from the records of said court.

Given under my hand and the seal of said Court this

1st day of February, 2011.

Circuit Court
CLAY COUNTY, WEST VIRGINIA

James

IN THE CIRCUIT COURT OF CLAY COUNTY, WEST VIRGINIA

MULTIPLEX, INC., a West Virginia corporation; ART R. POFF and PAMELA POFF,

Plaintiffs,

v.

CIVIL ACTION NO. 10-C-62
Judge Face mire

TOWN OF CLAY; BOYLES & HILDRETH; and UNITED STATES SURETY COMPANY,

Defendants.

ORDER

This Court referred certain issues in this matter to Special Commissioner Elliot G. Hicks for findings and recommendations in a series of orders, the last of which was entered on February 5, 2011. Special Commissioner Hicks has issued a report dated November 14, 2011, making certain preliminary findings on the Town of Clay's entitlement to an undetermined amount of money from the bond posted by Multiplex. The Special Commissioner has now supplemented that earlier report with recommendations on the amount of money to which the Town of Clay is entitled.

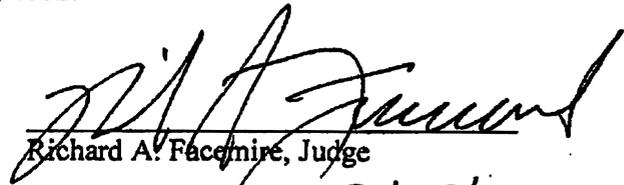
This Court, by this order, receives the Supplemental Report made by Special Commissioner, adopts all of the recommendations contained in the report, and incorporates those findings and recommendations into this order. More specifically, this Court orders the following:

1. The Town of Clay is entitled to the proceeds of the injunction bond posted by Multiplex in the amount of \$25,000, as the Town of Clay proved to this Court that it

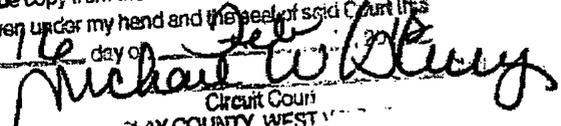
suffered such an expenses and costs resulting from Multiplex's having filed a Complaint for a Temporary Injunction, and then abandoning the Complaint before the Court could determine the merits of the Complaint.

2. Multiplex shall be responsible for all remaining costs of the referral to the Special Commissioner, including the Commissioner's fees in the amount of \$9,344.05 , which shall be paid within 30 days after the entry of this Order.

Ordered this 15th day of February, 2012.


Richard A. Face mire, Judge
2/15/12

STATE OF WEST VIRGINIA
COUNTY OF CLAY, SS
I, MICHAEL W. ASBURY, Clerk of the Circuit Court of said county and in said State, do hereby certify that the foregoing is a true copy from the records of said court.

Given under my hand and the seal of said Court this 16 day of Feb 2012

Michael W. Asbury
Circuit Court
CLAY COUNTY, WEST VIRGINIA

Ancil Ramey

IN THE CIRCUIT COURT OF CLAY COUNTY, WEST VIRGINIA

MULTIPLEX, INC., a West Virginia corporation; ART R. POFF; and PAMELA POFF,

Plaintiffs,

v.

Civil Action No. 10-C-62 Judge Face mire

TOWN OF CLAY; BOYLES & HILDRETH; and UNITED STATES SURETY COMPANY,

Defendants.

AGREED ORDER STAYING TOWN'S MOTION FOR SANCTIONS

Upon presentation of this Agreed Order by counsel of record, the Court is of opinion to and doth hereby STAY proceedings involving a motion for sanctions filed by defendant, Town of Clay, pending settlement negotiations between the parties, including but not limited to this Court's order regarding additional submissions by defendant, Town of Clay, and by plaintiff, Multiplex, Inc.

The Court directs that the Clerk provide a copy of this Agreed Order to counsel below upon its entry.

Entered this 21st day of February, 2012.

[Signature of Richard A. Face mire]
Hon. Richard A. Face mire, Judge
2/21/12

Presented by:

[Signature of Ancil G. Ramey]
Ancil G. Ramey, Esq.
WV Bar No. 3013
Stephoe & Johnson PLLC
P.O. Box 2195
Huntington, WV 25722-2195
Telephone (304) 526-8133
Counsel for Plaintiff

[Signature of Carl J. Roncaglione, Jr.]
Carl J. Roncaglione, Jr. Esq.
WV Bar No. 5723
1018 Kanawha Blvd., East
Suite 401
Charleston, WV 25301
Telephone (304) 342-3945
Counsel for Defendant Town of Clay

COUNTY OF WEST VIRGINIA
COUNTY OF CLAY, SS

I, MICHAEL W. ASBURY, Clerk of the Circuit Court of said County and in said State, do hereby certify that the foregoing is a true copy from the records of said court.
Given under my hand and the seal of said Court this 23 day of Feb 20 12

[Signature of Michael W. Asbury]
Michael W. Asbury
Circuit Court
CLAY COUNTY, WEST VIRGINIA

Ancil Ramsey

IN THE CIRCUIT COURT OF CLAY COUNTY, WEST VIRGINIA

MULTIPLEX, INC., a West Virginia corporation;
ART R. POFF; and
PAMELA POFF,

Plaintiffs,

v.

Civil Action No. 10-C-62
Judge Facemire

TOWN OF CLAY;
BOYLES & HILDRETH; and
UNITED STATES SURETY
COMPANY,

Defendants.

AGREED ORDER STAYING JUDGMENT PENDING APPEAL

Upon presentation of this Agreed Order by counsel of record, the Court is of opinion to and doth hereby STAY its JUDGMENT pending an appeal by plaintiffs to the Supreme Court of Appeals.

The Court directs that the Clerk provide a copy of this Agreed Order to counsel below upon its entry.

Entered this 28th day of February, 2012.

Received

[Signature]
Hon. Richard A. Facemire, Judge
2/28/12

Presented by:

FEB 28 2012

[Signature]
Ancil G. Ramsey, Esq.
WV Bar No. 3013
Steptoe & Johnson PLLC
P.O. Box 2195
Huntington, WV 25722-2195
Telephone (304) 526-8133
Counsel for Plaintiff

HONORABLE RICHARD A. FACEMIRE
FOURTEENTH JUDICIAL CIRCUIT

[Signature]
Carl J. Roncaglione, Jr. Esq.
WV Bar No. 5723
1018 Kanawha Blvd., East
Suite 401
Charleston, WV 25301
Telephone (304) 342-3945
Counsel for Defendant Town of Clay

STATE OF WEST VIRGINIA
COUNTY OF CLAY, SS
I, MICHAEL W. ASBURY, Clerk of the Circuit Court of said County and in said State, do hereby certify that the foregoing is a true copy from the records of said court.
Given under my hand and the seal of said Court this day of March, 2012
[Signature]
Michael W. Asbury, Clerk
Circuit Court
CLAY COUNTY, WEST VIRGINIA