

34750

IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA

ERIC CARPER,)
Plaintiff)

v.)

CHAD WATSON and)
BURKHART'S, INC.,)
a West Virginia corporation,)

Defendants.)

Civil Action No. 05-C-710
Judge Gray Silver, III

BERKELEY COUNTY
CIRCUIT CLERK
2008 MAY -6 AM 10:52
VIRGINIA SINE, CLERK

**ORDER DENYING PLAINTIFF'S MOTION FOR NEW TRIAL
AND GRANTING, IN PART, DEFENDANTS'
MOTION FOR COSTS PURSUANT TO OFFER OF JUDGMENT**

This day came the parties, by and through their respective counsel, James J. Matzureff, Esquire, on behalf of Plaintiff Eric Carper, and Macel E. Rhodes, Esquire, and the law firm of Zimmer Kunz, PLLC, on behalf of Defendants Chad Watson and Burkhardt's, Inc., and addressed the Court on two principal motions: **Plaintiff's Motion For New Trial and Defendants' Motion for Costs Pursuant to Offer of Judgment**. In doing so, the Court also disposed of a number of Motions related to the aforementioned principal motions, either granting or denying those incidental motions in such a way that allowed all of the evidence and argument to be heard and considered by the Court. That being done on the record, the Court hereby references, adopts and attaches the transcript of the Hearing on these matters, taken before Judge Gray Silver, III on January 8, 2008.

The Court also adopts and incorporates by reference all findings of fact, conclusions of law, and rulings made at trial and thereafter. Thus, after careful



consideration of all the relevant pleadings, the written and oral arguments of counsel for both Plaintiff and Defendants, the legal authority cited by the parties, and further independent legal research, the Court hereby makes the following rulings:

Considering first **Plaintiff's Motion for New Trial**, the Court finds that it allowed the Defendants only limited examination at trial into Plaintiff's financial assets and, therefore, overrules Plaintiff's argument that financial information elicited was unfairly prejudicial. The Court finds further that the trial testimony of Robert Cirincione, M.D., was free of any perjury whatsoever and, therefore, overrules Plaintiff's argument on that issue.

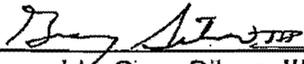
As such, given the foregoing, and with full incorporation and adoption of the full record of this case, together with the transcript of the instant hearing, this Court finds that Plaintiff's Motion for New Trial fails to meet its necessary burden, and as such, is **DENIED**. The exceptions and objections of the Plaintiff are noted.

The Court turns now to **Defendants' Motion for Costs Pursuant to Offer of Judgment**. The Court finds that the Offer of Judgment of \$35,000 made by the Defendants on June 8, 2007, was not extinguished by Defendants' subsequent offer to settle made two days before trial. The Court finds further that the trial judge has wide discretion in determining costs under Rule 68 and, as such, **GRANTS**, in part, Defendants' Motion for Costs Pursuant to Offer of Judgment, awarding Defendants \$7,012.07, as specifically itemized in the transcript of the Hearing of this matter, which is adopted and incorporated into this Order. The exceptions and objections of the Plaintiff are noted.

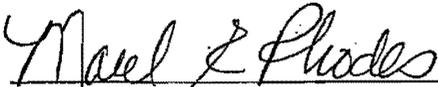
The Clerk is directed to enter this Order on and for the date set forth below and to forward attested copies hereof to counsel of record listed below.

(TRANSCRIPT OF HEARING OF JANUARY 8, 2008, ATTACHED)

ENTER: 5/5/08



The Honorable Gray Silver, III

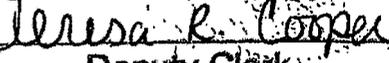


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A TRUE COPY
ATTEST

Virginia M. Sine
Clerk Circuit Court
By: 
Deputy Clerk

