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NO. _____
IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

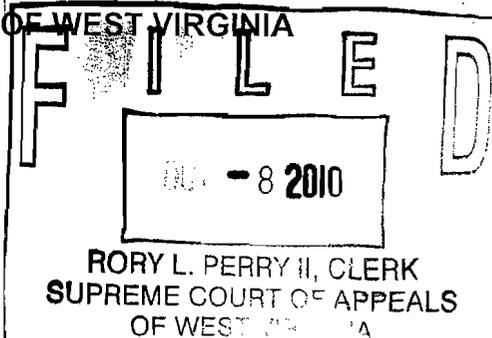
STATE OF WEST VIRGINIA, ex rel.
DARRELL V. McGRAW, JR.,
ATTORNEY GENERAL,

Petitioner,

v.

THE HONORABLE LOUIS H. BLOOM, JUDGE,
CIRCUIT COURT OF KANAWHA COUNTY,

Respondent.



Civil Action No. 10-MISC-372
(before the Circuit Court of
Kanawha County)

PETITION FOR WRIT OF PROHIBITION

The State of West Virginia, ex rel. Darrell V. McGraw, Jr., Attorney General ("the State" or "Attorney General"), by counsel, Norman Googel, Assistant Attorney General, hereby files this Petition for Writ of Prohibition praying that a rule to show cause be issued directing the Respondent Louis H. Bloom, Judge of the Circuit Court of Kanawha County, to show cause why the Order entered August 19, 2010 requiring severance of all Respondents in the proceedings below should not be prohibited. In support of this Petition, the State represents as follows:

1. On August 18, 2010, the State filed a Petition to Enforce Investigative Subpoenas and for Related Relief ("Petition to Enforce") against eight internet payday lenders¹.

¹One of the Respondents below, Payday Loan Resource Center, LLC offers advice and assistance for a fee to West Virginia consumers in obtaining payday loans but does not fund the loans, as do the remaining seven Respondents.

2. Since November 6, 2006, the State has filed four subpoena enforcement suits, including the current one, against unlicensed internet payday lenders making usurious loans to West Virginia consumers.

3. Each of the previous suits joined multiple Respondents who failed or refused to respond to an identical investigative subpoena issued by the State.

4. All of the previous suits were assigned at random to Kanawha County Circuit Court judges; three of them, including the current one, were assigned to Respondent Judge Bloom.

5. Each of the previous subpoena enforcement suits were fully resolved in summary fashion after one brief court hearing by the presiding judge.

6. Out of 34 companies named as Respondents in the previous suits, only four appeared by counsel (three of them were affiliated); all four later reached full settlements with the State.

7. All other Respondents either defaulted (and thus were ordered to comply with the Subpoena) or were dismissed for lack of service (locating actual addresses for internet payday lenders can be difficult).

8. At no time did any of the four Respondents in the three previous suits, including the current suit, move to be severed, nor did any circumstances arise that would have warranted severance.

9. In the case at bar, Respondent Bloom entered an Order *sua sponte* on August 19, 2010 finding and concluding that the Respondents were not properly joined as parties pursuant to Rule 20(a) of the West Virginia Rules of Civil Procedure and directing the Clerk of the Kanawha County Circuit Court to divide the case into eight civil actions

(with the case involving Payday Loan Resource Center to be retained by him) and to assign the seven cases at random to other circuit court judges, each with a new civil action number and filing fee required.

10. On August 30, 2010, the State filed State's Motion to Alter or Amend Order with supporting legal authority requesting Respondent Judge Bloom to reconsider or rescind his Order severing the parties.

11. On September 23, 2010, the Respondent Judge Bloom entered an Order Denying Motion to Alter or Amend.

12. On September 23, 2010 the State filed a Motion for Stay with Respondent Judge Bloom to afford the State an opportunity to file a Petition for Writ of Prohibition with this Court.

13. On September 27, 2010, Respondent, Judge Bloom entered an Order Denying the Motion for Stay without providing any reason for the denial.

14. On September 27, 2010, the State filed a motion for stay of proceedings pending the filing of a petition for writ of prohibition with this Court.

15. As of this date, the Court has not acted upon the State's motion for stay.

16. Because this court did not grant the stay, the Clerk of the Circuit Court of Kanawha County was compelled to implement the Order that the state seeks to prohibit.

17. On October 1, 2010, the Clerk divided the State's Petition to Enforce below, Civil Action No. 10-MISC-372, into seven additional civil actions and billed the State an additional filing fee of \$145.00 for each case, for a total of \$1,240.00.

18. Notwithstanding the Clerk's required division of the case below into eight miscellaneous civil actions, none of the Respondents have been served and no proceedings have been conducted by the newly assigned Judges.

19. The State asserts that Respondent Judge Bloom has abused his discretion and exceeded his legitimate authority by entering the Order severing the Respondents and by refusing to stay the Order pending the filing of this Petition with the Court.

20. Unless this Court prohibits entry of the Order below, the State will be greatly hindered in its efforts to protect West Virginia consumers from usurious payday loans and in protecting the public from other predatory and unfair or deceptive practices in accordance with its obligation to enforce the West Virginia Consumer Credit and Protection Act, W. Va. Code § 46A-7-101, et seq.

21. A complete copy of all pleadings and orders in the case below is attached hereto as the Appendix and incorporated by reference herein.

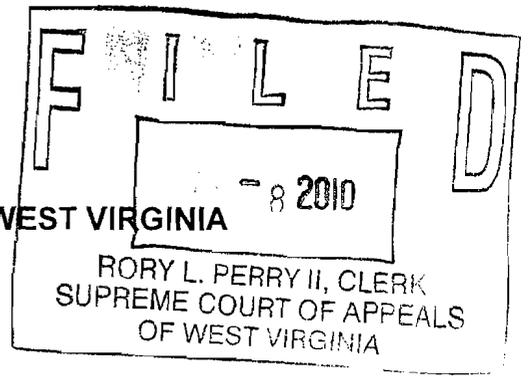
WHEREFORE, the State prays that this Court issue a rule directing the Respondent Judge Bloom to show cause why the Order entered on August 19, 2010 should not be prohibited.

STATE OF WEST VIRGINIA, ex rel.
DARRELL V. MCGRAW, Jr.,
By Counsel:



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Respondent.

MEMORANDUM OF LAW IN
SUPPORT OF STATE'S PETITION FOR
WRIT OF PROHIBITION

The Petitioner, State of West Virginia, ex rel. Darrell V. McGraw, Jr., Attorney General ("the State" or "Attorney General"), hereby files this memorandum of law in support of its Petition for Writ of Prohibition as set forth below:

I. INTRODUCTION AND OVERVIEW

Since November 6, 2006, the State has filed four subpoena enforcement suits, including the current one, against unlicensed Internet payday lenders making usurious loans to West Virginia consumers. Each suit joined multiple Respondents who failed or refused to respond to an identical investigative subpoena issued by the State.¹ Although the suits

¹The subpoena issued to Respondent Payday Loan Resource Center in the current case was modified slightly to reflect that it engages in "credit services" (it provides advice and assistance to consumers in obtaining Internet payday loans) but does not fund the loans.

were assigned at random to Kanawha County Circuit Court Judges, three of them (including the current one) were assigned to Respondent Judge Bloom.

As discussed in detail herein below, each previous suit has been fully resolved in summary fashion requiring only one court hearing. Out of 34 companies named as Respondents in the previous suits, only four appeared by counsel (three of them were affiliated); all four later reached full settlements with the State. All other Respondents either defaulted (and thus were ordered to comply with the subpoena) or were dismissed for lack of service (locating actual addresses for Internet payday lenders can be difficult.)

At no time did any of the 34 Respondents joined in three previous suits move to be severed, nor did any circumstances arise that would have warranted severance. If anything, the joinder of multiple Respondents worked to their advantage, as they could have pooled their legal resources to pose a common defense on the issue of jurisdiction, or the legality of their virtually identical lending practices.

If the Respondents in the three previous cases had been ordered severed, as occurred in the current case, there would have been 34 suits, 34 filing fees paid by the State, 34 court files to be created and maintained by the Circuit Court clerk, 34 memoranda of law, 34 hearings to be conducted by Kanawha County Circuit Court Judges, and 34 hearings to be attended by the undersigned counsel or other counsel for the State. In contrast, the previous cases were decided summarily by three hearings involving three Judges, collectively consuming a total of approximately 1.5 hours of court time.

If the current order requiring severance remains, the above-styled civil action (that would likely be resolved in the same efficient manner as the previous cases) will be required to proceed as eight civil actions requiring eight filing fees to be paid by the State,

eight memoranda of law, eight hearings to be conducted by eight Judges, and eight hearings to be attended by the State's counsel.

Unless the Respondent Judge Bloom's Order is prohibited, the State will be substantially hindered in carrying out its statutory obligation to protect the public from usurious payday loans and other unlawful practices as required by the West Virginia Consumer Credit and Protection Act, W. Va. Code §46A-7-101 *et. seq.*

II. PROCEDURAL HISTORY OF THE STATE'S INVESTIGATION OF INTERNET PAYDAY LENDING INDUSTRY.

In 2005 the Attorney General commenced an investigation of the Internet payday lending industry after receiving complaints from numerous consumers who had been victimized by payday loans that they obtained over the internet on their computers via interactive web sites owned or operated by companies based in other states and sometimes foreign countries.²

"Payday loans" are short term loans or cash advances, typically for 14 days, secured by a post-dated check, or when made over the Internet, secured by an Agreement authorizing an electronic debt for the full loan amount plus interest from the consumer's checking account.

Internet payday loans are electronically deposited into consumers' accounts and require payment of interest with annual percentage rates ("APR") ranging from 600 to 800 APR, more than 44 times greater than the maximum allowable rate (18% APR) for consumer loans in West Virginia.

²As of this date the State's investigation has resulted in settlement agreements with 107 Internet payday lenders and their collection agencies bringing nearly \$2.5 million in refunds and cancelled debts for 8,044 West Virginia consumers.

Based upon research and investigation conducted by the Attorney General's Consumer Protection Division, the Attorney General learned that all of the Internet payday lenders share the following characteristics:

1. All are non-bank entities and, therefore, would be required to obtain a license from the State before making loans in West Virginia and would be obligated to comply with the State's usury laws.
2. None are licensed to make loans in West Virginia.
3. All Internet payday loans are usurious as defined by W. Va. Code § 47-6-6.
4. All Internet payday loans are obtained by consumers on their computers via interactive web sites owned or operated by the lenders, and, therefore, the State of West Virginia has specific personal jurisdiction over the conduct of Respondents and their principals arising from their lending activities. See Zippo Manufacturing Company v. Zippo Dot Com, Inc. 952 F. Supp. 1119, 1124 (W.D. Pa. 1997); see also Quick Payday, Inc. v. Stork, 549 F.3d. 1302 (10th Cir. 2008)

The Attorney General learned that each Internet payday lender operated in West Virginia in a virtually identical manner. Thus, the State's investigation of this industry lended itself to a standardized approach that employed form letters and subpoenas, which frequently led to settlements.

When it became necessary to file suits to enforce subpoenas, the industry's standardized practices permitted the State to file a single suit to enforce subpoenas and to request injunctive relief against multiple unaffiliated parties. As of this date, the State has filed four enforcement actions (including the current one) against 42 party Respondents (some of them were affiliated). The State has labeled the actions Rounds I, II, III and IV, respectively. The State's previous subpoena enforcement action against

Internet payday lenders are outlined in Exhibit A, which is attached hereto and incorporated by reference herein.

In the three previous suits that have already been decided, only four of the 34 Respondents made an appearance (three of them were affiliated and represented by the same counsel); all four subsequently reached full settlement agreements with the State). The remaining 30 Respondents either failed to appear (which resulted in the State's Petition being granted against them) or were dismissed because they could not be located for service of process (very common for an industry that goes to great lengths to hide its physical location).

III. ARGUMENT

A. **RULE 20(A) MUST BE INTERPRETED TO ALLOW FOR THE BROADEST POSSIBLE SCOPE OF ACTION CONSISTENT WITH FAIRNESS TO THE PARTIES; JOINDER OF CLAIMS, PARTIES AND REMEDIES IS STRONGLY ENCOURAGED.**

In connection with this motion the Attorney General has surveyed the evolution of the law on what constitutes proper joinder of parties under Rule 20(a) of the West Virginia Rules of Civil Procedure as construed by federal courts and the West Virginia Supreme Court of Appeals. This research discloses that the court's decision to sever the Respondents, in the absence of a request by any party or just cause to do so, runs contrary to the letter and spirit of Rule 20(a) as determined by numerous federal courts.

In Saval v. BL LTD, 712 F. 2d 1027, 1031 (4 Cir. 1983), the court held that Rule 20(a) of the Federal Rules of Civil Procedure (which is identical to the state rule) "should be construed in light of its purpose, which is to promote trial convenience and expedite the

final determination of disputes, thereby preventing multiple lawsuits" (emphasis added), citing 7 C. Wright & A. Miller, *Federal Practice and Procedure*; Civil § 1652 (1972 & Supp. 1983). This principle as explained in Saval has been cited with approval and followed repeatedly in this jurisdiction as a basis for upholding joinder even in the face of requests by parties to sever. See, i.e., United States v. Gwinn, 2008 WL 867927, filed Mar. 31, 2008 (S.D.W.Va.)

For example, the court in Carbon Fuel Company v. USX Corp. 867 F. Supp. 414, 418 (S.D. Va. 1994) held:

Under [Rule 20(a)] joinder of parties-defendant is governed by the concepts of "same transaction" and "common questions of law or fact" (citation omitted). The "transaction or occurrence" test of [Rule 20(a)] would permit all reasonably related claims for relief by or against different parties to be tried in a single proceeding. Absolute identity of all events is unnecessary.

710 F. 2d 1031 (emphasis added), citing Saval, Id. Significantly, the court in Carbon Fuel Company further refined what is meant by the word "transaction" in Rule 20(a):

In defining the word transaction in a similar context, the Supreme Court has stated it 'is a word of flexible meaning. It may comprehend a series of many occurrences, depending not so much on the immediateness of their connection as upon their logical relationship.'

867 F. Supp. 418-419 (emphasis added), citing Moore v. New York Cotton Exchange, 270 U.S. 593, 610 (1926).

The trial court in the case at below concluded that severance was mandated because "there are no factual allegations of any connection between any of one of the Respondents. . ." (emphasis added). In other words, because the Respondents are all separate corporate entities (actually two are affiliated), they cannot properly be joined as

multiple Respondents in this action. In reaching this conclusion, the court has misconstrued the meaning of Rule 20(a)'s "same transaction or occurrence" test as it has been interpreted by many federal courts. As explained by Carbon Fuel Company, the seminal case in this jurisdiction, Rule 20(a) permits (in fact strongly encourages) that "all reasonably related claims for relief by or against different parties. . . be tried in a single proceeding" (emphasis added). 867 F.Supp. at 418, citing the Fourth Circuit in Saval, 710 F. 2d at 1027.

As Carbon Fuel Corp. further explained, it is not necessary that there be an "immediate connection" between the parties (i.e., they need not be the same company or corporate affiliates); rather, their need only be a "logical relationship" between them and the claims against the multiple parties need only be "reasonably related" such as to permit them to be tried in a single proceeding (emphasis added). Id. In the case at the bar, the court below has severed the parties solely because they are not connected to each other, even though the operative facts and applicable law are common to all of them.

B. THE COURT APPLIED THE WRONG STANDARD IN DETERMINING THAT THE PARTIES WERE NOT PROPERLY JOINED

In Jonas v. Conrath, 149 F. R.D. 520, 523 (S.D. W.Va. 1993), the court noted that: "A court has broad discretion in ruling on the requested severance under Rule 21" (emphasis added). However, the court explained that a different standard applied when determining misjoinder:

While Rule 21 is silent on the standard applicable for determining misjoinder, courts have uniformly held that parties are misjoined when they fail to satisfy either of the preconditions of permissive joinder set forth in Rule 20(a) . . . thus, misjoinder is present, and severance appropriate, when

the claims asserted by or against the joinder parties do not arise out of the same transaction or occurrence, or do not present some common questions of law or fact.

Id. (emphasis added). See also Hanna v. Gravett, 262 F.Supp. 2d 643, 647 (S.D.W.Va. 1993) (the parties are only misjoined “when they fail to satisfy either of the preconditions for permissive joinder”) (emphasis added).

This distinction between determining severance when requested and joinder was echoed most recently in Bryant v. Provost & Umphrey Law Firm, LLP, 2009 WL 5216977 (filed Dec 30, 2009 S.D.W.Va.), citing Carbon Fuel Company, 867 F.Supp. 419. The court in Bryant held: “Rule 21 applies when ‘the claims asserted by or against the joined parties do not arise out of the same transaction or occurrence or do not present some common question of law or fact” (emphasis added). Thus, although Rule 20(a) appears to require that a case must satisfy both criteria in Rule 20(a) for joinder to be proper, the courts have held that joinder is proper, and severance should not be granted, so long as the claims asserted against the joined parties satisfy either of the two Rule 20(a) criteria. In denying the motion to sever, the court in Bryant held: “Under the Rules the impulse is toward entertaining the broadest scope of action consistent with fairness to the parties; joinder of claims, parties and remedies is strongly encouraged” (emphasis added.) Id., citing Szantay v. Beech Aircraft Corp., 349 F.2d 60-66 (4th Cir. 1965); (“it is federal policy to encourage joinder in multi-party actions. . . .”) (emphasis added).

As explained above, the court below has too narrowly construed Rule 20(a)’s “same transaction or occurrence test” as mandating that all the Respondents must be connected. In fact, the State has satisfied both Rule 20(a) criteria because it has filed reasonably related claims against multiple parties that have a logical relation to each other.

Nonetheless, even if a motion to sever were filed, joinder would still be proper in this case so long as one of the criteria are satisfied.

IV. CONCLUSION

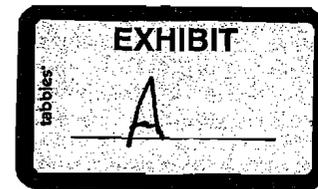
For these reasons, the State represents that the Respondent Judge Bloom has abused his discretion and exceeded his legitimate authority in issuing the subject order severing the Respondents below. Accordingly, the State prays that this Court issue a rule to show cause and grant the State's Petition for Writ of Prohibition.

STATE OF WEST VIRGINIA, ex rel.
DARRELL V. MCGRAW, Jr.,
By Counsel:



NORMAN GOOGEL (WV State Bar # 1438)
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THE STATE'S PREVIOUS LITIGATION AGAINST
INTERNET PAYDAY LENDERS



ROUND I -

State ex rel. McGraw v. Cash Advance Network, Inc.; Cash Advance USA; Cash Advance Marketing, Inc. d/b/a Cash Back Values; Cash Net; Leads Global, Inc. d/b/a Cash Today Limited and d/b/a Cash2day4you.com; GECC d/b/a Cashdirectnow.com; Americash Hotline, LLC d/b/a Direct Cash Express, LLC; Ambassador Financial Services d/b/a Nationwide Cash; Quik Payday.com Financial Solutions and USA Cash Center

Civil Action No.: 06-Misc-437
Filed: November 6, 2006
Judge Zakaib
Number of Hearings Held: **One**

Disposition: Prior to the hearing Apple Fast Cash Personal Loans and PayDay OK d/b/a PayDay Select entered into settlement agreements with the Attorney General. No parties appeared except for Leads Global, Inc., which represented that it was not a lender and requested a continuance. The court granted the Attorney General's Petition in full as to all remaining parties.

Subsequent to the hearing, the Attorney General also reached settlement agreements with Leads Global, Inc., American Interweb Marketing, Magnum Cash Advance, and Ambassador Financial Services.

ROUND II -

State ex rel. McGraw v. AeroAdvance Financial, Inc.; Cash Supply; Eastside Lenders.com; FTR Processing; Geneva-Roth Ventures; Interin Cash.com; Miami Nation Enterprises d/b/a Ameriloan, d/b/a Cash Advance, d/b/a US Fast Cash, d/b/a United Cash Loan; MTE Financial Services d/b/a 500 Fast Cash, d/b/a NoFaxingPaydayLoan.com, d/b/a PayCheckToday.com, d/b/a QuickestPaydayLoan.com, d/b/a Rio Resources; d/b/a XtraCash.com; d/b/a 1000Payday Cash.com; My Cash Now; Payday Max.com; Payday Services.com; Payday Yes.com; Preferred Cash; Route 66 Funding; Selling Source d/b/a Preferred Cash Loans.com; SFS, Inc. d/b/a One Click Cash; Web Payday

Civil Action No.: 07-MISC-364
Filed: September 5, 2007
Judge Bloom
Number of Hearings Held: **One**

Disposition: Three affiliated parties, Miami Nation Enterprises, MTE Financial Services and SFS, Inc., appeared by counsel and requested a continuance, which was granted. The court proceeded with the hearing on all parties who were properly served, none of which appeared. The court granted the Attorney General's petition as to those parties and dismissed the parties that were not serviced. Subsequent to the hearing, the Attorney General reached agreements with Aero-Advance, Inc., Cash Supply, Eastside Lenders.com, Geneva-Roth Ventures, Miami Nation Enterprises, MTE Financial Services, Payday Services.com, Payday Yes.com, SFS, Inc., and Web Payday.

ROUND III -

*State ex rel. McGraw v. Cash Advance Now; d/b/a PeoplesPayday.com; Debt Doctor, LLC
d/b/a Magnum Z, LLC; DirectROI db/a Cashwest Payday Loans; E Smart Credit Network
d/b/a www.YourLoanServices.com; Island Payday, LLC d/b/a www.islandpayday.com;
Platinum Finance Company, LLC d/b/a www.PaycheckNow.com;
Sonic Cash, LLC d/b/a Sonic Cash Online Payday Online*

Civil Action No.: 09-Misc-97

Judge Bloom

Filed: March 24, 2009

Number of Hearings Held: **One**

Disposition: No parties appeared in person or by counsel at the hearing. The court granted the Attorney General's Petition as to all parties who were properly serviced, Debt Doctors, LLC, Island Day, LLC, and Sonic Cash and dismissed those parties who were not served, Cash Advance Now, DirectROI, E Smart Credit Network, and Platinum Finance Company, LLC. Subsequent to the hearing, the Attorney General entered into settlement agreements with Debt Doctor, LLC and Island Payday, LLC.

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

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v.

Civil Action No.: 10-MISC-372
(before the Circuit Court of
Kanawha County)

THE HONORABLE LOUS H. BLOOM, JUDGE
CIRCUIT COURT OF KANAWHA COUNTY,

Respondent.

CERTIFICATE OF SERVICE

I, NORMAN GOOGEL, ASSISTANT ATTORNEY GENERAL, hereby certify that a copy of the foregoing "STATE'S PETITION FOR WRIT OF PROHIBITION AND MEMORANDUM OF LAW" was served this 8th day of October, 2010, by first-class United States mail, postage prepaid, upon:

Honorable Louis Bloom, Judge
Circuit Court of Kanawha County
111 Court Street
Charleston, WV 25301

Honorable Louis Bloom, Judge
c/o Mark Plantz, Prosecuting Attorney
Prosecuting Attorney's Office
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Charleston, WV 25301

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Moe Tassoudji
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Payday Loan Resource Center, LLC
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DirectROI d/b/a Cash West Payday Loans
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