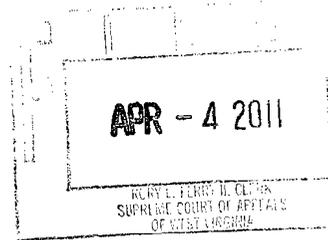


IN THE WEST VIRGINIA SUPREME COURT OF APPEALS

**THE AFFILIATED CONSTRUCTION
TRADES FOUNDATION, A DIVISION
OF THE WEST VIRGINIA STATE BUILDING
AND CONSTRUCTION TRADES COUNCIL,
AFL-CIO,**



Petitioner,

v.

**Appeal No. 35742
Kanawha County Circuit Court
Civil Action No. 04-C-3189
Judge James C. Stucky**

**WEST VIRGINIA DEPARTMENT OF
TRANSPORTATION, DIVISION OF HIGHWAYS;
THE WEST VIRGINIA BOARD OF EDUCATION;
THE MINGO COUNTY REDEVELOPMENT AUTHORITY; AND
NICEWONDER CONTRACTING, INC.**

Respondents.

**RESPONSE OF THE WEST VIRGINIA
DEPARTMENT OF TRANSPORTATION, DIVISION OF HIGHWAYS
TO THE INITIAL BRIEF ON APPEAL OF THE AFFILIATED CONSTRUCTION
TRADES COUNSEL, A DIVISION OF THE WEST VIRGINIA STATE BUILDING AND
CONSTRUCTION TRADES COUNCIL, AFL-CIO, FROM THE ORDER OF THE
CIRCUIT COURT OF KANAWHA COUNTY THAT GRANTED DEFENDANT
NICEWONDER CONTRACTING, INC.'S MOTION FOR SUMMARY JUDGMENT
BASED ON PLAINTIFF'S LACK OF STANDING**

Presented by:

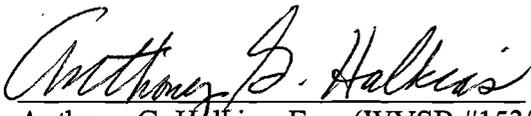
**Anthony G. Halkias, Director (WV State Bar No. 1535)
Jeffrey J. Miller, Asst. Director (WV State Bar No. 4277)
W. Va. Department of Transportation, Division of Highways
Legal Division
Rm. A517, B-5
1900 Kanawha Boulevard, East
Charleston, WV 25305-0430
Telephone 304-558-2823**

As no material changes from Appellant Affiliated Construction Trades Foundation's Petition for Appeal appear in its Initial Brief on Appeal, the West Virginia Department of Transportation, Division of Highways ("WVDOH") reiterates and incorporates herein by reference its Response to Appellant's Petition for Appeal as its Response to Appellant's Initial Brief on Appeal, and prays that the granting of summary judgment by the Circuit Court of Kanawha County be affirmed.

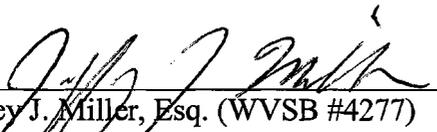
Respectfully Submitted,

**WEST VIRGINIA DEPARTMENT OF
TRANSPORTATION, DIVISION OF
HIGHWAYS,**

By counsel



Anthony G. Halkias, Esq. (WVSB #1535)



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IN THE WEST VIRGINIA SUPREME COURT OF APPEALS

**THE AFFILIATED CONSTRUCTION
TRADES FOUNDATION, A DIVISION
OF THE WEST VIRGINIA STATE BUILDING
AND CONSTRUCTION TRADES COUNCIL,
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**Appeal No. 35742
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**WEST VIRGINIA DEPARTMENT OF
TRANSPORTATION, DIVISION OF HIGHWAYS;
THE WEST VIRGINIA BOARD OF EDUCATION;
THE MINGO COUNTY REDEVELOPMENT AUTHORITY; AND
NICEWONDER CONTRACTING, INC.**

Respondents.

CERTIFICATE OF SERVICE

I, Jeffrey J. Miller, counsel for the West Virginia Division of Highways, do hereby certify that I have served a true and correct copy of **Response of the West Virginia Department of Transportation, Division of Highways to the Initial Brief on Appeal of the Affiliated Construction Trades Counsel, a Division of the West Virginia State Building and Construction Trades Council, AFL-CIO, from the Order of the Circuit Court of Kanawha County that granted Defendant Nicewonder Contracting, Inc.'s Motion for Summary Judgment based on Plaintiff's Lack of Standing** by depositing same in the United States mail, postage prepaid, this 4th day of April, 2011, addressed as follows:

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