

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

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DOCKET NO. 12-0959

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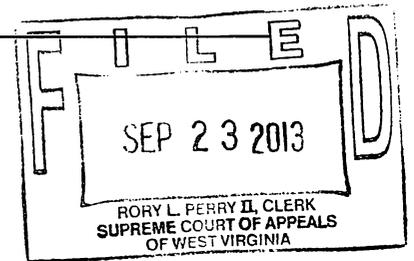
**Board of Trustees  
of the Weirton Policemen's  
Pension and Relief Fund,**

**Plaintiff Below,  
Petitioner,**

v.

**The Jones Financial Companies, LLLP,  
EDJ Holding Company, Inc.,  
Edward D. Jones & Co., L.P., and  
Curt Randy Grossman,**

**Defendants Below,  
Respondents.**



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**RESPONDENTS' RULE 10(i) NOTICE OF ADDITIONAL AUTHORITIES**

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Counsel for Respondents

Respondents respectfully submit this Notice of Additional Authorities pursuant to Rule 10(i) of the Rules of Appellate Procedure. Petitioner's appeal was perfected on October 24, 2012. Respondents filed their Opposition on December 10, 2012, and Petitioner filed its Reply on December 31, 2012.

On June 24, 2013, this Court issued a Memorandum Decision in *Price v. Morgan Financial Group*, No. 12-1026 (W.Va. Supreme Court, June 24, 2013)(memorandum decision). The petitioner in *Price*, a teacher, asserted claims for negligence against her financial planner and retirement account broker based on their alleged failure to timely roll over her account to the West Virginia Teacher's Retirement System. The respondents moved to compel arbitration based on the arbitration agreement provision in the account agreement governing their relationship with petitioner. The circuit court granted respondents' motion and petitioner appealed. *Id.*

This Court affirmed the circuit court's decision. In affirming the decision, this Court held that to be unenforceable, a contract term must, at least in some small measure, be both procedurally and substantively unconscionable. In finding that there was no procedural unconscionability, this Court held that although the arbitration agreement was a contract of adhesion, the agreement to arbitrate was conspicuous and distinct. There was no evidence that the parties were on unequal footing when the agreement was signed. Concerning substantive unconscionability, this Court held that the paramount consideration was mutuality, and that there was no evidence that the petitioner would have been required to bear any greater burden than respondents in the circumstances of arbitration. *Id.*

The facts and issues in *Price* are substantially similar to those in this matter, and the result should be the same. In *Price*, the petitioner was a teacher; in this matter the petitioner is a board of trustees comprised of a dozen policemen and two mayors. The arbitration agreement in *Price* was part of the financial account agreement and acknowledgement. The arbitration agreement in this matter was also a part of the financial account agreement and acknowledgement. Both agreements were distinctly identified and contain very similar language. Finally, the Court in *Price* held that there was no evidence of procedural or substantive unconscionability to render the arbitration agreement unenforceable. The Circuit Court in this matter found the same, and the record is devoid of any evidence to the contrary.

A few days before this Court issued *Price*, it issued a decision in *Credit Acceptance Corp. v. Front*, 231 W.Va. 518, 745 S.E.2d 556 (June 19, 2013). In *Credit Acceptance Corp.*, this Court held in Syllabus Point 4 that a state statute, rule or common-law doctrine which targets arbitration provisions for disfavored treatment, and which is not usually applied to other types of contract provisions, stands as an obstacle to the accomplishment and execution of the purposes and objectives of the Federal Arbitration Act, 9 U.S.C. §2 and is preempted. Applying the syllabus point, this Court stated that insofar as an arbitration agreement, by its very nature, requires a party to surrender his or her right to litigate, it may not be invalidated solely upon that ground. This holding rebuts Petitioner's argument in subparagraph D of its argument section that the underlying arbitration agreement is unenforceable because Petitioner waived its right to a jury trial.

Pursuant to Rule 10(i) of the Rules of Appellate Procedure, Respondents respectfully submit the foregoing authority for consideration by the Court in the resolution of this matter.

Respectfully submitted,

**THE JONES FINANCIAL COMPANIES,  
LLP, EDJ HOLDING COMPANY, INC.,  
EDWARD D. JONES & CO., L.P., and  
CURT RANDY GROSSMAN**

By: Spilman Thomas & Battle, PLLC



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**CERTIFICATE OF SERVICE**

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I certify that service of the foregoing **RESPONDENTS' RULE 10(i) NOTICE OF ADDITIONAL AUTHORITIES** has been made upon counsel of record by placing a true copy thereof in the regular course of the United States Mail, postage prepaid, on this 20th day of September, 2013, addressed as follows:

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