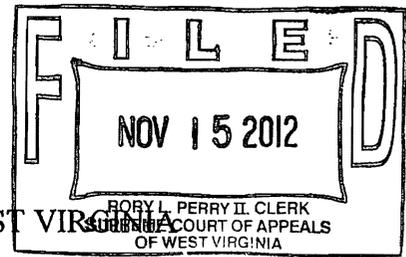


No. 12-0719



IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

HESS OIL COMPANY, INC.,

Defendant Below, Petitioner,

v.

(Circuit Court of Harrison County
Civil Action No. 10-C-20)

AIG DOMESTIC CLAIMS, n/k/a
AIG CLAIMS, INC., and
COMMERCE AND INDUSTRY INSURANCE COMPANY,

Defendants Below, Respondents.

**REPLY BRIEF ON BEHALF OF PETITIONER,
HESS OIL COMPANY, INC.**

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COUNTER PRELIMINARY STATEMENT

Consistently, the Respondent urges this Court to sit as jurors, retrying the case with its same evidence in the hope of a different result. It presents only its unilateral interpretation of the facts failing to address the undisputed evidence presented by Hess Oil Company, Inc. (“Hess”). The jury found that the actual evidence established that AIG Domestic Claims, Inc. (“AIG-DC”) and Commerce and Industry Insurance Company (“C&I”) (collectively, “AIG”) maliciously and intentionally disclaimed coverage, and its refusal to acknowledge the facts is the same strategy that resulted in a verdict intended, in part, to instruct AIG to treat the facts, and its insureds, fairly.¹

AIG is correct in its rendition of the testimony of Mileidy Perez, the AIG claims adjustor, who disclaimed coverage in 2009 on Hess’ 1999 environmental claim at Mt. Storm more than a decade later. However, AIG omits that the jury squarely rejected Perez’s testimony that she “discovered on her own” that the West Virginia Department of Environmental Protection (“DEP”) had issued a Confirmed Release-Notice to Comply in April 1997 (“1997 Notice”). AIG ignores the testimony of the DEP investigator who issued the 1997 Notice confirming Hess’ position that it only represented minor tank pit overflow/overfill (*Tr. 12:1090, Sneberger*), that it was cleanup and the matter closed to the DEP’s satisfaction in 1998 (*Tr. 12:1107, Sneberger*) that the 1997 Notice and the spill discovered in February 1998 with the discovery of fumes at a neighboring property, and subject of the instant claim, were two completely separate events (*Tr. 12:1105, 1108, Sneberger*), that the LEAK Id. No. issued by the DEP in 1997 to the Mt. Storm site pertained to the location not the contamination event (*Tr. 12:1103, 1160, Sneberger*) or that Ms. Perez was positively evaluated by AIG for “revisiting” of prior coverage determinations. (*Tr. 12:1569, Perez*) Perhaps it was that no one from AIG, including Perez, ever bothered to contact any DEP official in 1999, before disclaiming coverage or prior to trial to check out the facts.

AIG’s claim that no economic damage was presented is without merit. AIG ignores substantial

¹ AIG Domestic Claims changed its name to Chartis Claims, Inc. (*Tr. 11:190, 12:1751, Tinney*)

evidence regarding Ryan Environmental's ("Ryan") \$252,000 claim against Hess, attorneys' fees incurred by Hess, and costs to complete cleanup of the Mt. Storm location which it abandoned as a result of its bad faith disclaimer of coverage based upon a conjured "coverage dispute" which also caused Hess to be sued. (*AIG's Rsp. at 13*) All of these losses were the liability of Hess' former shareholders had AIG prevailed. (*AIG's Rsp. at 33*) AIG ignores that its failure to object to the general verdict form on damages renders its assertions regarding its makeup sheer speculation. (*See, Hess Rsp, No. 12-0705, at 21*) Had AIG simply been acting on a "good-faith interpretation" of the policy," there was ample opportunity to reverse its course when the evidence was clear to drop its own one million dollar claim against Hess, and release its former shareholders from liability, instead pursuing a course which would have financially destroyed them to the bitter end. (*AIG's Rsp. at 1*)

While Hess did complete a renewal application on October 30, 1997, glaringly omitted from AIG's Preliminary Statement is that Hess maintained an insurance policy with AIG, effective October 21, 1996 through October 21, 1997, bearing policy number ST6163330, with an October 1, 1995 retroactive date possessing the same policy limits and conditions as the renewal policy, rendering its claim of misrepresentation of a known environmental claim in April 1997 illogical. (*See Dec. Page 10/21/96 Policy, Hess Tr. Ex. 1-A, A5:3333-3349 at A3343*) Also omitted is that Hess completed two applications for insurance in October 1997 on October 15, 1997 and October 30, 1997. (*10/15/97 App. for Ins., Hess Tr. Ex. 13, A5:3388-A3393; .10/30/97 Application for Ins., Hess Tr. Ex. 14, A5:3415-3418*) AIG fails to reference the October 15, 1997 application, because they never found it or any prior application. (*Tr. 11:927 Perez*), despite undisputed evidence establishing that it existed (*Tr. 11:436-437, Holliday*), and never told Hess it was lost. (*Tr. 11:914, Perez*)

In support of its self-serving narrative, AIG asserts that Hess' October 30, 1997 application was so incomplete and misleading that the policy should not have been issued in the first place. (*AIG Rsp. at 1*) First, if the application was incomplete, then, arguably AIG should not have issued the policy, however, an issue to be addressed with the AIG underwriter, not used to negate coverage for its

insured a decade later. More important, in the October 30, 1997 application, Hess clearly disclosed “prior leaks,” however, AIG never bothered to follow-up with that disclosure in 1997 or before AIG disclaimed coverage in 2009. Had it done so anytime prior to trial, it would have discovered that two separate environmental events occurred on the Mt. Storm Location - one in 1997 and one in 1998 - as the jury in this case easily concluded. (*Tr. 12:1105, 1108, Sneberger*)

Next, assuming *arguendo* that AIG’s fiction as to the applications is plausible, nowhere, either in the record or in AIG’s multiple briefs, is any evidence proffered that AIG would not have issued the renewal policy to Hess regardless. Of course, such a contention would have been contrary to the testimony of AIG’s authorized selling agent that such policies were routinely issued despite prior contamination. (*Tr. 11:753, Resch Depo. read at trial*) While AIG contends that is the case now, the entire record is devoid of evidence to support this contention and no evidence was presented to the jury. It is also undisputed that AIG accepted the premiums for the policy at issue.

AIG also does not dispute that the policy contained an automatic renewal provision (*Tr. 11:533, Terpstra*) and that its practice was to “issue renewals automatically even if we don’t have an application at that time.” (*Tr. 11:933, Perez*) Hess’ policy was renewed effective October 21, 1997 through October 21, 1998, bearing policy No. ST6169323, with the same retroactive date, same policy limits, and obligations as Hess’ immediately preceding AIG policy.² (*See C&I Policy, Hess Tr. Ex. 13-A- at A5:3394-3414*) By separate endorsement, Endorsement No. 9, Hess purchased an extended reporting period through May 5, 1999 for its Mt. Storm location, based on advice of AIG’s authorized selling agent.³ (*Tr. 11:763-674, Resch; 07/16/99 Ltr., Perez to Bill Brown, Hess Tr. Ex. 22 at A5:3466*) Such endorsements were automatically effective upon payment of an additional premium to AIG. (*Tr. 11:763, Resch*)

² The initial AIG policy, effective October 21, 1996, and all subsequent renewals, provided the same UST coverage to Hess, liability limit of \$1 million and self-retention \$25,000. (*Dec. Page 10/21/96 Policy, Hess Tr. Ex. 1-A, A5:3333-3349 at A3343; Dec. Page 10/21/97 Policy, Hess Tr. Ex. 15 at A5:3420*)

³ The Mt. Storm location was deleted from the policy as Hess sold the tanks to the owner for \$1.00 after paying for replacement. (*See 07/16/99 Letter, Perez to Bill Brown, Hess Tr. Ex. 22 at A5:3465*)

After being sued by Ryan as a result of AIG's bad faith denial of coverage, Hess filed a cross-claim against AIG. (*A1:42 Ans., Affirm. Defenses, Decl. Action and Cross-Claims of Hess*) It is without question that Hess was sued for \$252,000 by Ryan solely as a result of AIG's conduct, yet, despite getting its insured sued, AIG failed to provide a defense, forcing Hess to fend for itself. (*Tr. 11:832-833, Perez; Tr. 11:422, Bill Brown*) AIG sued Hess, its own insured, for \$622,000, and later added its settlement of Ryan's claim for a total of \$822,000 - knowing the liability for such claim was born by Hess' former shareholders. (*A1:403, Ans., Affirm. Defenses, and Cross-Claims of AIG*)

The record is replete with evidence of AIG's conduct and the basis for the jury's compensatory and punitive damages awards. AIG now complains about reference to executive compensation, testimony to which AIG failed to object at trial, and asks this Court to speculate that it was from such evidence that the punitive award was based. AIG offers nothing, but speculation, failing to properly preserve such objection at trial. It was AIG's conduct that justified the punitive damage award.

The reality of the trial transcript compared to AIG briefs and citations on appeal demonstrates that AIG's simply ignores the reality that the jury saw all too well.

REPLY TO COUNTERSTATEMENT OF THE CASE

A. THE DECADE LONG COVERAGE OF HESS' CLAIMS

AIG's basic recitation regarding the insurance policy, its renewal and the submission of Hess' claim in 1999 is accurate although it completely ignores overwhelming unfavorable evidence.⁴ Omitted from AIG's recitation is reference to the October 15, 1997 application (*See Hess Tr. Ex. 13, 10/15/97 App. for Ins. at A5:3388*) completed by Hess and that the October 30, 1997 application made reference to previous applications, which AIG chose to ignore. (*See Hess Tr. Ex. 14, 10/30/97 App. for Ins. at A5:3415*) The jury correctly resolved the factual question of accuracy raised by AIG. The October 30, 1997, AIG application asked Hess: "Question No. 9: [i]s there a history of leaks or

⁴ Hess set out its Statement of the Case, in full, in its opening brief filed in the instant appeal. Hess then expanded upon that Statement of the Case in response to AIG's Brief in Appeal No. 12-0705. Hess incorporates each Statement of the Case by reference.

releases at this facility not stated above?” Hess plainly responded “Y,” with the explanation “See previous applications.” (See *Hess Tr. Ex. 14, 10/30/97 App. for Ins. at A5:3415*) Neither at the renewal in 1997 or prior to the disclaimer of coverage in 2009, did AIG ever investigate the disclosure in the application, yet they could not locate a single “prior” application in 2009. (*Tr. 11:927, Perez*) No one from AIG investigated the disclosure which would have yielded information regarding the minor overspill/overflow contamination from the 1997 Notice. (*Tr. 11:841, Lokos*)

Hess’ October 15, 1997 application which AIG “lost,” provided, in response to Question No. 7: “[h]ave you, during the past five years, had any reportable releases or spills or regulated substances, hazardous waste or other pollutants, as defined by applicable environmental statutes or regulations” Hess responded, “Y” “[c]onfirmed release that was cleaned up.” (See *Hess Tr. Ex. 13, 10/15/97 App. for Ins. at A5:3388*) At trial, AIG claimed never to have relied upon this application, because AIG never found it or any other “prior” application, even though Hess’ policy was renewed on October 21, 1997, before the October 30, 1997, application. (*Tr. 11:927, Perez*) Moreover, Eileen Holliday, a former employee of Brown Family Hess Oil testified, without rebuttal by AIG, that she completed the October 15, 1997 application and that it was her own handwriting. (*Tr. 11:436-437, Holliday*) She testified that she dealt with DANA, AIG’s authorized selling agent, and that she would have sent the application to the address that was provided to her. *Id.*

In 1999, Brenda Brown was asked by AIG adjustor Douglas Terpstra to gather the expenses that Hess incurred at the Mt. Storm Location for reimbursement. (*Tr. 12:1378, Brenda Brown*) The AIG Defendants reimbursed invoices pertaining to the investigation of gasoline vapors at the church initiating discovery of the 1998 Release, however, invoices relating to the 1997 Notice - the tank pit contamination, tank replacement, and the investigation by Subsurface - were not approved.⁵ (*Tr. 11:1380-1381;12:1379, Brenda Brown*) AIG admitted that it did not make payments relating to

⁵ It was Hess’ notice of intent to the DEP in April 1997 to replace the tanks at Mt. Storm that lead to a routine inspection noticing the overflow/overflow contamination and the 1997 Notice. (*Tr. 12:1068, Sneberger; A8:6439*) The tanks were not removed in response to the 1998 Release, as AIG contends, but were being removed in a routine replacement and, in the process, remedying the 1997 Notice of minor contamination when the 1998 Release was first discovered. (*Tr. 12:1608, Sneberger; Tr. 11:366, Brown*)

“tank testing” or “investigative costs” related to the 1997 Notice betraying the fact that AIG knew in 1999 that it was a separate event.⁶ (*AIG Rsp. at 4*)

AIG’s unsupported inference notwithstanding, the time period between the discovery of vapors in February 1998, giving rise to discovery of the 1998 Release and the notice of claim to AIG was a function of its own policy terms. (*A1:213, C&I’s Storage Tank Third Party Liability, Corrective Action and Cleanup Policy Renewal Declarations for Hess for Policy Period of 10/21/1997 to 10/21/1998*) The policy required the insured to investigate any potential contamination before making a claim. *Id.* Hess did not believe the 1998 Release was its responsibility because its investigation of the 1997 Notice confirmed no loss of product and nothing more than minor overfill/overflow that was routine at the time. This conclusion was confirmed by the DEP. (*Tr. 12:1077, 1090, Sneberger*) Hess contested the DEP’s conclusion that it was responsible for the 1998 Release. This led to the confrontational communications erroneously relied upon by AIG. (*Tr. 11:309, Brown*) Without investigation, AIG accepted that Hess was responsible in 1999 and still cannot pinpoint the source even today. (*Tr. 11:677, 723, Schmidt*)

B. AIG’S DISCOVERY OF THE 1997 RELEASE

Nine years after the remediation began at Mt. Storm, it still was incomplete. (*Tr. 11:496, 551 Terpstra; Tr. 11:785, 788, 795, 802, 837, Lokos*) It is undisputed that AIG, prior to 2008, never sent anyone to the Mt. Storm site, nor had they previously authorized the use of ground penetrating radar. (*Tr. 11:663, Schmidt; Tr. 12:1643, Simon; Tr. 12:1513, Perez*) Michael Schmidt, AIG’s environmental specialist, on whose opinion Perez relied to pull Hess’ coverage, testified that a source and timing investigation which would have revealed the source of the 1998 release, was never performed. (*Tr. 11:661, Schmidt*) According to Schmidt, AIG did not know the source of the 1998 release, at the time of trial. (*Tr. 11:677, 723, Schmidt*) Schmidt testified that even after ten years, AIG still did not have the facts necessary to determine that the release AIG remediated for 10 years

⁶ The AIG Defendants never bothered to speak with Terpstra, the AIG adjuster in 1999 who found coverage, even though he worked for AIG continuously through the trial.

had anything to do with the Mt. Storm site. (*Tr. 11:723 Schmidt*)

In support of Perez's sudden investigation into the history of the claim, AIG claims that Perez did so to justify an increase in the reserves. (*AIG Rsp., at 4*)⁷ It was at this time, despite controlling the remediation for over nine years, that AIG first sought to determine if there were other sources of contamination at Mt. Storm. (*Tr. 12:1509, 1511, Perez*) Attempting to distance itself from its inability to locate documents pertinent to the claim and application process by noting that the file was maintained by a third-party underwriter, AIG asserts that although Perez conducted a very thorough search, she was unable to find the Tank Closure Report for the tank replacement. (*AIG Rsp. at 5*) To be clear, the underwriter was Sedgwick James, AIG's Managing General Agent. (*Tr. 11:750, Resch*) According to selling agent Resch, AIG authorized the managing general agent to issue policies on its behalf. *Id.* AIG makes no mention of the fact that these critical documents were not in the claim file which it was required to maintain under the law. In fact, AIG admits that it requested that Ryan conduct a FOIA request to the DEP for historical documents in 2009. (*AIG Rsp. at 5*) It is without question that had AIG performed a proper investigation and documented its claim file at any time during the pendency of the claim or maintained its file regarding the investigation it conducted in 1999, the documents would have been available to AIG as all were in DEP possession the entire time. Had AIG established procedures for performing investigations and documenting the claims file, the information would have been in claim file.⁸ Instead, AIG violated West Virginia law and attempted to shift the blame for its lack of documentation on its insured.

AIG omits, but the jury heard, that Perez also discovered that completion of the Mt. Storm cleanup to DEP satisfaction would cost up to an additional \$1 million (*Tr. 12:1572-1573, Perez*) - far in excess of Hess' then-remaining policy limits. (*Tr. 12:1516, Perez*) Not coincidentally, Perez then

⁷ The alternative, and more likely inference, is that AIG was looking to avoid further liability on this claim when it became apparent that AIG had mismanaged the cleanup and costs in excess of policy limits would be incurred. There is no evidence that AIG had taken any similar steps during the preceding decade.

⁸ Demonstrating a corrupt corporate culture, AIG's own employees was presented testimony that it did not train its adjustors, had no written policies or procedures for claims adjustment or the documentation of the claims file. (*Tr. 11:509, Terpstra; 11:615-616, 624, 626, Schmidt; 11:799, Lokos; 11:894, Perez*)

began looking for other contamination sources and Hess' Tank Closure Report. Perez then disclaimed coverage without speaking to a single DEP employee, even though AIG was in constant communication. (*Tr. 11:956; Tr. 12:1560, Perez*) From this evidence, the jury easily inferred that Perez's goal was to avoid liability for AIG, not justify reserves. The reality was that AIG had supervised the cleanup for a decade. (*Tr. 11:607, 653-655, Schmidt; 12:1286-1287, Anderson*)

C. DEP CORRESPONDENCE WITH HESS

Regarding the "lengthy series" of notices and letters received by Hess from the DEP, AIG relies upon the Leak ID No. (a/k/a LUST No.) to infer the 1997 Notice and the 1998 Release were a single event. DEP Inspector Sneberger testified that the number relates to the site, not to a particular spill event. (*Tr. A12:1103-05; 1160, Sneberger*) This was confirmed by Allan Anderson, Ryan's lead representative. (*Tr. A12:1298, Anderson*) While the 1997 Notice was received by Hess prior to the inception of the October 1997 renewal policy, the undisputed evidence is that when it was received, Hess was insured under an AIG policy effective October 21, 1996, had there been any claim related to the 1997 Notice. (*Dec. Page Effective 10/21/96, Hess Tr. Ex. 1-A, A5:3333-3349 at p. A3343*).

Although Hess had no recollection of the DEP letter of September 1997, contrary to AIG's interpretation, the un rebutted evidence established that Hess had already addressed the DEP's concerns therein. Bill Brown testified that all information sought by the September 1997 letter already had been provided to DEP's Sneberger. (*Tr. A11:293, Brown*) Sneberger confirmed that the letter was a routine form letter, that he had already received all of the information sought, and that Hess had complied with the time frames and other DEP requests per the 1997 Notice. (*Tr. A12:1106, Sneberger*) AIG had no rebuttal. Sneberger further explained that such letters were automatic and that the geologist issuing the letter was likely unaware of the documentation that Sneberger possessed before it was sent. (*Tr. A12:1106-07, Sneberger*) In addition, the evidence also showed that Hess had submitted the Corrective Action Plan or Assessment Report. (*Tr. A12:1135-36, Sneberger*) AIG's representations of fact are incomplete, at best, and collectively misleading.

AIG infers that Hess had failed to provide the Corrective Action Plan requested by the DEP or cleanup the spill relating to the 1997 Notice, but that too was refuted by DEP inspector, Sneberger, responsible for oversight. *Id.* While Hess did pay a fine to the DEP, it pertained to Hess contesting liability for the 1998 Release - not the 1997 Notice. As Bill Brown testified, everything related to the report of fumes leading to discovery of the 1998 Release. (*Tr. 11:310, Bill Brown*) Sneberger, the only DEP official called to testify, confirmed Hess' conclusion, as he unequivocally testified the minor overfill/overflow contamination leading to the 1997 Notice was cleaned up in 1998. (*Tr. 12:1107, Sneberger*) Hess' expert, Lawrence Rine, agreed. (*Tr. 12:1353, 1359, Rine*)

D. FAILURE TO PROVIDE ADDITIONAL INFORMATION TO AIG

Using references to Schmidt's claim history review, AIG maintains, as it did at trial, that the 1997 Notice and 1998 release were a single event. (*AIG Rsp. at 8*) To the contrary, during this testimony at trial, Schmidt agreed that even after ten years, AIG still did not have the facts necessary to conclude that the release it had remediated for 10 years had anything to do with the Mt. Storm site and that the source of the 1998 Release was unknown. (*Tr. 11:677, 723, Schmidt*) Schmidt testified that there was free product found in the 1998 Release. (*Tr. 11:673, Schmidt*) Schmidt admitted that, based upon his review of the 1997 Notice and subsequent testing, there was no free product discovered in relation to the 1997 Notice - confirming that there were two separate events. (*Tr. 11:672, Schmidt*) Schmidt also testified that *Hess would not have known nor should it have known that there was anything else on the Mt. Storm site in 1997 other than minor contamination in the tank pit*, (*Tr. 11:689, Schmidt*) critical to AIG's claim of misrepresentation on Hess' applications. Perez never asked Schmidt what Hess knew or should have known in 1997, and he was instructed to do only what Perez asked. (*Tr. 11:694, Schmidt*)

While AIG's expert agreed with AIG's contention of a single release, Anderson, Ryan's contractor remediating the release, and Larry Rine, Hess' expert witness, each testified that the 1997 Notice and the 1998 Release were two separate events, (*Tr. 12:1299, Anderson; Tr. 12:1353, 1359,*

Rine), as did Sneberger. AIG recklessly infers that Donald Martin and Michael Sutphin of the DEP opined that there was a single release, however, neither of these individuals were called to testify and both would have deferred to Sneberger. In direct contradiction to AIG's "one event" argument, Sneberger confirmed that the minor contamination subject of the 1997 Notice was cleaned up to the DEP's satisfaction in 1998.⁹ (*Tr. A12:1107, Sneberger*) AIG failed to offer any evidence to the contrary. In fact, AIG never checked with a single DEP official prior to disclaiming coverage or before trial. (*Tr. 11:956; Tr. 12:1560, Perez*)

Attempting to shift its burden of proving policy exclusions, as well as its duties, AIG complains about Hess' failure in 2009 to provide "additional information that Chartis should consider before making its final coverage determination." (*AIG Rsp. at 9*) By 2009, Bill Brown was retired and not well and his brother Tom, primarily responsible for environmental issues, had died unexpectedly in 2005. (*Tr. 11:164, Bill Brown*) Hess had dissolved and, after a decade, records were hard to locate and events forgotten. Even then, the Browns attempted to assist relying on the help of DANA, AIG's authorized selling agent.¹⁰ AIG's attempt to imply nefarious conduct by the Browns, after a decade passed, is ludicrous when AIG could not find its own file documentation. (*Tr. 11:927-928, 931, Perez*) It is without question that Perez never asked Brown for specific information, never told him what documents had been lost by AIG, nor did she tell Brown what she needed. (*Tr. 11:914, Perez*) Contrary to AIG's false inference, it attempted to shift the burden to its insureds to prove continuing entitlement to coverage and disprove exclusions. This is a textbook definition of insurer bad faith necessitating reinstatement of the jury's punitive damage award to ensure that this conduct, in-and-of-itself, is never perpetrated against another West Virginia insured.

E. THE PROCEEDINGS BELOW

Considering the injury caused by AIG's conduct, the jury found in Hess' favor and awarded

⁹ As explained, *infra*, a separate spill was discovered in February 1998 - subject of the case at Bar.

¹⁰ Mr. Brown testified that he was informed that DANA, AIG's selling agent, was going to look into the request for information. (*Tr. A11:408*)

\$5 million in general compensatory damages to Hess. In their findings, the jury found by a preponderance of the evidence that the conduct of AIG proximately caused damages to Hess, and only then rendered the award to Hess through its former shareholders. (*Verdict Form, A3:2866-2867*)

Following the jury's verdict in the tort phase, the circuit court convened the bifurcated, punitive damages phase of the trial. Daniel Selby was Hess' sole witness. AIG offered no evidence. This reality is reflective of AIG's failure throughout the trial to contest evidence or object. During the punitive phase, AIG could have offered any witness or provided financial information of C&I or AIG-DC. AIG did neither, leaving Selby unrebutted. (*A12:1801, Tinney*) Rather, it chose to do nothing, and now asks this Court to relieve it of its strategic decisions.

The jury awarded \$53 million in punitive damages. (*Verdict Form - Punitive Damages, A3:2868*). While that number is around the amount of AIG executive compensation, the conclusion reached by AIG that the jury's punitive award was based on that evidence is speculative and, by failing to object, renders its complaint moot and waived. Hess does not challenge the law as articulated in *TXO Prod. Corp. v. Alliance Res. Corp.*, 187 W.Va. 457, 419 S.E.2d 870 (1992), *aff'd*, 509 U.S. 443, 113 S.Ct. 2711, 125 L.Ed.2d. 366 (1993). Rather, Hess contends, and the jury found, that AIG's conduct was intentional and malicious, with the potential to cause even greater injury, justifying the original punitive award under *TXO*, or, in the alternative, that this Court should adopt with approval the punitive-compensatory ratio articulated in *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 123 S.Ct. 1513 (2003). (*Hess Opening Brief, at 36-40*)

Hess does not deny it advised the jury, without objection from AIG, of the constitutional validity on multipliers under *Campbell*. (*Tr. 12:1807-1808, Jury Instr. - Punitive Damages Phase*) Even then, the jury awarded a greater ratio; confirming the extent of evil conduct AIG was found to have committed. Simply stating that there was no evil conduct, does not render the same accurate.

ARGUMENT

I. AIG'S RESPONSE BRIEF CONFIRMS THE EVIDENCE OF RECORD AND SETTLED CASE LAW MANDATES REINSTATEMENT OF THE JURY'S PUNITIVE DAMAGE AWARD.

A. AIG’S CONDUCT TOWARD HESS WAS “INTENTIONAL” SUPPORTING REINSTATEMENT OF THE JURY’S PUNITIVE DAMAGE AWARD.

In a predictable attempt to divert the Court’s attention from the record, AIG’s Response Brief summarily states that the jury made no finding of evil intention and there was no evidence from which it could have done so. (*AIG Rsp. at 23*) The jury’s \$53 million dollar punitive damage award against AIG confirms for this Court the jury’s understanding of AIG’s conduct. Analyzing the parties’ post-trial motions, the circuit court also found that the “aggravating” factors outweighed the “mitigating” factors articulated in *Perrine*, and that a “high award of punitive damages [was] proper.” (*05/01/12 Order, App. at A4:3234*) Consequently, through the jury’s unmistakable indictment and the trial court’s post-trial analysis, AIG’s conduct has consistently been found to warrant a significant punitive damage award by all involved - except AIG.

AIG’s Response Brief is filled with generic platitudes concerning Hess’ arguments for reinstatement of the jury’s full punitive damage award. AIG attacks Hess’ specific references to the record evidencing AIG’s black hearted, evil conduct, instead maintaining the same misguided theory it proffered from the beginning - that this was simply a “*bona fide* insurance dispute.” (*AIG Rsp. at 23*) Instead of addressing the record, AIG blames Hess and its former shareholders for AIG’s failures and deficiencies, retroactively attempting to diffuse the impact of its egregious conduct.¹¹

AIG contends, and Hess agrees, that to establish “evil intent” warranting imposition of punitive damages in excess of the 5:1 ratio under *TXO*, evidence of an “intent to cause [the plaintiff] specific harm” must be introduced. (*AIG Rsp. at 21*, citing *Vandevender*) AIG further asserted that for it to prevail, “Hess is required to establish that the Chartis [AIG] Defendants committed their putatively wrongful acts out of an ‘actual intention to cause harm to Hess.’” (*AIG Rsp. at 23*, citing *Syl. Pt. 15*,

¹¹ In its “Preliminary Statement” AIG contends that its only conduct was to act on its good faith interpretation of an insurance contract. (*AIG Rsp. at 1*) AIG blames Hess for pulling coverage ten years after acceptance by claiming that Hess refused to provide information explaining why coverage should not be pulled more than a decade after coverage was accepted. *Id.* AIG then claims, with an apparent straight face, that “[a]gainst all evidence, Hess decided that [AIG’s] disclaimer [of coverage] was in bad faith. *Id.* at 2. AIG fails to address that its failure to maintain its claim file was the primary reason it attempted to shift the burden to Hess to prove coverage in 2009; AIG’s actions led to its insured being sued by Ryan for expenses that AIG had pre-approved and promised to pay in writing; and that *evidence* established double digit violations of insurance law by AIG in this case alone.

TXO, supra) As reexamined below, AIG's conduct can only be construed as intent to cause harm to Hess and its shareholders.

The origins of this litigation occurred during a time of financial upheaval for AIG, when AIG decided to reevaluate the decade-old acceptance of coverage for the cleanup at Hess' Mt. Storm location. AIG undertook this reevaluation with knowledge that after a decade, significant work and expense remained at the Mt. Storm location in excess of remaining policy limits. (*Tr. 12:1290, Anderson*) AIG knew that critical documents had been lost and, in fact, knew the application on which it relied to disclaim coverage referred to "prior applications" regarding leaks. (*Tr. 11:927, Perez*) Prior to 2009, the AIG Defendants had lost Hess policies, declarations, endorsements, and most important, prior applications for all policies prior to the policy effective October 21, 1997, under which the claim for the 1998 Release was made. (*Tr. 11:778, 838-839, Lokos; 11:927, Perez*)

AIG's loss of information was never shared with Hess. (*Tr. 11:405, Brown; 11:914, Perez*) Instead, AIG relied on "trickery and deceit" attempting to shift the burden to Hess to prove its continued entitlement to coverage when AIG knew it had breached the law by failing to properly document and maintain its files.¹² Consequently, taking AIG's assertion of a "bona fide coverage dispute" at face value, it was triggered in 2009 as a result of AIG's breach of insurance regulations (failure to adequately document and maintain files) and its realization that the cost to complete the cleanup at Mt. Storm which it supervised was exceeded its policy limits. (*Tr. 12:1286-87, 1290, Anderson*) It was further initiated through intentional burden-shifting to Hess to prove continuing coverage while AIG deceptively concealed that it had not conducted a thorough investigation and lost critical documents, which would have reaffirmed the existing coverage.¹³ Now, AIG attempts

¹² In *Vandevender*, this Court reaffirmed that punitive damage ratios exceeding the *TXO* 5:1 ratio are permissible when evidence of "fraud, trickery, or deceit" is present. *Vandevender v. Sheetz, Inc.*, 200 W.Va. 591, 606, 490 S.E.2d 678, 693 (1997) (citing *TXO*, 509 U.S. at 462, 113 S.Ct. at 2722-23).

¹³ The AIG environmental specialist, Schmidt ("Schmidt"), on whose opinion AIG claims analyst Mileidy Perez ("Perez") relied to disclaim coverage, testified that *AIG made no attempt to determine what Hess knew or should have known about the 1998 Release at the time of 1997 applications*, and no one at AIG asked his opinion. (*Tr. 11:694, Schmidt*) Schmidt testified that based on everything that Hess knew prior to the October 21, 1997 renewal, Hess could not have known about the 1998 release - the very basis of AIG's 2009 disclaimer of coverage. (*Tr. 11:689, Schmidt*)

to blame a dissolved Hess and Bill Brown for not providing information exonerating Hess, when Perez did not even tell him what was needed or what AIG had lost a decade after the events had occurred - there can be no clearer example of trickery or deceit resulting in significant harm.¹⁴

Unfortunately for Hess, AIG was not content to simply deny coverage for the remaining cleanup at the Mt. Storm site, probably because it had been mismanaged by AIG causing costs to escalate beyond policy limits. (*Tr. 12:1333-35, Rine*) After forming the intent to deny Hess' claim around May 2009, AIG refused to pay pre-approved invoices for services rendered by Ryan, *knowing full well that the failure to pay those invoices would result in Hess being sued.* (*Tr. 11:791, Lokos*) AIG's refusal to pay preauthorized invoices with the knowledge Hess would be sued constitutes further, irrefutable evidence of evil conduct calculated to harm its insured.

It is accurate that AIG settled Ryan's suit, charged to the limits of Hess' coverage, even though they continued to assert that coverage was void. Hess was not advised of the settlement or the application of the settlement to their limits to do so.¹⁵ This conduct by AIG went so far as to obtain releases for itself from other Ryan claims, but attributing the entire settlement against the Hess policy limits, even beyond the amount of Ryan's unpaid bill. Contrary to its assertions of mitigating conduct in settling the Ryan suit, AIG then used the amounts paid to Ryan to increase the damages it sought to recover from Hess to \$822,000, establishing further malicious and intentional acts.

Evidence that AIG evaluated adjustors for "cost containment" is additional intentional conduct.¹⁶ (*Tr. 11:706, Schmidt; see, also, Cost Control and Cost Containment, Part of M. Schmidt Evaluation, Hess. Tr. Ex. 66,A5:3507-3513*) Throughout this action, AIG sought to recover

¹⁴ Before disclaiming coverage, the AIG Defendants did not even bother to contact Doug Terpstra, the AIG claims adjustor who, in 1999, determined coverage and liability for the 1998 Release even though he still worked for the AIG Defendants. (*Tr. 11:531, Terpstra; 11:894, Perez*)

¹⁵ Charles Henderson, an insurance industry expert, opined that such payment would be an acceptance of coverage, and, that Hess should have been consulted. (*Tr. 12:1037, Henderson*) Lokos and Perez acknowledged that if a bill was charged against the coverage limits that was because it was concluded to be an aspect of coverage. (*Tr. 11:830, Lokos; Tr. 11:954, Perez*)

¹⁶ AIG also evaluated for reevaluation of coverage. Perez's 2009 evaluation noted, "Mileidy does not hesitate to take a second look at coverage if determination is already made and when appropriate, change coverage position when subsequent facts supporting such action." (*Tr. 12:1569; Hess. Tr. Ex. 69 at A5:3534*)

\$822,000 from Hess through its former shareholders.¹⁷ This too, constituted intentional conduct. At the close of Hess' case in chief, after two years of refusing to do so, AIG proffered a Stipulation that they would not seek to collect any judgment against Hess from its former shareholders. (*See Tr. 12:1404-1405; A3:2838*) By then, the jury had heard the entirety of AIG's malicious conduct, but by waiting until the close of Hess' evidence, AIG attempted to maximize its leverage against Hess' shareholders despite its argument they were not at risk.¹⁸ This was intentional conduct by AIG designed to coerce Hess' former shareholders by pitting its vast financial superiority against their financial ruin. There is no justification for such conduct that can be explained as a "bona fide coverage dispute." The entirety of AIG's conduct, from its ill-conceived "reevaluation" of coverage through trial, constituted a series of intentional acts designed to avoid liability for its mismanagement of the Mt. Storm clean-up, at a cost to Hess and its shareholders of financial ruin.¹⁹

B. WEST VIRGINIA PRECEDENT SUPPORTS REINSTATEMENT OF A PUNITIVE DAMAGE AWARD IN EXCESS OF THE 5:1 RATIO IN *TXO*.

1. STANDARDS FOR IMPOSITION OF PUNITIVE DAMAGES IN INSURANCE BAD-FAITH CASES MIRROR STANDARDS FOR IMPOSITION OF PUNITIVE DAMAGES IN EXCESS OF A 5:1 PUNITIVE-COMPENSATORY DAMAGE RATIO.

In *Hayseeds v. State Farm*, 177 W.Va. 323, 352 S.E.2d 73 (1986), this Court held that "actual malice" in the insurance context means that "... the company actually knew that the policyholder's

¹⁷ The testimony of Bill Brown established the obvious tremendous financial distress caused noting that if AIG had been successful, they would have been "devastated." (*Tr. 11:421-422, Bill Brown*) AIG, the largest insurance company in the world, makes light of the litigation costs to Hess. While the approximately \$30,000 spent to defend the Ryan and AIG claims is negligible to AIG, for Hess' former shareholders, as well as most West Virginians, this constituted a significant, unexpected expense. (*Tr. 11:422, Bill Brown*) These attorneys' fees did not begin to address the approximately \$450,000 in fees and costs incurred to defend against AIG's attempted recovery against Hess and to prosecute its own claims.

¹⁸ Equally disingenuous is AIG's argument that had it known that the former shareholders received nothing in the liquidation of Hess, it would have released them from risk of an adverse verdict sooner. (*AIG Rsp. at 25*) First, Hess' shareholders did receive substantial sums in liquidation, however, AIG never asked the right question. (*Hess Opening Rsp. at 3, 13*) Second, AIG's argument betrays its "evil intent" to recover from Hess' former shareholders as long as the shareholders had the money to pay.

¹⁹ The motives of AIG were varied, including the testimony of Lokos, who erroneously claimed Hess had "snookered" AIG. (*Tr. 11:801-802, Lokos*) With full appreciation of his erroneous belief, Lokos was keenly aware that the decision to pull the insurance coverage from Hess after ten years would have a significant economic impact on the insured. (*Tr. 11:851, Lokos*) Perez's claim that AIG was looking at the increasing reserves due to increased cost projections prior to the disclaimer of coverage presents another inference of AIG's intentional bad-faith motives - seeking to avoid additional costs. (*Tr. 11:906, Perez*)

claim was proper, but *willfully, maliciously and intentionally* denied the claim.” *Id.* at 331, 352 S.E.2d at 81 (emphasis added).²⁰ Ignoring this precedent, AIG misapplies *McCormick v. Allstate Ins. Co.*, 202 W.Va. 535, 505 S.E.2d 454 (1998) to impose a greater burden on Hess than is required to establish “evil intent.”

In *McCormick*, this Court specifically declined to impose the punitive damage standard in *Stevens v. Friedman*, 58 W.Va. 78, 51 S.E. 132 (1905) on bad faith property claims. The Court noted that, “[u]nless the policyholder is able to introduce evidence of intentional injury - not negligence, lack of judgment, incompetence, or bureaucratic confusion - the issue of punitive damages should not be submitted to the jury.”²¹ *McCormick*, at 539, 505 S.E.2d at 458. This Court also noted that the standards for imposition of punitive damages in *McCormick* and *Stevens* differed, as the *McCormick* standard required “proof of malicious conduct in the insurer’s handling of *the policyholder’s claim.*” *Id.*, *supra* (emphasis in original). Thus, the standard for imposition of punitive damages in insurance bad faith cases already embodies the “evil intent” required by *TXO*.

The jury clearly found AIG’s conduct met the threshold for imposition of punitive damages. West Virginia jurisprudence holds that for a punitive damage award to exceed a 5:1 punitive-compensatory ratio, there must be evidence of an intention to cause harm. *See*, Syl. Pt. 15, *TXO*, *supra* Here, this jury already found that AIG engaged in intentional, malicious conduct toward Hess to meet the threshold for imposition of punitive damages in this bad faith case. Consequently, the jury made the requisite findings to justify an award in excess of the 5:1 ratio in *TXO*, *supra*.

²⁰ AIG cited to *United States v. White*, 670 F.3d 498, 511 (4th Cir. 2012) for the erroneous proposition that the actual malice standard “in no way requires that the [actor] have a specific intent to cause harm . . .” (*See, AIG Rsp.* at 18) This holding does not reflect West Virginia standards of proof for imposition of punitive damages in insurance bad-faith litigation, as noted herein.

²¹ AIG attempts to impose the “actual malice” standard in libel cases on their conduct here to increase the standard of proof on Hess for a finding of “evil intent.” (*AIG Rsp.* at 18-19). The actual malice standard in U.S. Supreme Court cases such as *New York Times Co. v. Sullivan*, 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964) requires only a showing that a statement was made with knowledge that it was false or a reckless disregard that it was false. *Id.* at 279-280, 84 S.Ct. at 725-26. This libel standard of “actual malice” is not easily transferred from such cases into the realm of insurance disputes. This Court’s jurisprudence defining “actual malice” has confirmed that a claimant must establish that an insurance company knew that the policyholder’s claim was proper, but *willfully, maliciously and intentionally* denied the claim.” *Hayseeds*, at 331, 352 S.E.2d. at 81. The *New York Times* decision, and its progeny, do not require a showing that a publisher “willfully, maliciously and intentionally” published a false statement.

2. AIG’S MISPLACED RELIANCE ON *VANDEVENDER* AFFIRMS THAT ITS CONDUCT SURPASSED ANY THRESHOLD FOR SHOWING EVIL INTENT JUSTIFYING A PUNITIVE DAMAGE AWARD IN EXCESS OF A 5:1 RATIO.

In *Vandevender, supra*, this Court cited with approval to Syl. Pt. 15 of *TXO, supra*, which distinguished between “extreme negligence or wanton disregard” conduct limited to a 5:1 punitive-compensatory limit and conduct that evinces an “actual intention to cause harm.” *Vandevender* at 604, 490 S.E.2d at 691 (citing *TXO, supra*). This Court then noted that “[o]nly in those cases where the defendant can be shown to have actually intended to cause harm is the ratio of punitives to compensatory damages permitted to climb higher without ‘raising a suspicious judicial eyebrow.’” *Vandevender, supra*, (citing *TXO*, 509 U.S. at 481, 113 S.Ct. at 2732). Consequently, our bad-faith jurisprudence requires evidence of intentional conduct before punitive damages may be considered, and requires the same evidence to exceed the 5:1 punitive-compensatory ratio established in *TXO*. AIG’s contention that these two standards of proof differ is inaccurate.

AIG attempts to differentiate its conduct here from the defendant’s retaliatory conduct in *Vandevender* which this Court found to constitute intentional conduct warranting punitive damages exceeding the *TXO* 5:1 ratio.²² (*AIG Rsp. at 19-20*) In *Vandevender*, this Court upheld the 15:1 punitive-compensatory ratio for the defendant’s retaliation against the plaintiff. *Id.* at 606, 490 S.E.2d at 693. The Court upheld a ratio, well in excess of the 10.6:1 ratio, because the defendant feigned ignorance of the plaintiff’s medical restrictions, forcing plaintiff to engage in strenuous work, requiring that plaintiff obtain a doctor’s examination by the end of her first week of return to work, and use of surveillance cameras on plaintiff. *Id.* at 604-606, 490 S.E.2d at 691-693. Contrary to AIG’s arguments, the jury here was presented with evidence of conduct directed toward Hess far more “malevolent” than the plaintiff in *Vandevender*. If engaging in passive surveillance of a party is considered “intentional conduct” which can support imposition of a 15:1 punitive-compensatory ratio, then attempting to shift the burden to an insured to prove coverage, holding former

²² The Court in *Vandevender* did reduce the punitive damage award to a 5:1 ratio for her unlawful termination/failure to rehire claims. *Vandevender* at 606, 490 S.E.2d at 693.

shareholders at risk, and disclaiming coverage without investigation, among much more, is also “intentional conduct.” *See, Vandevender* at 606-607, 490 S.E.2d at 693-694.

AIG has no response to the double-digit violations of the Unfair Trade Practices Act and insurance law; or why it permitted its insured to be sued after pre-approving work for Ryan; or for the failure to properly document its file; or for its failure to contact individuals with knowledge prior to pulling coverage (*Tr. 11:791, Lokos; 12:1077, 1107, 1090, 1102, 1108, 1169, Sneberger*); (*Tr. 12:1560, Perez*) The evidence at trial established that AIG evaluated employees involved with claims for “cost containment” as the reason the cleanup was a failure. (*Tr. 12:1333-35, Rine*) Thus, AIG’s disclaimer of coverage constituted “intentional conduct” in light of AIG’s knowledge that completion of the remediation would exceed Hess’ policy limits. (*Tr. 12:1290, Anderson*) Based on AIG’s conduct, the *Vandevender* decision confirms that the jury’s punitive damage award is permissible and should be reinstated at 10.6:1 as this Court has sanctioned a 15:1 ratio.

3. AIG FAILED TO ADDRESS THE *TXO* DECISION AND ITS GUIDANCE ON WHEN PUNITIVE DAMAGE AWARDS MAY EXCEED 5:1 RATIOS.

AIG places heavy reliance on the *TXO* decision in support for the position that a punitive damage award in excess of the 5:1 ratio is unconstitutional. However, other than cursory references, and unsupported conclusions, AIG failed to address the facts of *TXO*. Hess established in its opening brief that AIG’s conduct exceeded the “black hearted” actions described in *TXO*.

In *TXO*, the defendants knowingly and intentionally brought a frivolous declaratory judgment action to clear a purported cloud on title. *TXO* at 462, 419 S.E.2d at 875. Here, AIG attempted to shift the burden to its insured to prove that coverage was proper 10 years after accepting coverage. Similar to the *TXO* decision, which discussed *TXO*’s pattern and practice to defraud and coerce those of unequal bargaining power, the jury here heard that AIG’s conduct constituted multiple violations of the UTPA and the law governing insurance companies in West Virginia. *TXO* at 468, 419 S.E.2d at 881; (*Tr. 11:499, 500, 509-511, 514, 553-554, 570-571, 572, 599, Terpstra; Tr. 11:609, 616, 618-619, 623, 626, 655, 660, 663, 677, 698, 699, Schmidt; Tr. 11:915, 924, 927-928,*

934, 952, 953, 954-955, 959; 12:1552, 1560 Perez). AIG also failed to substantively address the decision in *Eichenseer v. Reserve Life Ins. Co.*, 934 F.2d 1377 (5th Cir. 1991), which this Court relied upon to establish a factual predicate warranting imposition of punitive damages in excess of the 5:1 ratio. As noted in Hess' initial brief, the facts of *Eichenseer* are strikingly similar to those now on appeal, with the exception that the defendant in that decision did not cause its insured to be sued.

4. HESS' BRIEF PLAINLY ADDRESSED THE AGGRAVATING FACTORS SUPPORTING THE JURY'S PUNITIVE DAMAGE AWARD.

AIG asserts that Hess did not address the "aggravating factors" announced at Syl. Pt. 4, *Garnes v. Fleming Landfill, Inc.*, 186 W.Va. 656, 413 S.E.2d 897 (1991), supporting imposition of the jury's punitive damage award. (*AIG Rsp. at 32*) This is false. Hess addressed the such factors throughout its opening brief. (*Hess Opening Rsp. at 25-28*) This contention is an attempt to deflect attention from AIG's negligible evidence supporting "mitigating" factors.

C. THE PUNITIVE DAMAGE RATIO ANNOUNCED IN CAMPBELL SHOULD BE APPROVED BY THIS COURT TO CONTROL ANY REDUCTION IN THE PUNITIVE DAMAGE AWARD.

Hess' opening brief contains ample evidence warranting the reinstatement of the jury's original \$53 million dollar punitive damage award. AIG's Response Brief asks this Court to apply federal case law in support of many of its arguments in favor of a new trial or further reduction in the jury's punitive damage award.²³ Hypocritically, AIG requests this Court ignore or disregard application of the 9:1 punitive-to-compensatory damage ratio in *Campbell*, when examining the constitutionality of jury's original punitive damage award. The single-digit multiplier established in *Campbell*, while not a bright-line ratio, is presumptively valid. Because there is no black letter law prohibiting an award with a 10.6:1 ratio, the jury's original award should have been permitted to stand to deter AIG, and any other insurer, from engaging in similar conduct in the future. In the alternative, and at a

²³ See, *AIG Petitioner's Brief*, Appeal No. 12-0705 at 35 (attempted reliance on *Campbell, supra*; *Jones v. United Parcel Serv.*, 674 F.3d 1187 (10th Cir. 2012); *Jurinko v. Med. Protective Co.*, 305 Fed. App'x 13 (3rd Cir. 2008); *Bridgeport Music, Inc. v. Justin Combs Pub.*, 507 F.3d 470 (6th Cir. 2007) and other cases cited in support of further reduction in the punitive damage award). AIG has also attempted to place heavy reliance on *Philip Morris USA v. Williams*, 549 U.S. 346, 127 S.Ct. 1057, 166 L.Ed.2d 940 (2007). See, *AIG Petitioner's Brief*, Appeal No. 12-0705 at 37.

minimum, this Court should reinstate the jury's punitive damage to reflect a 9:1 (\$45 million punitive damage award) which is undeniably constitutional pursuant to *Campbell*.

D. THE DOUBLE-DIGIT VIOLATIONS OF WEST VIRGINIA INSURANCE LAW, ENCOURAGED BY AIG COMPANYWIDE POLICIES APPLICABLE TO OTHER BUSINESS AND INDIVIDUAL INSUREDS AND CLAIMANTS, WARRANTS REINSTATEMENT.

AIG's Response Brief confirmed that it has no explanation for the double-digit violations of West Virginia insurance law and regulations. (*Tr. 12:1077, 1107, 1090, 1102, 1108, 1169 Sneberger; Tr. 12:1560, Perez*) This Court must take notice that whatever decision it reaches on the respective parties' appeals must deter AIG from ever again ignoring the valid, legislative pronouncements concerning its insurance operations in the State.²⁴ While certain conduct of AIG was directed specifically toward Hess, the violations of UTPA and insurance laws involved companywide policies, thereby applicable to all insurance policyholders and claims in West Virginia.

If the reduction in the jury's punitive damage award stands, this Court will have unintentionally sanctioned AIG to proceed conducting business as usual, which invariably means subjecting West Virginia insureds to AIG's blatant and willful violations of the law to their detriment. Most telling is the fact that after approximately three years of litigation, AIG has failed to produce any evidence to this Court that it has taken corrective steps to assure compliance with West Virginia law.

CONCLUSION

Despite the jury's clear indictment of its conduct, established through uncontroverted evidence, AIG has proceeded in this litigation in the hope that this Court will save it from its own conduct. For these reasons and all stated herein, Hess respectfully requests that the jury's original punitive damage award be reinstated to assure that AIG adheres to West Virginia law and that its conduct toward Hess is never repeated.

²⁴ In violation of the Unfair Trade Practices Act, AIG did not have any standards regarding the investigation of claims. *See W. Va. Code § 33-11-4(9)*. The jury heard undisputed evidence of the general business practices by AIG during the handling other claims, including the failure to take statements from witnesses, having no adjustment standards, and failing to conduct full and prompt investigations of claims. (*Tr. 12:1248-1249, Segal*)

Respectfully submitted this 15th day of November, 2012.

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CERTIFICATE OF SERVICE

This is to certify that on the 15th day of November, 2012, the undersigned counsel served the foregoing “***REPLY BRIEF ON BEHALF OF PETITIONER, HESS OIL COMPANY, INC.***” upon counsel of record by placing true copies thereof in the United States Mail, postage prepaid, in envelopes addressed as follows:

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