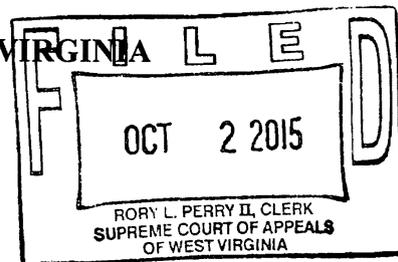


IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

No. 15- 0968



**STATE OF WEST VIRGINIA EX REL. ERIE  
INSURANCE PROPERTY AND CASUALTY  
COMPANY,**

**Petitioner,**

**v.**

**THE HONORABLE J. D. BEANE, Judge of  
the Fourth Judicial Circuit, Wood County,  
West Virginia; and DAVID CHEDESTER AND  
JOYCE CHEDESTER,**

**Respondents.**

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**VERIFIED PETITION FOR WRIT OF PROHIBITION**

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Laurie C. Barbe (W. Va. Bar No. 5504)  
Chelsea V. Prince (W. Va. Bar No. 11447)  
STEPTOE & JOHNSON PLLC  
1085 Van Voorhis Road, Suite 400  
P.O. Box 1616  
Morgantown, WV 26507-1616  
(304) 598-8000  
*laurie.barbe@steptoe-johnson.com*  
*chelsea.prince@steptoe-johnson.com*

Amy M. Smith (W. Va. Bar No. 6454)  
STEPTOE & JOHNSON PLLC  
400 White Oaks Boulevard  
Bridgeport, WV 26330  
(304) 933-8000  
*amy.smith@steptoe-johnson.com*

*Counsel for Petitioner,  
Erie Insurance Property and Casualty Company*

**TABLE OF CONTENTS**

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIES ..... ii

I. QUESTION PRESENTED.....1

II. STATEMENT OF THE CASE.....1

    A. Procedural History .....1

    B. Claims Handling History .....4

III. SUMMARY OF THE ARGUMENT .....6

IV. STATEMENT REGARDING ORAL ARGUMENT.....7

V. ARGUMENT .....7

    A. Issuance of a Writ of Prohibition is Appropriate under  
    the Standard Established by this Court Where the Circuit  
    Court has Committed a Clear Error of Law Regarding  
    Application of the Statute of Limitations.....7

    B. The Circuit Court’s Order is Clearly Erroneous as a  
    Matter of Law .....10

        1. The Circuit Court Committed Clear Legal Error by  
        Concluding that the Ten-Year Statute of Limitations  
        Applies to Counts I and II of the Chedesters’ Complaint,  
        thereby Denying Erie’s Request for Dismissal of these Claims .....10

        2. The Circuit Court Committed Clear Legal Error by  
        Holding that UTPA and *Hayseeds* Claims Do Not  
        Accrue and the Statute of Limitations Does not Begin  
        to Run until the Underlying Coverage Issues are Resolved,  
        thereby Denying Erie’s Request for Dismissal of Counts III  
        and IV of the Chedesters’ Complaint.....19

VI. CONCLUSION.....25

**TABLE OF AUTHORITIES**

**CASES**

*Adamski v. Allstate Ins. Co.*,  
738 A.2d 1033 (Pa. Super. Ct. 1999)..... 21, 23

*Aldalali v. Underwriters at Lloyd’s London*,  
174 Mich. App. 395, 435 N.W.2d 498 (1989)..... 17

*Anderson v. Moulder*,  
183 W. Va. 77, 394 S.E.2d 61 (1990)..... 3

*Beasley v. Allstate Ins. Co.*,  
184 F. Supp. 2d 523 (S.D.W. Va. 2002)..... 17

*Beazor-Williams v. St. Paul Fire & Marine Ins. Co.*,  
598 S.2d 1249 (La. Ct. App. 1992)..... 17

*Brodner v. Am. Home Assurance Co.*,  
169 P.3d 139 (2007)..... 21

*Daugherty v. Allstate Ins. Co.*,  
55 P.3d 224 (Colo. Ct. App. 2002) ..... 21

*Davis v. Aetna Cas. & Sur. Co.*,  
843 S.W.2d 777 (Tex. 1992)..... 23, 24

*Hayseeds, Inc. v. State Farm Fire & Cas.*,  
177 W. Va. 323, 352 S.E.2d 73 (1989)..... *passim*

*Hinkle v. Black*,  
164 W. Va. 112, 262 S.E.2d 744 (1979)..... 8, 24

*Hitt Contracting, Inc. v. Indus. Risk Insurers*,  
258 Va. 40, 516 S.E.2d 216 (1999)..... 17

*Kirk v. Firemen’s Ins. Co.*,  
107 W. Va. 666, 150 S.E. 2 (1929)..... 16

*Klettner v. State Farm Mut. Auto. Ins. Co.*,  
205 W. Va. 587, 519 S.E.2d 870 (1999)..... 21

*Knapp v. Am. Gen. Fin. Inc.*,  
111 F. Supp. 2d 758 (S.D.W. Va. 2000)..... 24

<i>L.H. Jones Equip. Co. v. Swenson Spreader LLC,</i> 224 W. Va. 570, 687 S.E.2d 353 (2009).....	15
<i>McCormick v. Allstate Ins. Co.,</i> 197 W. Va. 415, 475 S.E.2d 507 (1996).....	3
<i>Meadows v. Emp'rs' Fire Ins. Co.,</i> 171 W.Va. 337, 298 S.E.2d 874 (1982).....	18
<i>Murray v. San Jacinto Agency, Inc.</i> 800 S.W.2d 826 (Tex. 1990).....	23
<i>Nat'l Mut. Ins. Co. v. McMahon &amp; Sons, Inc.,</i> 177 W. Va. 734, 356 S.E.2d 488 (1987).....	19
<i>Noland v. Va. Ins. Reciprocal,</i> 224 W. Va. 372, 686 S.E.2d 23 (2009).....	<i>passim</i>
<i>Potesta v. U.S. Fid. &amp; Guar. Co.,</i> 202 W. Va. 308, 504 S.E.2d 135 (1998).....	19
<i>Preiser v. MacQueen,</i> 177 W. Va. 273, 352 S.E.2d 22 (1985).....	10, 24
<i>Prete v. Royal Globe Ins. Co.,</i> 553 F. Supp. 332 (N.D.W. Va. 1982).....	15, 16, 17
<i>SER Monongahela Power Co. v. Fox,</i> 227 W. Va. 531, 711 S.E.2d 601 (2011).....	8, 9, 10, 24
<i>Sizemore v. State Farm Gen. Ins. Co.,</i> 202 W. Va. 591, 505 S.E.2d 654 (1998).....	<i>passim</i>
<i>State ex rel. Gessler v. Mazzone,</i> 212 W. Va. 368, 572 S.E.2d 891 (2002).....	8
<i>State ex rel. Hoover v. Berger,</i> 199 W. Va. 12, 483 S.E.2d 12 (1996).....	8, 9, 10
<i>Tucker v. State Farm Mut. Auto. Ins. Co.,</i> 53 P.3d 947 (Utah 2002).....	23
<i>Villa Clement, Inc. v. Nat'l Union Fire Ins. Co.,</i> 120 Wis. 2d 140, 353 N.W.2d 369 (Wis. Ct. App. 1984).....	17

<i>Watson v. Nat'l Union Fire Ins. Co.</i> , No. 5:13-cv-01939, 2013 WL 2000267 (S.D.W. Va. May 13, 2013) .....	21, 22, 23, 24
<i>Wilt v. State Auto. Mut. Ins. Co.</i> , 203 W.Va. 165, 506 S.E.2d 608 (1998).....	<i>passim</i>

**STATUTES**

W. Va. Code § 33-1-10 .....	12, 13
W. Va. Code § 33-2-29 .....	18
W. Va. Code § 33-6-14 .....	12, 18
W. Va. Code § 33-11-1 .....	3
W. Va. Code § 33-11-4 .....	1, 2
W. Va. Code § 33-17-2 .....	11, 12, 13, 18
W. Va. Code § 53-1-1 .....	7
W. Va. Code § 55-2-6 .....	18
W. Va. Code § 55-2-12 .....	3, 20

**RULES**

W. Va. R. Civ. P. 12 .....	1
W. Va. R. App. P. 19 .....	7
W. Va. R. App. P. 20 .....	7
W. Va. R. App. P. 21 .....	7

## I. QUESTION PRESENTED

Did Respondent Judge J. D. Beane of the Circuit Court of Wood County commit a clear error of law and exceed his judicial authority by denying Petitioner Erie Insurance Property and Casualty Company's motion to dismiss the underlying Complaint, holding that (1) the statute of limitations for breach of insurance contract and reasonable expectations claims is ten years, despite the fact that the insurance contract at issue is a standard fire insurance policy with a stated limitations period of one year; and (2) the claims for violation of the West Virginia Unfair Trade Practices Act, W. Va. Code § 33-11-4(9) ("UTPA"), and arising under *Hayseeds, Inc. v. State Farm Fire & Casualty*, 177 W. Va. 323, 352 S.E.2d 73 (1989), do not accrue and the one-year statute of limitations does not begin to run until the underlying coverage issues are resolved?

## II. STATEMENT OF THE CASE

### A. Procedural History

The instant writ arises out of the August 28, 2015, Order entered by the Circuit Court of Wood County, West Virginia, Honorable J. D. Beane, denying the motion to dismiss filed on behalf of Petitioner Erie Insurance Property and Casualty Company ("Erie") requesting dismissal of Respondents David and Joyce Chedester's claims for failure to state a claim upon which relief may be awarded under West Virginia Rule of Civil Procedure 12(b)(6) after application of the statute of limitations. (A.R. 87 – 92.)

Respondents David and Joyce Chedester ("Chedesters") initiated the underlying Civil Action with the filing of their Complaint on or around June 3, 2015. (A.R. 93.) With respect to Erie, the Chedesters identified five counts arising from Erie's handling of the Chedesters' first-party property damage claim. Specifically, the Chedesters asserted claims based upon: (1)

breach of contract; (2) “reasonable expectations”; (3) Unfair Trade Practices Act violations; (4) common law bad faith (hereinafter, “*Hayseeds* claim”); and (5) vicarious liability for the conduct of Erie’s agent in handling the property damage claim. (A.R. 1-11.) Erie was served through the Secretary of State on June 10, 2015. (A.R. 93.)

On July 9, 2015, Erie responded to the Chedesters’ Complaint with the filing of the Motion to Dismiss of Defendant Erie Insurance Property and Casualty Company. Erie argued that the Chedesters’ Complaint was time-barred by the applicable statute of limitations and, therefore, failed to state a claim upon which relief may be granted, requiring dismissal by the Circuit Court.<sup>1</sup> Specifically, Erie asked the Court to apply the already established one-year statute of limitations applicable to breach of contract (*Hayseeds*) and UTPA actions in West Virginia to support the dismissal of the Chedesters’ claims, where the Chedesters were informed of the denial of their property damage claim on May 10, 2013. Because the Chedesters did not file the underlying civil action until June 3, 2015, Erie asserted that the claims were time-barred and dismissal, with prejudice, was warranted. (A.R. 12-69.)

The Chedesters filed Plaintiffs’ Response to Defendant Erie’s Motion to Dismiss on August 18, 2015. (A.R. 70-86.) The Chedesters argued that Erie’s request for dismissal of their claims was premature as “the plaintiffs must be permitted to conduct discovery into the course of dealings [with Erie] to discern precisely when the statute of limitations tolled.” (A.R. 72.) With respect to the statute of limitations applicable to their UTPA claim, the Chedesters acknowledged this Court’s decision in *Wilt v. State Automobile Mutual Insurance Co.*, 203 W.Va. 165, 506 S.E.2d 608 (1998), but argued that a violation of West Virginia Code § 33-11-4(9) was

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<sup>1</sup> At the time of filing Erie’s motion to dismiss, Defendants Bruce Hunter and Barry Dickson had not been served with a Summons or Complaint. Bruce Hunter is an employee of Erie and participated in the handling of the Chedesters’ property damage claim. However, as argued in the motion to dismiss, as an employee of Erie, the arguments for dismissal of the Chedesters’ claims applied equally to Mr. Hunter. Mr. Hunter has since been served and a similar motion to dismiss based upon the statute of limitations will be filed on his behalf.

nonetheless subject to a two-year statute of limitations.<sup>2</sup> (A.R. 72, 74-75.) With respect to their breach of contract claim, the Chedesters argued against the imposition of a one-year statute of limitations and, instead seemed to advocate for a general ten-year contract statute of limitations, while at the same time acknowledging that *Noland v. Virginia Insurance Reciprocal*, 224 W. Va. 372, 686 S.E.2d 23 (2009), “supports the notion that a common law bad faith claim is subject to a one-year statute of limitation.” (A.R. 74-75.) With respect to their *Hayseeds* claim, the Chedesters acknowledged that this claim was subject to a one-year statute of limitations. (A.R. 75.)<sup>3</sup>

The Circuit Court heard oral argument on August 20, 2015. On August 28, 2015, the Circuit Court entered its Order denying Erie’s motion to dismiss. (A.R. 87-92.) Specifically, the Circuit Court found that the one-year statute of limitations applicable to standard fire insurance policies does not extend beyond the “fire portion” of a multiple line policy “to other portions of such policy.” (A.R. 89-91.) Instead, the Circuit Court determined that the statute of limitations

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<sup>2</sup> In support of their argument, the Chedesters cite to *Anderson v. Moulder*, 183 W. Va. 77, 394 S.E.2d 61 (1990), for the proposition that violation of a statute is *prima facie* evidence of negligence. However, the Chedesters’ citation to *Anderson* is misplaced in this context, as a violation of the UTPA is not based upon a negligence standard. Instead, the UTPA is a creature of statute and this Court created a cause of action arising from a violation of the UTPA upon proof, *inter alia*, of a general business practice. This Court further held that the applicable statute of limitations for such claims is the one-year statute set forth in West Virginia Code § 55-2-12(c) (1994). *Wilt*, 506 S.E.2d at 614. By characterizing a violation of the UTPA as one premised upon a traditional negligence theory of liability, the Chedesters misunderstand both the statutory scheme and its application in first-party litigation.

<sup>3</sup> Although the Chedesters delineated separate counts for their allegations of common law bad faith and breach of contract, these claims are actually duplicative of each other. In the first-party context, a breach of contract claim arising from coverage denial is a creature of common law. The standard for such a claim was announced in *Hayseeds, Inc. v. State Farm Fire & Casualty*, 177 W. Va. 323, 352 S.E.2d 73, 80 (1989) (“Accordingly, we hold today that whenever a policyholder must sue his own insurance company over any property damage claim, and the policyholder substantially prevails in the action, the company is liable for the payment of the policyholder’s reasonable attorneys’ fees.”). Notably, “[t]o recover attorney fees and net economic loss damages and damages for aggravation and inconvenience under syllabus point 1 of *Hayseeds, Inc. v. State Farm Fire & Casualty*, 177 W. Va. 323, 352 S.E.2d 73 (1986), it is not necessary that a plaintiff show bad faith.” Syl. Pt. 3, *McCormick v. Allstate Ins. Co.*, 197 W. Va. 415, 475 S.E.2d 507 (1996). In other words, a plaintiff may recover in a *Hayseeds* action regardless of whether bad faith was present or absent in the coverage decision. *Id.* However, due to the confusion regarding these concepts, parties and courts understandably conflate the terms. Conversely, causes of action based upon unfair claims settlement practices are a creature of statutory construction and arise under the UTPA. *See*, W. Va. Code § 33-11-1, *et seq.* Regardless of the title assigned to the cause of action, all are barred by the one-year statute of limitations.

for the Chedesters' breach of insurance contract and reasonable expectations claims is ten years, as it determined each claim sounds in contract. (A.R. 89-91.) With respect to the Chedesters' claims for UTPA violations and *Hayseeds* claim, the Circuit Court acknowledged that a one-year statute of limitations was applicable to the claims, but determined that these claims for relief "do not accrue until the underlying coverage issues are resolved." (A.R. 92.) Therefore, the Circuit Court denied Erie's motion to dismiss and ordered the coverage claims in Counts I and II be bifurcated from the UTPA claim in Count III and the *Hayseeds* claim in Count IV. (A.R. 92.)

**B. Claims Handling History**

In their Complaint, the Chedesters alleged that large amounts of snowfall during the winter of 2012 caused damage to their residence located in Independence, West Virginia. (A.R. 2.) The Chedesters' residence was insured under an Extracover HomeProtector Policy issued by Erie. (A.R. , 22-66.) The Erie policy is a multi-line policy providing property protection for the insured property as well as home and family liability protection. With respect to property protection, the all risk policy provides as follows:

**PERILS WE INSURE AGAINST**

**DWELLING AND OTHER STRUCTURE COVERAGES**

**We** pay for risks of direct physical loss to property insured under the *Dwelling* and *Other Structures Coverages* except as excluded or limited herein.

**We** do not pay for loss:

5. Caused by:
  - b. mechanical breakdown, deterioration, wear and tear, marring, inherent vice, latent defect, tree roots, rust, smog, wet or dry rot, mold, fungus, or spores;
  - e. bulging, cracking, expansion, settling or shrinking in ceilings, foundations, floors, patios, decks, pavements, roofs or walls.
6. Caused by weather conditions if any peril excluded by this policy

contributes to the loss in any way.

8. Caused by, resulting from, contributed to or aggravated by faulty or inadequate:

- a. planning, zoning, development;
- b. design, development of specifications, workmanship, construction;
- c. materials used in construction; or
- d. maintenance;

of property whether on or off the **residence premises** by any person, group, organization, or governmental body.

(A.R. 32.)

The policy also defines certain rights and duties of Erie and the Chedesters including:

**RIGHTS AND DUTIES – CONDITIONS – SECTION I**

**(16) WHAT TO DO WHEN A LOSS HAPPENS**

In case of a loss, **anyone we protect** must:

- 1. give **us** or **our** Agent immediate notice of the loss. If the loss is due to criminal activity or theft, **you** must also notify the police;

(A.R. 40.)

Finally, the policy provides for a limitation on the time period in which suit can be brought in the event of a first-party dispute:

**RIGHTS AND DUTIES – CONDITIONS – SECTION I**

**(15) SUIT AGAINST US**

**We** may not be sued unless there is full compliance with all the terms of this policy. Suit must be brought within one year (Maryland – three years) after the loss or damage occurs.

(A.R. 40.)

Although the Chedesters claim that the damage to their residence occurred during the winter of 2012, the Chedesters did not alert Erie to their potential property damage claim until on

or around April 24, 2013. At that point in time, the damage alleged to the Chedesters' residence extended to the roof, walls, and siding of the house. (A.R. 2.) On April 26, 2013, Barry Dickson, structural engineer, inspected the Chedesters' residence at Erie's request to determine the cause of the reported damage. Mr. Dickson concluded that the damage was caused by "improper construction methods, poor workmanship, and heavy snow loads." (A.R. 3.) After receiving Mr. Dickson's report, Erie corresponded with the Chedesters by letter dated May 10, 2013, notifying them of its coverage denial with respect to their property damage claim. (A.R. 2-3, 67-69.) With this correspondence, Erie clearly and unequivocally stated:

Based on the limitations and exclusions cited and other limitations and exclusions which may also be applicable, the *Erie Insurance Property and Casualty Company has taken the position that the damage to the roof and the front wall are specifically excluded under your policy* and Erie Insurance Property and Casualty Company will be unable to assist you with repairs to your home.

(A.R. 69.) (Emphasis added.)

The Chedesters allege that after they were notified of the coverage denial they retained the services of David B. Friend to inspect the roof and re-evaluate the cause of damage. (A.R. 3.) The Chedesters allege that they provided Erie with a copy of Mr. Friend's report, which prompted a confirmation of the prior coverage denial on June 12, 2013 and again sometime around November 11, 2013. (A.R. 3-4.) Notwithstanding the clear and equivocal denial of the Chedesters' property damage claim on May 10, 2013, the Chedesters did not file their Civil Action until June 3, 2015. (A.R. 93.)

### **III. SUMMARY OF THE ARGUMENT**

The Chedesters' claims for breach of contract/common law bad faith (*Hayseeds*) and violation of the UTPA are clearly time-barred by the one-year statute of limitations prescribed by this Court's clearly established legal precedent. In reaching its decision to deny Erie's motion to

dismiss, the Circuit Court disregarded clearly established law concerning the application of statutes of limitation to these claims and, instead, imposed the incorrect standard to deny Erie's motion. The resulting Order deprives Erie not only of the correct application of established legal precedent, but also causes Erie severe prejudice by requiring it to litigate claims upon which no relief can be awarded to the Chedesters regardless of any discovery performed in this case.

**IV. STATEMENT REGARDING ORAL ARGUMENT**

Oral argument is warranted under West Virginia Rule of Appellate Procedure 20(a)(2) and (4) because this case involves an issue that is of fundamental public importance and has the potential to severely prejudice Erie throughout the duration of the case if the issue is not resolved. Alternatively, the appeal may be suitable for oral argument under West Virginia Rule of Appellate Procedure 19(a) because it involves assignments of error on a narrow issue of law. Because this Honorable Court should reverse the Circuit Court's Order, a memorandum decision may not be appropriate, consistent with West Virginia Rule of Appellate Procedure 21(d).

**V. ARGUMENT**

**A. Issuance of a Writ of Prohibition is Appropriate under the Standard Established by this Court Where the Circuit Court has Committed a Clear Error of Law Regarding Application of the Statute of Limitations.**

Pursuant to West Virginia Code § 53-1-1, "[t]he writ of prohibition shall lie as a matter of right in all cases of usurpation and abuse of power, when the inferior court has no jurisdiction of the subject matter in controversy, or, having such jurisdiction, exceeds its legitimate powers." In determining whether to grant a writ of prohibition in a matter in which the circuit court is acting within its jurisdiction, but is alleged to have exceeded its authority, this Court examines five factors:

- (1) whether the party seeking the writ has no other adequate means, such as direct appeal, to obtain the desired relief;
- (2) whether the petitioner will be damaged or

prejudiced in a way that is not correctable on appeal; (3) whether the lower tribunal's order is clearly erroneous as a matter of law; (4) whether the lower tribunal's order is an oft repeated error or manifests persistent disregard for either procedural or substantive law; and (5) whether the lower tribunal's order raises new and important problems or issues of law of first impression. These factors are general guidelines that serve as a useful starting point for determining whether a discretionary writ of prohibition should issue. Although all five factors need not be satisfied, it is clear that the third factor, the existence of clear error as a matter of law, should be given substantial weight.

Syl. Pt. 4, *State ex rel. Hoover v. Berger*, 199 W. Va. 12, 483 S.E.2d 12 (1996).

“In determining the third factor, the existence of clear error as a matter of law, [the Supreme Court] will employ a *de novo* standard of review, as in matters in which purely legal issues are at issue.” *State ex rel. Gessler v. Mazzone*, 212 W. Va. 368, 372, 572 S.E.2d 891, 895 (2002). Further, this Court has also instructed:

In determining whether to grant a rule to show cause in prohibition when a court is not acting in excess of its jurisdiction, this Court will look to the adequacy of other available remedies such as appeal and to the over-all economy of effort and money among litigants, lawyers, and courts; however, this Court will use prohibition in this discretionary way to correct only substantial, clear-cut legal errors plainly in contravention of a clear statutory, constitutional, or common law mandate which may be resolved independently of any disputed facts and only in cases where there is a high probability that the trial will be completely reversed if the error is not corrected in advance.

Syl. Pt. 1, *Hinkle v. Black*, 164 W. Va. 112, 262 S.E.2d 744 (1979).

This Court has previously granted a petition for writ of prohibition where the petitioner argued the trial court applied the erroneous statute of limitations standard in denying its motion to dismiss. *See, e.g., SER Monongahela Power Co. v. Fox*, 227 W. Va. 531, 711 S.E.2d 601 (2011). *SER Monongahela Power Co.* involved a breach of contract claim asserted by Shell Equipment Company, Inc. and Shell Energy Company, Inc. (collectively, “Shell”) against Monongahela Power Company, Allegheny Power, and Allegheny Energy Service Corp (collectively, “Mon Power Co.”) arising from the sale of coal for use at Mon Power Co.’s Harrison Power Station located in Haywood, West Virginia. *SER Monongahela Power Co.*, 711

S.E.2d at 603-04. The parties entered into a “Coal Sales Agreement,” whereby Shell was obligated to supply Mon Power Co. with 8,000 tons of coal per month for a two-year period from the Baldwin Mine operated by a Shell subsidiary. After Shell was unable to fulfill the terms of the contract, Mon Power Co. sent a termination notice on July 14, 2000, which took effect the same day. Shell instituted a breach of contract action on January 5, 2009, asserting two theories of recovery: breach of contract and detrimental reliance. *Id.* Mon Power Co. responded by filing a Motion to Dismiss or, in the alternative, Motion for Summary Judgment, asserting that Shell’s claims were time-barred by the four-year statute of limitations provided by the UCC for contracts involving the sale of goods. *Id.* at 604. Shell argued that the ten-year limitations period that applies to written contracts was the controlling statute of limitations. *Id.*

The trial court denied Mon Power Co.’s motion to dismiss Shell’s breach of contract claim, concluding that the UCC’s four-year statute of limitations was inapplicable and the ten-year statute of limitations was controlling. The trial court’s decision was based on its perception that the subject contract did not constitute a sale of goods under the UCC because Shell was not the party charged with severing the coal. *Id.* This Court reviewed the trial court’s decision under the standards enumerated in *State ex rel. Hoover* and concluded that the contract did, in fact, qualify as a sale of goods within the meaning of the UCC. *Id.* at 604-07. Having established the correct statute of limitations applicable to the claims, this Court then concluded:

By determining that the agreement was not a sale of goods under the UCC and therefore not subject to the UCC’s limitations period, the trial court committed error. Because Petitioners [Mon Power Co.] have demonstrated clear legal error, they are entitled to a writ of prohibition with regard to the trial court’s ruling that the four-year statute of limitations provided in West Virginia Code § 46-2-725(1) was not applicable to the underlying case.

*Id.* at 607.

In addition, in *Preiser v. MacQueen*, 177 W. Va. 273, 352 S.E.2d 22 (1985), this Court granted a writ of prohibition where the circuit court incorrectly determined that the abuse of process claim was not time-barred by the applicable statute of limitations. Importantly, when one of the parties to *Preiser* challenged the propriety of prohibition as the appropriate remedy for determining whether an action is barred by the statute of limitations, this Court concluded that it was. “When . . . there is a clear legal question it is often efficient to come in prohibition. Furthermore, a remedy by appeal of a crucial but erroneous legal ruling is frequently quite inadequate. . . .” *Id.*, 352 S.E.2d at 31 n. 2 (quoting *Hinkle v. Black*, 164 W. Va. 112, 262 S.E.2d 744, 749 (1979)).

As in *SER Monongahela Power Co.* and *Preiser*, a writ should be granted with respect to this matter because the Circuit Court committed clear legal error in denying the Motion to Dismiss of Defendant Erie Insurance Property and Casualty Company. The Circuit Court clearly applied the incorrect statute of limitations to each of the contested claims in contravention of clearly established legal precedent. Application of the five *Hoover* factors to the case *sub judice*, mandates that the writ be granted as the Circuit Court’s Order is clearly erroneous as a matter of law.

**B. The Circuit Court’s Order is Clearly Erroneous as a Matter of Law.**

**1. The Circuit Court Committed Clear Legal Error by Concluding that the Ten-Year Statute of Limitations Applies to Counts I and II of the Chedesters’ Complaint, thereby Denying Erie’s Request for Dismissal of these Claims.**

The Circuit Court’s Order, entered on August 28, 2015, concluding that the statute of limitations applicable to the Chedesters’ breach of contract and reasonable expectations claims is ten years is clearly erroneous as a matter of law and contrary to the clear legal precedent of this Court established in *Sizemore v. State Farm General Insurance Co.*, 202 W. Va. 591, 505 S.E.2d

654 (1998). It also reflects a lack of understanding of a reasonable expectations claim in West Virginia.

With respect to a breach of contract claim, this Court in *Sizemore* examined the application of the statute of limitations in a standard fire insurance policy which contained multiple line coverages, providing casualty insurance along with property insurance, to conclude that the plaintiffs' breach of contract action arising from a claim for first-party property coverage was barred by the one-year limitation of action provision contained within the policy, where plaintiffs failed to institute the action within one year of receiving written notification of the denial of coverage. *Id.*, 505 S.E.2d at 656, 662. On April 24, 1993, a fire destroyed the residence owned by plaintiffs Randall and Teresa Sizemore and insured through State Farm General Insurance Company ("State Farm"). The policy at issue was a standard fire insurance policy with multiple line coverages providing both casualty insurance and fire insurance, which had been approved by the Commissioner of Insurance of the State of West Virginia, as required by West Virginia Code § 33-17-2 (1957). *Id.* at 656. Within the multiple line insurance policy was a statement providing that "[n]o action shall be brought unless there has been compliance with the policy provisions. The action must be started within one year after the date of loss or damage." *Id.* at 657. By letter dated August 24, 1993, State Farm informed the plaintiffs that their fire loss claim was denied, citing exclusions relating to intentional acts, concealment or fraud, and failure to provide documentation. *Id.* at 656. The plaintiffs filed a complaint against State Farm on April 24, 1995, alleging breach of contract and bad faith<sup>4</sup> arising from the denial of coverage for the fire loss. *Id.* at 656-57. State Farm responded to the complaint by filing a

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<sup>4</sup> The Sizemore plaintiffs failed to plead a statutory bad faith claim, which led this Court to conclude that the "bad faith" claim alleged in the Complaint was more akin to a *Hayseeds* cause of action. *Sizemore*, 505 S.E.2d at 661. Because this Court ultimately decided that the plaintiffs' property damage claim was barred by the one-year statute of limitations in their policy, the *Hayseeds* claim was void. *Id.*

motion to dismiss, which was ultimately converted to a motion for summary judgment, arguing that the breach of contract claim was barred by the one-year limitation of action provision contained within the insurance policy. The circuit court denied State Farm's motion for summary judgment but submitted the issues raised to this Court as certified questions. *Id.* at 657.

This Court undertook a detailed inquiry into the validity of the one-year limitation of action provision in the policy by starting its examination with a review of West Virginia Code § 33-17-2 (1957), and West Virginia Code § 33-6-14 (1957).<sup>5</sup> As this Court noted, West Virginia Code § 33-17-2 states:

No policy of fire insurance covering property located in West Virginia shall be made, issued or delivered unless it conforms as to all provisions and the sequence thereof with the basic policy commonly known as the New York standard fire policy, edition of one thousand nine hundred forty-three, which is designated as the *West Virginia standard fire policy*; except that with regard to multiple line coverages providing *casualty insurance* combined with *fire insurance* this section shall not apply if the policy contains, with respect to the fire portion thereof, language as least as favorable to the insured as the applicable portions of the standard fire policy and such multiple line policy has been approved by the commissioner.

*Id.* at 657-58 (emphasis added).

The West Virginia standard fire policy referenced in this code section is a policy of insurance that provides property coverage for loss by fire and other perils, unless excluded. Specifically, the West Virginia Standard Fire Policy states: “This Company shall not be liable for loss by fire *or other perils* insured against in this policy caused, directly or indirectly, by. . . .” (emphasis added). “Casualty” insurance as referenced within § 33-17-2 means something different than property insurance. In this regard, West Virginia Code § 33-1-10(e) defines casualty insurance to mean vehicle insurance, liability insurance, burglary and theft insurance,

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<sup>5</sup> These two code sections have not been modified since their original adoption in 1957.

personal property floater insurance, glass insurance, boiler and machinery insurance, leakage and fire extinguishing equipment insurance, credit insurance, malpractice insurance, entertainment insurance, mine subsidence insurance, miscellaneous insurance, federal flood insurance, and workers' compensation insurance. Finally, "fire insurance" as referenced within § 33-17-2 refers to property insurance for losses caused by fire and other perils. In this regard, West Virginia Code § 33-1-10(c) defines "Fire" insurance as "insurance on real or personal property of every kind and interest therein, against loss or damage *from any or all hazard or cause*, and against loss consequential upon such loss or damage, other than noncontractual liability for any such loss or damage. Fire insurance shall also include miscellaneous insurance as defined in paragraph (12), subdivision (e) of this section." (emphasis added)

West Virginia Code § 33-6-14, also examined by the *Sizemore* Court, states:

No policy delivered or issued for delivery in West Virginia and covering a subject of insurance resident, located, or to be performed in West Virginia, shall contain any condition, stipulation or agreement requiring such policy to be construed according to the laws of any other state or country...or *limiting the time within which an action may be brought to a period of less than two years from the time the cause of action accrues in connection with all insurances other than marine insurances*;...Any such condition, stipulation or agreement shall be void, but such voidance shall not affect the validity of the other provisions of the policy. *This section shall not apply to the standard fire insurance policy.*

*Id.* at 658 (emphasis in original).

This Court summarized the intersection of these two code sections as follows:

Stated succinctly, if the multiple line policy containing both fire and casualty insurance is included within the meaning of the term "standard fire insurance policy" in W. Va. Code § 33-6-14, it is exempt from the prohibition on limitation of action provisions of less than two years contained in that statute, and the policy's one year limitation provision is valid. Conversely, if the multiple line policy is not included within the meaning of the term "standard fire insurance policy," its one year limitation of action provision is void.

*Id.*

This Court in *Sizemore* defined the term “standard fire policy” to include *both* stand-alone fire insurance policies *and* multiple line policies that include fire insurance coverage, holding in Syllabus Point 1 as follows:

The term “standard fire insurance policy” in W.Va. Code § 33-6-14 (1957) includes the fire portion of approved multiple line insurance policies which combine casualty and fire insurance coverage, as provided for in W.Va. Code § 33-17-2 (1957), so that the fire portion of approved multiple line policies is exempt from the two year requirement for limitation of action provisions in insurance contracts set out in W.Va. Code § 33-6-14 so long as the policy language is at least as favorable to the insured as the applicable portions of the standard fire policy and such multiple line policy has been approved by the commissioner.

Syl. Pt. 1, *Sizemore*.

As further explained by this Court:

[W]e believe the intent of the Legislature, as set forth in W. Va. Code § 33-17-12, is to treat the 165 line standard fire insurance policy the same as the approved fire portions of multiple line coverages *which combine casualty and fire insurance*. We find, therefore, that W. Va. Code § 33-17-2 (1957) defines the scope and meaning of the term ‘standard fire policy’ to *include not only the 165 numbered line basic policy, but also approved multiple line policies containing fire coverage*.

*Id.* at 659-60 (emphasis added).

Stated another way, this Court did not carve out only coverage for fires to be included within the definition of the term “standard fire policy.” Instead, this Court concluded that there is no support for the proposition proffered by plaintiff that “a West Virginia standard fire insurance policy is a policy which provides for fire coverage, and fire coverage only.” *Id.* at 659.

Rather, this Court stated:

We can think of no rational basis for the Legislature to allow the 165 line standard fire policy to have a one year limitation of action provision and then require the same provision in an approved fire insurance portion of a multiple line policy to be voided by the terms of W. Va. Code § 33-6-14...Accordingly, we find that because the Legislature saw fit to allow insurance providers to write multiple line policies containing fire insurance coverage conforming to the standard fire policy,

the Legislature also saw fit to allow fire insurance portions of multiple line policies to contain the same limitation of action provisions as the standard fire policy to which they must conform.

*Id.* at 660.<sup>6</sup>

Based upon this Court's analysis set forth above, it concluded that the plaintiffs' claim for property coverage was barred by the one-year limitation of action provision within their insurance policy and that, as a result, plaintiffs were unable to substantially prevail on their claim entitling them to an award of attorneys' fees and costs under *Hayseeds* as a result of the denial of coverage. *Id.* at 661. Consequently, this Court concluded that the plaintiffs' claims for first party property coverage and common law bad faith were effectively time barred by the policy's one year limitation of action provision. *Id.* at 662.

Contrary to the Circuit Court's interpretation of *Sizemore*, at no point in this Court's *Sizemore* opinion did it limit application of the one-year limitation of action provision to *only* that portion of the policy which insures against losses caused by fire. Instead, this Court expressly stated that the term "standard fire policy "include[s] *not only* the 165 numbered line basic policy, *but also* approved multiple line policies containing fire coverage." *Id.* at 660 (emphasis added).

The Court's decision in *Sizemore* is consistent with the ruling of the United States District Court for the Northern District of West Virginia in *Prete v. Royal Globe Insurance Co.*, 553 F. Supp. 332 (N.D.W. Va. 1982), which concluded that the twelve-month limitation provision contained in the West Virginia Standard Fire Insurance Policy issued to the plaintiffs

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<sup>6</sup> As noted previously, fire insurance and the standard fire policy refer to coverage for losses caused by more than just fire. It is insurance for loss to property caused by many different types of perils, unless specifically excluded. See, e.g., Syl. Pt. 6, *L.H. Jones Equip. Co. v. Swenson Spreader LLC*, 224 W. Va. 570, 687 S.E.2d 353 (2009) (the West Virginia Farm Equipment Dealer Contract Act is not limited in scope and application to dealers of farm equipment as might be mistakenly inferred from the title of the statute).

by the defendant also extended to the water damage and loss of rental endorsements attached to the policy. *Id.* at 335. In *Prete*, the plaintiffs first noticed cracks in the northeastern corner of their insured apartment building in November of 1974. *Id.* at 336. In July of 1978, the plaintiffs discovered the separated P-trap, to which they attributed the cause of the water damage. However, the plaintiffs did not file suit on this claim until October 11, 1979. *Id.* Their insurer, Royal Globe Insurance Company, moved for entry of summary judgment contending that the plaintiffs' claim was barred by the one-year limitation provision contained within the policy.<sup>7</sup> Specifically, the policy language provided that, "No suit or action on this policy for the recovery of any claim shall be sustainable . . . unless commenced within twelve months next after inception of the loss." *Id.* at 333.

Preliminarily, the District Court relied on this Court's decision in *Kirk v. Firemen's Insurance Co.*, 107 W. Va. 666, 150 S.E. 2 (1929) (decided after the Legislature adopted the New York Standard Fire Policy as the exclusive form of fire insurance to be issued in West Virginia) to conclude that the twelve month limitation on the commencement of an action on the Standard Fire Insurance Policy is valid in West Virginia. *Prete*, 553 F. Supp. at 334. The District Court then concluded:

Accordingly, this Court hereby holds that the twelve month limitation on the commencement of an action contained in the West Virginia Standard Fire Insurance Policy issued to the Plaintiffs by the Defendants applies to the water damage and loss of rental endorsements attached to that policy where those endorsements do neither expressly extend nor abrogate the twelve month limitation period.

*Id.* at 335.

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<sup>7</sup> Policy No. PYN 36 90 79, which was the policy at issue, was determined by the Court to be in conformity with the West Virginia Standard Fire Policy and was approved by the West Virginia Commissioner of Insurance prior to its issuance. *Id.* at 333.

Applying this holding to the facts before it, the District Court concluded that plaintiffs did not timely commence their action within one year, as required by the policy, because they discovered the separated P-trap, which they alleged caused the damage to their structure, in July 1978, but did not initiate this action until October 11, 1979. *Id.* at 336. Given the clear requirement of the policy language, the Court granted the defendant's motion for summary judgment. *Id.*<sup>8</sup>

Based upon the straightforward interpretation of this Court's conclusion in *Sizemore* as well as the persuasive authority of *Prete*, a multi-line policy (meaning a policy with casualty and property coverage) which includes language from the New York standard fire policy, and which is approved by the Commissioner of Insurance of the State of West Virginia, may properly include a one-year limitation of action provision which must be enforced by the circuit court.<sup>9</sup>

In the matter *sub judice*, the Circuit Court erred by finding that only the portion of a policy which provides protection from fires is subject to a one-year statute of limitations, which

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<sup>8</sup> Judge Haden, who authored the *Prete* decision, also authored the decision in *Beasley v. Allstate Insurance Co.*, 184 F. Supp. 2d 523 (S.D.W. Va. 2002), which ruled that the ten year general statute of limitations applied in that case. However, the insurer in *Beasley* did not argue that the one-year statute of limitations applied, but instead argued that a two-year statute of limitations applied. Accordingly, the District Court in *Beasley* did not consider a one-year limitations period. When it was determined that the two-year limitations period argued by the insurer was void, the District Court in *Beasley* simply resorted to a ten year statute of limitations.

<sup>9</sup> The Court's decision in *Sizemore* is consistent with courts in other jurisdictions applying limitation of action provisions in a multi-line policy to covered losses other than fire. *See, e.g., Hitt Contracting, Inc. v. Indus. Risk Insurers*, 258 Va. 40, 44, 516 S.E.2d 216, 217 (1999) ("Contrary to the insured's assertion, the mere fact that this policy provides coverage for other perils in addition to fire, and provides for insurer liability on a basis other than actual cash value, does not mean it is not subject to the "standard" provisions required in a fire policy [e.g., two-year limitations period]..."); *Beazor-Williams v. St. Paul Fire & Marine Ins. Co.*, 598 S.2d 1249 (La. Ct. App. 1992) (prescriptive fire insurance policy provision barring suit unless commenced within twelve months after the inception of loss applied to a claim for burglary loss under a homeowners policy); *Aldalali v. Underwriters at Lloyd's London*, 174 Mich. App. 395, 435 N.W.2d 498 (1989) (twelve-month time limitation set forth in fire policy applied with respect to action by insured against insurer for loss of earnings coverage); *Villa Clement, Inc. v. Nat'l Union Fire Ins. Co.*, 120 Wis. 2d 140, 353 N.W.2d 369 (Wis. Ct. App. 1984) (appellate court recognized that the term "fire insurance" covers indemnity insurance for losses to property caused by many other perils than fire, thereby concluding claim for water damage asserted under a builders all-risk insurance policy was barred by the one-year limitation provision because the policy was a "fire insurance" policy requiring suit be commenced within twelve months after loss).

wholly ignores the broader statutory definition of “fire insurance.” Furthermore, even if the Circuit Court was correct in applying a one-year statute of limitations only to coverage applicable to losses caused by fire, the Circuit Court erred by ignoring the language of West Virginia Code § 33-6-14 which provides for a two-year suit limitation on insurance policies (except for standard fire insurance policies). Even applying a two-year statute of limitations to the case at hand, the Chedesters’ suit is time-barred because the loss occurred in the winter of 2012, and the denial of their claim was communicated by Erie by letter dated May 10, 2013, but the underlying civil action was not filed until June 3, 2015. Instead, the Circuit Court applied a ten-year limitation of action to the Chedesters’ breach of contract claim without any legal basis. “Under the provisions of the standard fire policy adopted under W.Va. Code, 33-17-2 (1957), the twelve-month time period for bringing suit commences to run when the insurance company notifies the insured in writing that it declines to pay the loss.” Syl. Pt., *Meadows v. Emp’rs’ Fire Ins. Co.*, 171 W.Va. 337, 298 S.E.2d 874 (1982). This Court in *Meadows* further explained that “the enactment of W. Va. Code, 33-6-14 (1957), and its forerunner, W. Va. Code, 33-2-29 (1931), both of which dealt with limiting the time for bringing suits, indicates that the Legislature did not intend to have the general contract statute of limitations of W. Va. Code, 55-2-6 (1923), apply to insurance policies.” *Meadows*, 298 S.E.2d at 874.

Finally, with respect to its discussion of the Chedesters’ “reasonable expectations” claim, the Circuit Court’s Order reflects a lack of understanding of a reasonable expectations claim in West Virginia. A “reasonable expectations” claim is not a stand-alone claim in West Virginia, but rather can be a policyholder’s defense to a coverage denial, but only after a Court finds that the policy language at issue is ambiguous. Ordinarily, “[i]n West Virginia, the doctrine of reasonable expectations is limited to those instances . . . in which the policy language is

ambiguous.” *Nat’l Mut. Ins. Co. v. McMahon & Sons, Inc.*, 177 W. Va. 734, 742, 356 S.E.2d 488, 496 (1987), *overruled on other grounds by Potesta v. U.S. Fid. & Guar. Co.*, 202 W. Va. 308, 504 S.E.2d 135 (1998) (internal citations omitted). “[T]he doctrine of reasonable expectations is essentially a rule of construction, and unambiguous contracts do not require construction by the courts.” *Id.*, 356 S.E.2d at 496 n. 7 (internal citations omitted). In the case *sub judice*, the Chedesters have only generically alleged in Count II of their Complaint that any policy language relied upon by Erie to deny their claim must be ambiguous. However, no actual policy language is cited by the Chedesters to make that allegation. The Circuit Court made no ruling that the language provided in the Chedesters’ policy was ambiguous. Clearly then, the Circuit Court’s holding that a ten year statute of limitations applies to the Chedesters’ reasonable expectations claim has no basis in fact or law. For each of the reasons identified above, this Honorable Court should issue a writ of prohibition in this matter and award Erie relief from the Circuit Court’s Order denying Erie’s motion to dismiss.

**2. The Circuit Court Committed Clear Legal Error by Holding that UTPA and *Hayseeds* Claims Do Not Accrue and the Statute of Limitations Does Not Begin to Run until the Underlying Coverage Issues are Resolved, thereby Denying Erie’s Request for Dismissal of Counts III and IV of the Chedesters’ Complaint.**

The Circuit Court further erred by holding that the statute of limitations on a claim for violation of the UTPA and arising under *Hayseeds* does not begin to run until the Chedesters’ underlying coverage issues are resolved. That holding is clearly erroneous as a matter of law and contrary to clear legal precedent established by this Court.

As a preliminary matter, the Circuit Court’s Order does not dispute that a one-year statute of limitations applies to the Chedesters’ UTPA and *Hayseeds* claims.<sup>10</sup> Specifically, the Circuit

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<sup>10</sup> In this regard, the Circuit Court’s ruling is consistent with well-established law in West Virginia that a one-year statute of limitations applies to claims filed under the UTPA and arising under *Hayseeds*. See *Wilt v. State Auto*

Court noted that “[s]hould plaintiffs prevail on their coverage claims a one year statute of limitations applies to these derivative claims.” (A.R. 92.) However, the Circuit Court erroneously concluded that the statute of limitations had not begun to run, holding instead that “[i]t is well settled that these claims for relief do not accrue until the underlying coverage issues are resolved...”, characterizing them as “derivative claims.” (A.R. 92.)

This Court, however, has clearly instructed that the statute of limitations on UTPA and *Hayseeds* claims begins to run as of the date when the insured becomes aware of the denial of insurance benefits. This Court exhaustively reviewed the application of the statute of limitations to UTPA and *Hayseeds* claims arising from the insurer’s refusal to defend the insured in *Noland v. Virginia Insurance Reciprocal*, 224 W. Va. 372, 686 S.E.2d 23 (2009). Mr. Noland, plaintiff below, was named as a third-party defendant in a medical malpractice action filed in Raleigh County Circuit Court. *Id.* at 26. Mr. Noland was an insured under a policy issued by Virginia Insurance Reciprocal (“VIR”) to his employer, Beckley Appalachian Regional Hospital (“BARH”). On October 23, 2000, VIR corresponded with Mr. Noland notifying him of the denial of coverage and further denying a duty to defend him in the third-party action. Mr. Noland filed an action against VIR on July 25, 2001. On August 25, 2005, Mr. Noland was permitted to amend his complaint to assert statutory and common law bad faith/ *Hayseeds* claims against Richard Stocks, Lisa Hyman, Coverage Options Associations (“COA”), and Kentucky Hospital Association (“KHA”). These defendants filed motions to dismiss, which were granted by the trial court after application of the statute of limitations. *Id.*

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*Mut. Ins. Co.*, 203 W. Va. 165, 171, 506 S.E.2d 608, 614 (1998) (“[W]e determine that claims involving unfair settlement practices that arise under the Unfair Trade Practices Act are governed by the one-year statute of limitations set forth in West Virginia Code § 55-2-12(c)”; Syl. Pt. 4, *Noland v. Va. Ins. Reciprocal*, 224 W. Va. 372, 686 S.E.2d 23 (2009) (holding that “[t]he one year statute of limitations contained in W. Va. Code § 55-2-12(c) ... applies to a common law bad faith claim.”).

Mr. Noland argued that his statutory and *Hayseeds* claims were timely brought under this Court's prior decision in *Klettner v. State Farm Mutual Automobile Insurance Co.*, 205 W. Va. 587, 519 S.E.2d 870 (1999), because the underlying action, BARH's third-party complaint against him, was pending at the time he filed the amended complaint against Stocks, Hyman, COA, and KHA. *Noland*, 686 S.E.2d at 35.<sup>11</sup> Adopting the rationale of *Daugherty v. Allstate Insurance Co.*, 55 P.3d 224 (Colo. Ct. App. 2002) (superseded by statute as stated in *Broduer v. Am. Home Assurance Co.*, 169 P.3d 139 (2007)), and *Adamski v. Allstate Ins. Co.*, 738 A.2d 1033 (Pa. Super. Ct. 1999)), this Court rejected Mr. Noland's argument and concluded:

[I]n a first-party bad faith claim that is based upon an insurer's refusal to defend, and is brought under W. Va. Code § 33-11-4(9) (2002) (Repl. Vol. 2006) and/or as a common law bad faith claim, the *statute of limitations begins to run on the claim when the insured knows or reasonably should have known that the insurer refused to defend him or her in an action.*

*Noland*, 686 S.E.2d at 40 (emphasis added).

This Court affirmed the trial court's finding that the one-year statute of limitations applicable to statutory and *Hayseeds* causes of action was triggered on October 23, 2000, the date that VIR notified Mr. Noland that it would not provide coverage or a defense for him in the action brought by BARH. Because Mr. Noland did not seek to amend his complaint against VIR to assert his claims against Stocks, Hyman, COA, and KHA until July 15, 2004 – long after the expiration of the one-year statute of limitations – this Court affirmed the trial court's dismissal of the claims against these parties. *Id.*

In a case involving a claim for first-party insurance benefits similar to the case *sub judice*, the United States District Court for the Southern District of West Virginia in *Watson v. National Union Fire Insurance Co.*, No. 5:13-cv-01939, 2013 WL 2000267 (S.D.W. Va. May 13, 2013),

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<sup>11</sup> As the Court is aware, *Klettner* involved a claim for third-party unfair claim settlement practices, which claim was subject to a one year statute of limitations that was tolled until the appeal period expired on the underlying motor vehicle accident claim. Syl. Pt. 7, *Klettner*, *supra*.

applied the statutes of limitation identified in *Wilt* and *Noland* to conclude that the plaintiff's UTPA and *Hayseeds* claims were time barred based upon the date the denial of coverage was communicated to the insured. In *Watson*, the plaintiff was involved in a motor vehicle accident on June 19, 2008, in which he allegedly sustained substantial bodily injuries. *Id.* at \*1. Plaintiff sought the benefit of his employer's underinsured ("UIM") coverage through a policy issued by National Union Fire Insurance Company of Pittsburgh ("NUFIC") and administered by Chartis Claims, Inc. ("Chartis"). On November 11, 2009, Chartis denied plaintiff's claim, citing an applicable exclusion. *Id.* Plaintiff initiated the underlying civil action with claims arising under *Hayseeds* and the UTPA on October 11, 2012. *Id.* at \*4. Defendants NUFIC and Chartis timely moved to dismiss arguing that application of the statute of limitations barred the administration of the claims. *Id.*

The District Court agreed with defendants' position, finding that plaintiff's claims were, in fact, barred by the applicable statute of limitations prescribed in *Wilt* and *Noland*. *Id.* at 4. Specifically, the District Court concluded:

The Court has considered the allegations set forth in Plaintiff's First Amended Complaint which clearly establishes the date of Plaintiff's accident, the date he sought the benefit of the Defendant NUFIC issued insurance policy, and the date of the denial of benefits of the Defendant Chartis on November 11, 2009...As is obvious from the pleading, Plaintiff became aware of the denial of insurance benefits on November 11, 2009. He has not stated any reason in the amended pleading to prompt an inquiry regarding whether the statute of limitations should be tolled. Therefore, a timely claim was required to be filed by November 11, 2010. Plaintiff's initial complaint was filed in October, 2012. Therefore, taking Plaintiff's allegations as true, Plaintiff's alleged bad faith and UTPA claims are time-barred by the applicable one year statute of limitations.

*Id.*

This decision and the decision of *Noland* are likewise consistent with the Court's ruling in *Sizemore v. State Farm General Insurance Co.*, 202 W. Va. 591, 505 S.E.2d 654 (1998),

discussed *supra*, finding the plaintiffs' claim for property coverage for their fire loss was barred by the one-year limitation of action provision in their insurance policy, thereby effectively barring any *Hayseeds* cause of action otherwise available for attorneys' fees and costs as a result of the denial of the fire loss claim.<sup>12</sup>

Based upon the clearly established legal authority in *Noland* and *Sizemore*, in conjunction with the persuasive authority of *Watson*, *supra*, applying *Noland* and *Wilt*, the Circuit Court committed clear legal error by summarily determining that the Chedesters' UTPA and *Hayseeds* claims did not accrue at the time Erie's coverage denial was communicated to them on May 10, 2013. As a preliminary matter, the Circuit Court provides no explanation in its Order for the rejection of *Noland* and *Watson* to the Chedesters' claims. In fact, the Circuit Court's Order wholly omits any reference to these decisions cited by Erie in support of its motion to dismiss. Conversely, the Circuit Court provides no citation to any statute or case law to support its conclusion that these claims "do not accrue until the underlying coverage issues are resolved. Should plaintiffs prevail on their coverage claims a one year statute of limitations applies to these derivative claims." (A.R. 92.) Instead, the Circuit Court's Order leaves the basis for this conclusion wholly undefined.

A cursory review of the Chedesters' pleadings, in light of the guidance provided by this Court in *Noland* and *Watson*, discloses that their UTPA and *Hayseeds* claims are barred by the

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<sup>12</sup> These decisions are consistent with the rulings from other jurisdictions confirming that the statute of limitations begins to run with the denial of coverage and is not tolled by conduct which occurs after the denial of coverage. See, e.g., *Tucker v. State Farm Mut. Auto. Ins. Co.*, 53 P.3d 947 (Utah 2002) (mere willingness by the insurer to consider additional information after denial of coverage does not constitute an agreement to toll the limitations period; instead, the inception of loss occurs no later than the date on which the insurer refuses to pay the disputed PIP benefits.); *Adamski v. Allstate Ins. Co.*, 738 A.2d 1033 (Pa. Super. Ct. 1999) (holding that statute of limitations began to run as soon as the right to institute lawsuit arose and continuing refusal to provide coverage to insured was not a separate act of bad faith); *Davis v. Aetna Cas. & Sur. Co.*, 843 S.W.2d 777 (Tex. 1992) (the continued denial of the insured's claim did not extend the statute of limitations); *Murray v. San Jacinto Agency, Inc.* 800 S.W.2d 826 (Tex. 1990) ("The fact that damage may continue to occur for an extended period after denial does not prevent limitations from starting to run." Instead, insurer's admission of error, occurring six months after denial of benefits on September 5, 1984, did not toll the statute of limitations).

one-year statute of limitations – notwithstanding the outcome of the breach of contract claim. The Chedesters were notified on May 10, 2013, with clear and unequivocal language that their property damage claim was denied. (A.R. 2, 67-69.) Specifically, Erie advised the Chedesters in writing: “Erie Insurance Property and Casualty Company has taken the position that the damage to the roof and the front wall are *specifically excluded under your policy*.” (A.R. 69) (emphasis added.) The Chedesters have not alleged that Erie communicated any reversal in its coverage position at any point after this communication. In fact, the Chedesters simply assert that Erie reaffirmed its coverage position on June 12, 2013, and again sometime around November 11, 2013. (A.R. 3-4.) Because the Chedesters initiated the present action on June 3, 2015, well after the statute of limitations had run, the Circuit Court committed a clear error of law by not granting Erie’s motion to dismiss.<sup>13</sup> The clear legal precedent established by *Noland* and *Sizemore*, as well as the persuasive authority of *Watson*, required the Circuit Court to apply the one-year statute of limitations to the Chedesters’ UTPA and *Hayseeds* claims and dismiss those claims.

Similar to the error associated with the Circuit Court’s review of the breach of contract claim, the Circuit Court’s failure to apply the appropriate standard to the Chedesters’ other claims will cause severe prejudice to Erie who will be forced to defend against meritless claims, incurring substantial litigation expenses, which will require reversal following trial of this matter. Such a result does not comport with this Court’s instructions in *Hinkle*, *SER Monongahela Power Co.*, *Preiser*, or the West Virginia Rules of Civil Procedure requiring matters be administered to secure the “just, speedy, and inexpensive determination of every action.”

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<sup>13</sup> As noted in Erie’s motion to dismiss, the State of West Virginia generally adheres to the “discovery rule” for determining when the statute of limitations begins to run. In other words, the statute of limitations begins running when a plaintiff knew or should have known of the existence of a claim. (A.R. 18-19.) See *Knapp v. Am. Gen. Fin. Inc.*, 111 F. Supp. 2d 758 (S.D.W. Va. 2000). In this case, the Chedesters knew that Erie had expressly denied their claim upon receipt of Erie’s May 10, 2013, denial of coverage letter. That is when the statute of limitations on a possible cause of action started to run. The statute of limitations was not reset by any later affirmation of that same denial of coverage. “The injury producing event is the denial of coverage, and that is when the cause of action accrues.” *Davis v. Aetna*, 843 S.W.3d at 777 (citation omitted).

**VI. CONCLUSION**

For all of the reasons set forth herein, Petitioner Erie Insurance Property and Casualty Company petitions this Honorable Court for relief from the Circuit Court's Order denying Erie's motion to dismiss, entered on August 28, 2015. Erie respectfully requests that this Court issue a writ of prohibition in this matter and award Erie such other relief as set forth herein and justice demands.

Dated this 1st day of October, 2015.



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Laurie C. Barbe (W. Va. Bar No. 5504)  
Chelsea V. Prince (W. Va. Bar No. 11447)  
STEPTOE & JOHNSON PLLC  
1085 Van Voorhis Road, Suite 400  
P.O. Box 1616  
Morgantown, WV 26507-1616  
(304) 598-8000  
*laurie.barbe@steptoe-johnson.com*  
*chelsea.prince@steptoe-johnson.com*

Amy M. Smith (W. Va. Bar No. 6454)  
STEPTOE & JOHNSON PLLC  
400 White Oaks Boulevard  
Bridgeport, WV 26330  
(304) 933-8000  
*amy.smith@steptoe-johnson.com*

*Counsel for Petitioner,  
Erie Insurance Property and Casualty Company*

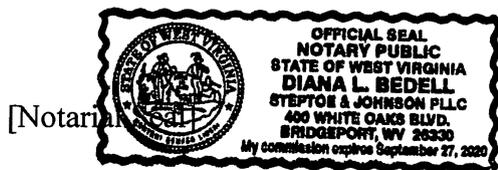
VERIFICATION

I, Amy M. Smith, being first duly sworn, state that I have read the foregoing VERIFIED PETITION FOR WRIT OF PROHIBITION; that the factual representations contained therein are true, except insofar as they are stated to be on information and belief; and that insofar as they are stated to be on information and belief, I believe them to be true.

  
\_\_\_\_\_  
Amy M. Smith

Taken, subscribed, and sworn to me this 1st day of October 2015.

My Commission expires: September 27, 2020.



  
\_\_\_\_\_  
Diana L. Bebell

**CERTIFICATE OF SERVICE**

I hereby certify that on this 1st day of October 2015, true and accurate copies of the foregoing “Verified Petition for Writ of Prohibition” were deposited in the U.S. mail upon the parties to whom a rule to “show cause” should also be served at their respective offices, to wit:

Todd Wiseman, Esquire  
Wiseman Law Firm, PLLC  
1510 Grand Central Avenue  
Vienna, WV 26105  
*Counsel for Respondents,  
David and Joyce Chedester*

The Honorable J. D. Beane  
c/o Wood County Circuit Clerk  
Wood County Judicial Building  
2 Government Square, Room 131  
Parkersburg, WV 26101-5353

James Stealey, Esquire  
The Stealey Law Firm, PLLC  
417 Grand Park Drive, Suite 102  
Parkersburg, WV 26101  
*Counsel for Respondents,  
David and Joyce Chedester*

  
\_\_\_\_\_  
Amy M. Smith (WVSB # 6454)  
*Counsel for Petitioner,  
Erie Insurance Property and Casualty Company*