

RECEIVED  
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JEFFERSON COUNTY  
CIRCUIT COURT

No.

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**IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA**

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LEE JAMES CRAWFORD,

*Petitioner and  
Defendant below<sup>1</sup>.*

v.

DAVID SNYDER and MARY SNYDER,  
Personal Representatives of the  
ESTATE OF MICHAEL C. SNYDER,  
Deceased.

*Respondents and  
Plaintiffs below.*

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**LEE JAMES CRAWFORD'S PETITION FOR APPEAL  
FROM THE CIRCUIT COURT OF JEFFERSON COUNTY, WEST VIRGINIA  
(Civil Action No. 06-C-243)**

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<sup>1</sup> In addition to Mr Crawford, there were other defendants named in the underlying suit who were also involved in the trial. However, this Petition is filed only on behalf of Mr Crawford

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## **KIND OF PROCEEDING AND NATURE OF THE RULING**

Petitioner, Lee James Crawford, appeals from the following rulings of the Jefferson County Circuit Court below:

- (1) the January 12, 2010 Judgment Order entering the jury verdict; and
- (2) the April 12, 2010 Order denying Petitioner's Motion for New Trial.

Petitioner seeks relief from certain errors committed during the trial of this matter.

### **STATEMENT OF FACTS**

This case arises from a motor vehicle accident resulting in a pedestrian fatality. The Plaintiffs' decedent, Michael Snyder, was working as a flagman for CHS Traffic Control Services, Inc., and was flagging the southbound lane of Augustine Avenue in Charles Town, WV as part of a construction project wherein a new entrance was being created to the Huntfield subdivision. A vehicle belonging to Defendant Sharon Wilson, mother of Heather Strachan, was being operated by Defendant Lee James Crawford when it struck the Plaintiffs' decedent, killing him. The Plaintiffs later filed this civil action, alleging various causes of action against the Defendants, including Lee James Crawford. (*See Plaintiffs' Complaint*).

In order to obtain a permit for the work being performed as part of the Huntfield construction project, Huntfield and its contractors had to implement a traffic control plan approved by the State inspector for the WV Division of Highways, to ensure that it complied with the applicable standards under the Manual on Uniform Traffic Control Devices prepared by the Federal Highway Administration (2000 edition) and the WV Traffic Control for Streets and Highways Construction and Maintenance Operations (1994 edition). (*See transcript of trial proceedings on December 2, 2009, at pp. 147 and 150*). The State inspector approved the use of Case A-9 as the traffic control plan for this project, which is a typical traffic control plan for the type of project involved in this

case. (*See Id.* at p. 150). As the work involved in this project necessitated a lane closure in the area where the new subdivision entrance was being built, Case A-9 required that certain signs be in place on the approach to the work zone, and that certain other precautions, such as flashing lights, be on those signs. (*See Id.* at pp. 157-165).

On the day of the accident, the southbound lane was closed, and this is the lane in which Mr. Snyder was standing at the time of the accident, and the lane in which Mr. Crawford was traveling. (*See Id.* at p. 29). However, no signs had been placed, on the approach to the construction site, indicating that there was a lane closure, in violation of the applicable state and federal standards. (*See Id.* at pp. 54, 159, 180 and 217). In addition, in the absence of the "One Lane Road" sign, the "Shoulder Work Ahead" sign, which was present, would only cause a driver to believe that the lane ahead was unobstructed. (*See Id.* at pp. 158-159 and 217). Further, although the signs that were present were equipped with flashing lights, the lights were not illuminated on the day of the accident, also in violation of the applicable standards. (*See Id.* at pp. 55 and 179).

As Crawford approached the construction site, unaware of the lane closure ahead, he looked down inside his vehicle to find a "spit cup" for his smokeless tobacco and, when he looked up, he saw Mr. Snyder standing in the roadway, but it was too late to avoid hitting him. (*See Id.* at p. 57). Mr. Crawford admitted to the investigating officer that he was distracted at the time of the accident, and later pled no contest to negligent homicide. (*See Id.*).

#### **ASSIGNMENTS OF ERROR**

1. The trial court erred in limiting the cross-examination of Mr. Crawford by his counsel, while he was on the stand during Plaintiffs' case in chief, to the areas testified to on direct examination.
2. The trial court erred in allowing an entry on the verdict form for loss of solace and a separate entry for sorrow and mental anguish, as they are one item of damages under West Virginia's wrongful death statute, W.Va. Code §55-7-6.

3. The trial court erred in allowing the report of Mike Fanning, submitted as an exhibit by Defendant Ryan Incorporated Central, to be admitted into evidence, as it did not meet the business record exception to the hearsay rule.
4. The trial court erred by allowing the jury to consider an award of punitive damages against Defendant Lee James Crawford, as such an award was not supported by the evidence at trial.
5. The trial court erred by denying Petitioner's Motion for New Trial and Petitioner's request for a remittitur of the punitive damages awarded by the jury.

### STANDARD OF REVIEW

A trial court's ruling on a motion for a new trial is reviewed under an abuse of discretion standard, and review of a trial court's underlying factual findings is performed under a clearly erroneous standard. Questions of law are subject to a *de novo* standard. Tennant v. Marion Health Care Found., Inc., 194 W.Va. 97, 459 S.E.2d 374 (1995). "Although the ruling of a trial court in granting or denying a motion for a new trial is entitled to great respect and weight, the trial court's ruling will be reversed on appeal when it is clear that the trial court has acted under some misapprehension of the law or the evidence." Syl. pt. 4, Sanders v. Georgia-Pacific Corp., 159 W.Va. 621, 225 S.E.2d 218 (1976); Syl. pt. 1, Rohrbaugh v. Wal-Mart Stores, Inc., 212 W.Va. 358, 572 S.E.2d 881 (2002); Syl. pt. 1, Keesee v. Gen. Refuse Serv., Inc., 216 W.Va. 199, 604 S.E.2d 449 (2004).

The limitations placed on cross-examination of a witness by the trial court are subject to an abuse of discretion standard. Syl. pt. 4, State v. Carduff, 142 W.Va. 18, 93 S.E.2d 502 (1956). Generally, the Court will also "apply an abuse of discretion standard when reviewing a trial court's decision regarding a verdict form." Perrine v. E.I. du Pont de Nemours and Co., 225 W.Va. 482, 694 S.E.2d 815, 871 (2010). "[T]he criterion for determining whether the discretion is abused is whether the verdict form, together with any instruction relating to it, allows the jury to render a verdict on the

issues framed consistent with the law, with the evidence, and with the jury's own convictions.”  
Adkins v. Foster, 195 W.Va. 566, 572, 466 S.E.2d 417, 423 (1995).

Two interrelated standards of review apply to evidentiary rulings. “First, an interpretation of the West Virginia Rules of Evidence presents a question of law subject to a *de novo* review. Second, a trial court's ruling on the admissibility of testimony is reviewed for an abuse of discretion, ‘but to the extent the [circuit] court's ruling turns on an interpretation of a [West Virginia] Rule of Evidence, [the Court's] review is plenary.’” State v. Sutphin, 195 W.Va. 551, 560, 466 S.E.2d 402, 411 (1995).

When reviewing the propriety of the amount of punitive damages awarded, the Supreme Court conducts a *de novo* review of the jury's award as well as the circuit court's ruling approving, rejecting, or reducing such an award. Syl. pt. 16. Peters v. Rivers Edge Mining, Inc., 224 W.Va. 160, 680 S.E.2d 791 (2009). Further, when a trial or appellate court reviews an award of punitive damages for excessiveness under Syllabus points 3 and 4 of Games v. Fleming Landfill, Inc., 186 W.Va. 656, 413 S.E.2d 897 (1991), the court should:

first determine whether the amount of the punitive damages award is justified by aggravating evidence including, but not limited to: (1) the reprehensibility of the defendant's conduct; (2) whether the defendant profited from the wrongful conduct; (3) the financial position of the defendant; (4) the appropriateness of punitive damages to encourage fair and reasonable settlements when a clear wrong has been committed; and (5) the cost of litigation to the plaintiff. The court should then consider whether a reduction in the amount of the punitive damages be permitted due to mitigating evidence including, but not limited to: (1) whether the punitive damages bear a reasonable relationship to the harm that is likely to occur and/or has occurred as a result of the defendant's conduct; (2) whether punitive damages bear a reasonable relationship to compensatory damages; (3) the cost of litigation to the defendant; (4) any criminal sanctions imposed on the defendant for his conduct; (5) any other civil actions against the same defendant based upon the same conduct; (6) relevant information that was not available to the jury because it was unduly prejudicial to the defendant; and (7) additional evidence.

Perrine v. E.I. du Pont de Nemours and Co., 225 W.Va. 482, 694 S.E.2d 815, 886-7 (2010).

## POINTS OF AUTHORITIES AND DISCUSSION OF LAW

- I. **The trial court erred in limiting the cross-examination of Mr. Crawford by his counsel, while he was on the stand during Plaintiffs' case in chief, to the areas testified to on direct examination.<sup>2</sup>**

During the Plaintiffs' case in chief, Mr. Crawford was called to testify as an adverse witness. However, the Plaintiffs only questioned Mr. Crawford as to his employment relationship with Defendants V.I.P. Limousine Services Ltd. and Glen Lee. During cross-examination of Mr. Crawford by his own counsel, counsel attempted to question Mr. Crawford regarding issues other than Mr. Crawford's employment relationship with V.I.P. Limousine Services and Glen Lee. Multiple objections by multiple parties were made, stating that such questioning was outside the scope of direct, and this objection was sustained by the Court. Thus, Crawford's counsel was not permitted to question Mr. Crawford regarding anything other than the employment issue.

Rule 611(b)(1) of the *West Virginia Rule of Evidence* states that "[a] party may be cross-examined on any matter relevant to any issue in the case, including credibility. In the interest of justice, the judge may limit cross-examination with respect to matters not testified to on direct examination." However, the court in Gable v. Kroger Co., 186 W.Va. 62, 410 S.E.2d 701 (1991), held that when limiting cross-examination, the judge must balance the fairness to both parties.

The Petitioner recognizes that "[t]he extent of cross-examination of a witness is a matter within the sound discretion of the trial court; and in the exercise of such discretion, in excluding or permitting questions on cross-examination, its action is not reviewable except in case of manifest abuse or injustice." Syl. pt. 4, State v. Carduff, *supra*. However, the action of the trial court must be reasonable. *See Wheeler v. Murphy*, 192 W.Va. 325, 333, 452 S.E.2d 416, 424 (1994). Further, as

stated above. the trial judge must balance the fairness to both parties when deciding whether or not to limit cross-examination. *See Gable, supra.*

In this case, the trial judge did abuse his discretion under Rule 611 (b)(1) because, due to Mr. Crawford's medical condition, it was not a simple matter for Mr. Crawford to come back at a later time to testify. During Mr. Crawford's direct examination by the Plaintiffs, it was clear that Mr. Crawford was suffering from a severe medical condition that would have made it extremely difficult for him to be present at trial for a second day of questioning on the liability issues involved in the case. As the trial court was aware, Mr. Crawford's medical condition required him to use portable oxygen. Mr. Crawford ran out of oxygen during his direct testimony and, because he was having so much difficulty breathing without it, the Court called a recess to allow counsel for Mr. Crawford, with the assistance of Courtroom security personnel, to obtain oxygen from the Charles Town EMS in order to permit him to continue to testify. (*See transcript of trial proceedings on December 3, 2009, at p. 143*).

However, since the Court did not permit Mr. Crawford to continue to testify, while he was on the stand, regarding the accident and other issues in the case, the jury did not hear that Mr. Crawford's physical condition deteriorated significantly since the accident occurred. Nor did it hear about Mr. Crawford's criminal conviction and incarceration as a result of the accident. The jury also did not get the opportunity to hear how the absence of a "One Lane Ahead" sign impacted Mr. Crawford's mental impressions and actions at the time of the accident, and how, when Mr. Crawford first saw Mr. Snyder, he believed Mr. Snyder to be standing on the side of the road rather than in the lane of travel. His counsel asked the Court for latitude in his cross-examination, such that Mr. Crawford would not have to be transported back to Charles Town from his home in Keyser, WV, and

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<sup>2</sup> The trial court did not address this assignment of error in its Order denying Petitioner's Motion for New Trial

have to attempt to obtain additional oxygen for a second day of questioning. However, the objection made by certain parties to the cross-examination of Mr. Crawford on issues outside the scope of direct examination was sustained, and counsel was not permitted to ask Mr. Crawford any questions other than those related to the employment issues involved in the case. (See transcript of trial proceedings on December 3, 2009, at pp. 200-204).

By not allowing Mr. Crawford to testify, while he was present in the courtroom and had enough oxygen to continue, the judge failed to balance the fairness to all parties, and abused his discretion in limiting Mr. Crawford's testimony. This limitation on counsel's cross-examination was not in the interest of justice, and was not proper under Rule 611(b)(1). Thus, the trial court erred in limiting the cross-examination of Mr. Crawford under the circumstances presented.

**II. The trial court erred in allowing an entry on the verdict form for loss of solace, and a separate entry for sorrow and mental anguish, as they are one item of damages under West Virginia's wrongful death statute, W.Va. Code §55-7-6.**

The verdict form presented to the jury during the trial of this matter included the following with regard to damages, despite the objection of counsel for Mr. Crawford:

Set forth the full amount of damages which you find will fully compensate the Plaintiff, regardless of any percentage of fault.

(1) the sorrow and mental anguish suffered by Michael Snyder's parents;  
\$ \_\_\_\_\_

(2) the loss of solace, which may include society, companionship, comfort, guidance, kindly offices and advice, which has been suffered by Michael Snyder's parents as a result of his death:  
\$ \_\_\_\_\_

(3) compensation for the reasonably expected loss of (i) income of Michael Snyder, and (ii) services, protection, care and assistance provided by Michael Snyder; and  
\$ \_\_\_\_\_

TOTAL DAMAGES (not reduced by fault) \$ \_\_\_\_\_

The jury awarded \$700,000.00 for “the sorrow and mental anguish suffered by Michael Snyder’s parents.” (See Verdict Form). The jury also awarded \$700,000.00 for “the loss of solace, which may include society, companionship, comfort, guidance, kindly offices and advice, which has been suffered by Michael Snyder’s parents as a result of his death.” (See Id.)

In a civil action brought pursuant to West Virginia’s wrongful death statute, W.Va. Code §55-7-6, the estate of the decedent may be awarded damages for the following:

- (A) Sorrow, mental anguish, and solace which may include society, companionship, comfort, guidance, kindly offices and advice of the decedent;
- (B) compensation for reasonably expected loss of (i) income of the decedent, and (ii) services, protection, care and assistance provided by the decedent; (C) expenses for the care, treatment and hospitalization of the decedent incident to the injury resulting in death; and (D) reasonable funeral expenses.

W.Va. Code §55-7-6(c)(1). The statute does not separate the damages to be awarded for sorrow and mental anguish from those for solace, but instead includes them as one item of damages to be awarded, constituting the only element of non-pecuniary damages permitted under the statute. The jury should not have been asked to consider an award for sorrow and mental anguish separately from an award of “loss of solace.” Instead, the jury should have been presented with the elements of damages exactly as they are laid out in the statute, with sorrow, mental anguish, and solace listed as one item of damages.

In addition, the West Virginia Supreme Court of Appeals has previously defined sorrow, mental anguish, and solace as “factors” that may be considered when determining damages in a wrongful death action: the Court does not define sorrow, mental anguish, and solace as separate types of damages that may be awarded. Davis v. Foley, 193 W.Va. 595, 457 S.E.2d 532 (1995).

Thus, the jury’s award of \$700,000 for loss of solace, in addition to the award of \$700,000 for sorrow and mental anguish was improper under West Virginia’s wrongful death statute.

Therefore, the trial court erred in allowing an entry on the verdict form for loss of solace, and a separate entry for sorrow and mental anguish.

**III. The trial court erred in allowing the report of Mike Fanning, submitted as an exhibit by Defendant Ryan Incorporated Central, to be admitted into evidence, as it did not meet the business record exception to the hearsay rule.**

During the trial of this matter, Defendant Ryan Incorporated Central sought to introduce into evidence the accident investigation report of Mike Fanning, superintendent for Ryan Incorporated Central, completed after the accident at issue in this case. The report was admitted into evidence, pursuant to the "business record exception" to the hearsay rule contained in Rule 803(6) of the *West Virginia Rules of Evidence*. However, the foundational requirements of Rule 803(6) were not met in this case, and the report should not have been admitted into evidence.

Rule 803 states as follows:

The following are not excluded by the hearsay rule, even though the declarant is available as a witness: (6) Records of Regularly Conducted Activity. A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness.

In order to satisfy the fourth foundational requirement, that the information set forth in the report be derived from a source with knowledge, the party seeking to admit such evidence may establish either:

(1) that the preparer of the record had knowledge of the matters reported; or  
(2) that the information reported was transmitted by a person with knowledge who was acting in the course of a regularly conducted activity; or (3) that it was a regular practice of the activity to rely upon communications from persons with knowledge.

Lacy v. CSX Transp., Inc., 205 W.Va. 630, 520 S.E.2d 418 (1999).

In Lacy, automobile passengers who were injured in a train collision at a crossing brought a personal injury action against the driver of the automobile and the railroad. At trial, the jury found the driver 97% at fault and the railroad 1% at fault. The plaintiffs appealed, and the West Virginia Supreme Court of Appeals reversed and remanded, holding that the plaintiffs should have been permitted to introduce the railroad investigator's diagram of the accident scene under the hearsay exception for business records, because the preparer of the diagram relied upon statements by eyewitnesses. Id. at 423.

In this case, Mr. Fanning did not testify to the items necessary to lay the appropriate foundation for the admission of his report under the "business record exception." In fact, Mr. Fanning testified that he prepared his report based upon secondhand sources, rather than through persons with actual knowledge of the accident, such as the eyewitnesses in Lacy. (See transcript of trial proceedings on December 7, 2009, at pp. 6-12, 14-16). Thus, the report was not admissible under the "business record exception" set forth in Rule 803(6), and should not have been admitted into evidence.

Further, the admission of Fanning's accident investigation report into evidence at the trial of this case was prejudicial to Mr. Crawford because it was factually incorrect, in that, among other defects, the report prepared by Mr. Fanning stated that the Traffic Control Plan implemented by CHS was in accordance with the West Virginia Uniform Traffic Control Manual. Expert testimony in this case made clear that Case A-9 was not properly implemented, as the signs which would have indicated to Mr. Crawford that a lane was closed ahead of him were missing, and the lights on other traffic control signs which were required to be flashing were not illuminated at all. As such, the trial court erred in allowing the report of Mike Fanning to be admitted into evidence.

**IV. The trial court erred by allowing the jury to consider an award of punitive damages against Defendant Lee James Crawford, as such an award was not supported by the evidence at trial.**

The jury's award of \$300,000 in punitive damages against Mr. Crawford was not supported by, and in fact was contradictory to, the evidence that was presented at trial by the Plaintiffs. In order to recover punitive damages against a defendant, plaintiffs must offer proof that the defendant acted with a bad motive, or in a manner so wanton or reckless as to manifest a willful disregard of the rights of others. Such damages, unlike compensatory damages, are not intended to compensate the plaintiffs, but are given with a view to the enormity of the offense, to punish the defendant for willfulness, wantonness, malice or other like aggravation of the wrong done to the plaintiffs. Alkire v. First Nat'l Bank of Parsons, 197 W.Va. 122, 475 S.E.2d 122 (1996); Mayer v. Frobe, 40 W.Va. 246, 22 S.E. 58 (1895).

In Perrine v. E.I. du Pont de Nemours and Co., *supra*, the Court synthesized the process for reviewing punitive damage awards:

[T]he court must first evaluate whether the conduct of the defendant toward the plaintiff entitled the plaintiff to a punitive damage award under Mayer v. Frobe and its progeny. If a punitive damage award was justified, the court must then examine the amount of the award pursuant to the aggravating and mitigating criteria set out in Garnes v. Fleming Landfill, Inc., 186 W.Va. 656, 413 S.E.2d 897 (1991), and the compensatory/punitive damage ratio established in TXO Production Corp. v. Alliance Resources Corp., 187 W.Va. 457, 419 S.E.2d 870 (1992).

Id.

In syllabus point 4 of Mayer, *supra*, the Court stated:

In actions of tort, where gross fraud, malice, oppression, or wanton, willful or reckless conduct on criminal indifference to civil obligations affecting the rights of others appear, or where legislative enactment authorizes it, the jury may assess exemplary, punitive or vindictive damages, these terms being synonymous.

Id. In the time period since Mayer, the West Virginia Supreme Court of Appeals has consistently reaffirmed its commitment to the factual prerequisite of wanton, willful or reckless conduct to support a claim of punitive damages. See Alkire, *supra*.

In the context of an award of punitive damages in an automobile accident case, Wilt v. Buracker, 191 W.Va. 39, 443 S.E.2d 196 (1993); Perry v. Melton, 171 W.Va. 397, 299 S.E.2d 8 (1982); Smith v. Perry, 178 W.Va. 395, 359 S.E.2d 624 (1987); and Hensley v. Erie Insurance Company, 168 W.Va. 172, 283 S.E.2d 227 (1981) are instructive. Punitive damages were permitted in each of these automobile collision cases. In each case, the fact that the defendants were under the influence of alcohol was a factor in permitting the award of punitive damages. In Wilt, the Court's instruction to the jury regarding punitive damages was upheld as there was evidence that the defendant had been drinking whiskey prior to the accident and, at the time of the accident, a bottle of whiskey was between the defendant's legs. Wilt, *supra*, at 51, 208. Following the accident, the defendant in Wilt had an extreme smell of alcohol and, prior to the accident, had been driving erratically. Id.

Similarly, in Perry v. Melton, *supra*, the defendant had a blood alcohol content of 0.19%. Id. at 400, 11. The Perry defendant had also attempted to pass a tractor-trailer traveling at approximately fifty-five (55) miles per hour by "traveling in excess of that speed in the far right-hand lane designed for emergency parking only." Id.

Punitive damages were also permitted against a defendant whose conduct resulted in an automobile accident in Hensley v. Erie Insurance Company, *supra*. In Hensley, punitive damages were supported by the defendant's operation of his motor vehicle in an "intoxicated condition" and at a high rate of speed on the wrong side of the public road. The defendant then collided head-on with a car occupied by the plaintiff in her lane of travel. Id. at 173, 228.

In Smith v. Perry, *supra*, the Supreme Court held that there was sufficient evidence in that case to support a verdict awarding punitive damages against a defendant whose conduct resulted in an automobile accident. In Smith, there was testimony as to the smell of alcohol on the defendant and in his car, as well as evidence of the defendant crossing the center line in a no-passing zone, traveling at a high rate of speed, and having little sleep the night prior to the accident. *Id*

In this case, unlike those set forth above, no evidence was presented that showed Mr. Crawford acted wantonly, willfully, or recklessly. The evidence presented showed that Mr. Crawford was not speeding at the time of the accident, and he was not under the influence of alcohol or drugs. (See transcript of trial proceedings on December 2, 2009, at pp. 39 and 53). The evidence, including expert testimony, only showed that Mr. Crawford acted negligently. He looked down for something inside his vehicle as he was entering the construction zone, having no indication that there was a lane closure ahead, and by the time he looked up, it was too late to avoid hitting Mr. Snyder. Therefore, based upon the evidence presented during trial, an instruction to the jury on punitive damages should never have been given, and the trial court committed error by allowing the jury to consider punitive damages.

**V. The trial court erred by denying Petitioner's Motion for New Trial and Petitioner's request for a remittitur of the punitive damages awarded by the jury.**

The jury's award of punitive damages against Mr. Crawford also violated his right to due process under both the West Virginia and United States Constitutions. The Court instructed the jury, during the punitive damages phase of the trial, pursuant to Garnes v. Fleming Landfill, Inc., *supra*, that, in determining the amount of punitive damages, the financial position of the Defendant was relevant. (See Punitive Damages Instructions). However, the jury was not given the opportunity to consider Mr. Crawford's financial position when they awarded punitive damages because Mr.

Crawford was not permitted to present evidence to the jury with regard to his financial position.

Prior to the trial of this matter, Defendant Huntfield moved, *in limine*, to exclude evidence of the financial resources of any of the Defendants. The Court ruled, at the pre-trial conference, that it would entertain a request to put punitive damages on the verdict form. If the jury determined that punitive damages were warranted, a bifurcated proceeding, beginning immediately after the rendering of the verdict, would be undertaken, at which time evidence of financial resources would be admissible pursuant to Garnes. (See Order From Pretrial of November 25, 2009). However, once the jury returned its verdict, indicating that an award of punitive damages should be considered against Mr. Crawford, his counsel was precluded from presenting any evidence of Mr. Crawford's financial resources.

The original jury verdict was returned at approximately 2:00 p.m. on Friday, December 11, 2009. Due to Mr. Crawford's severe medical condition, as more fully discussed above, he was unable to be present in Court to receive the jury verdict. Thus, his counsel requested a recess, until Monday morning, December 14, 2009, to make arrangements for Mr. Crawford to be transported to the courthouse from his home in Keyser, WV to testify regarding his financial resources. However, the Court ruled that, because Mr. Crawford was not present in Court on the afternoon of December 11, 2009, he would be precluded from testifying about his financial status. Such a ruling denied Mr. Crawford the opportunity to present relevant evidence in his defense to the punitive damages award, thus depriving him of his right to due process under both the West Virginia and United States Constitutions. Therefore, under the reasoning of the Garnes court, a new trial on punitive damages should have been granted.

In the alternative, a remittitur of the punitive damages should have been awarded by the trial court. In Garnes, the Court set forth the factors that should be considered by the trial court, when

reviewing an award of punitive damages. The Court stated that, in addition to the factors given to the jury, the trial court should also consider these additional factors:

- (1) The costs of litigation. (We want to encourage plaintiffs to bring wrongdoers to trial.);
- (2) Any criminal sanctions imposed on the defendant for his conduct. (Any sanctions should mitigate the punitive damages award.);
- (3) Any other civil actions against the same defendant, based upon the same conduct. (Any other awards should mitigate the punitive damages award.); and
- (4) The appropriateness of punitive damages to encourage fair and reasonable settlements when a clear wrong has been committed. A factor that may justify punitive damages is the cost of litigation to the plaintiff.

\* \* \*

Because all of the information is not available to the jury, it is likely that in some cases the jury will make an award that is reasonable on the facts as the jury know them, but that the trial court will be required to adjust the award downward because of information available to him or her that would have been prejudicial to the defendant if presented to the jury.

Id. at 909. In this case, criminal sanctions had been previously imposed upon Mr. Crawford, and Mr. Crawford's insurer had made multiple offers of settlement on his behalf for the limits of the liability policy available to him, beginning almost immediately after the accident. The jury had not received testimony regarding Mr. Crawford's plea to criminal charges regarding the death of Michael Snyder, because his testimony was improperly limited by the trial court. (See section I, above). Thus, the factors set forth in Garnes should have been applied to the benefit of Mr. Crawford in this case and, as an alternative to the granting of a new trial, the trial court should have reduced by remittitur the jury's award of punitive damages.

#### **PRAYER FOR RELIEF**

For all of the foregoing reasons, Petitioner Lee James Crawford, respectfully requests that this Honorable Court grant the Petition for Appeal and award the Petitioner a new trial. Petitioner

further requests its costs and expenses incurred and any and all other such relief the Court deems appropriate.



Traci L. Wiley, WWSB # 8080  
Gary E. Pullin, WWSB # 4528  
Jeffrey W. Molenda, WWSB # 6356

RECEIVED  
NOV 12 2010  
JEFFERSON COUNTY  
CIRCUIT COURT

**IN THE CIRCUIT COURT OF JEFFERSON COUNTY, WEST VIRGINIA**

**DAVID SNYDER and MARY SNYDER,**  
Personal Representatives of the  
**ESTATE OF MICHAEL C. SNYDER,**  
deceased.

**Plaintiffs.**

v.

Civil Action No. 06-C-243  
Judge David H. Sanders

Huntfield, L.C., a limited liability company;  
Ryan Incorporated Central, a Wisconsin corporation;  
CHS Traffic Control Services, Inc., a Maryland corporation;  
V.I.P. Limousine Services, Ltd., a Maryland corporation;  
Glen M. Lee dba V.I.P. Limousine Ltd., a West Virginia  
sole proprietorship; Sharon K. Wilson; Heather L. Strachan;  
Lee James Crawford; and Corporation of Charles Town,  
West Virginia.

**Defendants.**

v.

Insurance Brokers of Maryland.  
Selective Way Insurance Company.  
National Union Fire Insurance Company  
of Pittsburgh, PA.

**Third Party Defendants.**

**CERTIFICATE OF SERVICE**

The undersigned counsel for defendant, Lee James Crawford, does hereby certify on this 12<sup>th</sup> day of November, 2010, that a true copy of the foregoing "*Lee James Crawford's Petition for Appeal*" and "*Docketing Statement*" was served upon counsel of record by depositing the same to them in the U.S. Mail, postage prepaid, sealed in an envelope, and addressed as follows:

F. Samuel Byrer, Esquire  
Peter A. Pentony, Esquire  
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***Counsel for Defendant Heather Strachan***



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**PULLIN, FOWLER, FLANAGAN, BROWN & POE, PLLC**

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Number: 0096069

November 12, 2010

Received of PULLIN, FOWLER, FLANAGAN, BROWN & POE, PLLC \$110.00

901 QUARRIER STREET  
CHARLESTON WV 25301

The exact sum of One Hundred Ten Dollars and No Cents

For..... APPEAL BOND FEE/PULIN FOWLER

Payment type: CHECK Check # 078928

Case number.: 06-C-243

Plaintiff...: DAVID SNYDER, PERSNL REP ESTATE OF MICHAEL C. SNYDER, ET AL

Defendant...: HUNTFIELD, L.C.LMTD LBLTY CO.AGNT: JAMES B.CRAWFORD, III, ET AL

Transaction conducted at:  
JEFFERSON COUNTY COURTHOUSE  
CHARLES TOWN WV 25414

LAURA E RATTENNI, CIRCUIT CLERK

Deputy \_\_\_\_\_  
RMC

Distribution to Accounts...

6001 FUNDS AND BONDS	100.00	1001 CLERKS FEES - OTHER	5.00
4017 CFIA (\$25-BOND; \$10-	5.00		

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REPLY TO: Charleston  
SENDERS E-MAIL: [JMOLENDA@PFFWY.COM](mailto:JMOLENDA@PFFWY.COM)  
[www.pffwy.com](http://www.pffwy.com)

November 12, 2010

Via hand delivery

Laura E. Rattenni  
Jefferson Circuit Clerk  
Jefferson County Courthouse  
P.O. Box 1234  
Charles Town, WV 25414

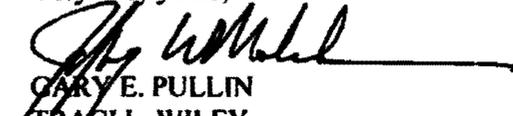
**RE: David Snyder, et al. v. Huntfield, L.C., et al.**  
**Jefferson County Circuit Court Civil Action No. 06-C-243**

Dear Ms. Rattenni:

Please find enclosed for filing in the above styled civil action, an original "*Lee James Crawford's Petition for Appeal*," including the corresponding "*Docketing Statement*," and "*Petitioner Lee James Crawford's Designation of Record for Appeal*." Counsel of record has been served with a complete copy of the same via U.S. Mail.

Thank you for your kind attention to this matter. Should you have any questions, please feel free to contact me.

Very truly yours,

  
GARY E. PULLIN  
TRACIL WILEY  
JEFFREY W. MOLEND A

JWM/mr  
Enclosure(s)

- cc: Honorable David H. Sanders, Chief Judge
- F. Samuel Byrer, Esquire/ Peter A. Pentony, Esquire
- Patrick J. Nooney, Esquire
- Anthony C. Sunseri, Esquire
- Stephen F. Gandee, Esquire
- Michael D. Lorensen, Esquire
- Robert W. Trumble, Esquire/ Suzanne Williams McAuliffe, Esquire
- Paul B. Weiss, Esquire
- Mr. Lee James Crawford
- Christi L. Miller, State Farm Claim No. 48-5361-790