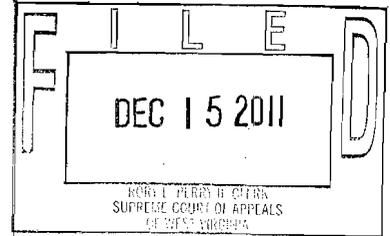


**IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA**

No. 11-1615



**STATE OF WEST VIRGINIA EX REL.  
JULIE MASSANOPOLI PIPER,  
ADMINISTRATRIX OF THE ESTATE OF  
WILLIAM LEE PIPER, DECEASED,**

**Petitioner,**

**Circuit Court of Jefferson County,  
Civil Action No. 09-C-415**

**v.**

**HONORABLE DAVID H. SANDERS,  
JUDGE OF THE CIRCUIT COURT OF  
JEFFERSON COUNTY, AND  
ROBIN SKINNER PRINZ, AS PERSONAL  
REPRESENTATIVE FOR THE ESTATE OF  
KYLE HOFFMAN, JR.,**

**Respondents.**

**RESPONDENT ROBIN SKINNER PRINZ'S RESPONSE TO PETITION FOR  
WRIT OF PROHIBITION**

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**STATUTES**

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## I. QUESTION PRESENTED

Did the Circuit Court abuse its legitimate powers when it refused Petitioner's motion to stay the trial of the underlying tort claim in a bifurcated case while the insurer appealed the jury verdict in the coverage action?

## II. STATEMENT OF THE CASE

Seventeen year-old Kyle Hoffman, Jr. was killed in a devastating car wreck in Jefferson County, West Virginia.<sup>1</sup> Hoffman was a passenger in a car driven by William Lee Piper. When Piper attempted to pass another vehicle he lost control, colliding with an oncoming minivan.<sup>2</sup> Piper died immediately.<sup>3</sup> Hoffman was airlifted to a hospital, but died of multiple blunt force injuries the next day.<sup>4</sup> Five months after Kyle Hoffman's death, his only child, Bailey, was born.

Plaintiff filed this wrongful death action on behalf of the Estate of Kyle Hoffman, Jr. on October 27, 2009.<sup>5</sup> Count I of the Complaint is a wrongful death claim against the Estate of William Lee Piper.<sup>6</sup> Count IV is an insurance claim against State Farm Fire and Casualty Company.<sup>7</sup>

At the request of Defendants, the parties filed a Joint Motion to Bifurcate and for Stay.<sup>8</sup> The Circuit Court granted this motion and entered an Order to that effect on July 22, 2010.<sup>9</sup> Accordingly, this case was bifurcated into two parts, a declaratory judgment

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<sup>1</sup> Respondent's Appendix 15-26 (Complaint), 160-164 (West Virginia Uniform Crash Report).

<sup>2</sup> Id.

<sup>3</sup> Respondent's Appendix 164.

<sup>4</sup> Id.

<sup>5</sup> Respondent's Appendix 15-26.

<sup>6</sup> Id.

<sup>7</sup> Id.

<sup>8</sup> Respondent's Appendix 104-109 (Joint Motion to Bifurcate and for Stay).

<sup>9</sup> Respondent's Appendix 110-113 (Order Granting Motion to Bifurcate and for Stay and Vacating Scheduling Order).

action on insurance coverage by Defendant State Farm and a tort action on the wrongful death claim.<sup>10</sup> None of the parties objected to the order. The underlying tort action was stayed pending the jury trial on the declaratory judgment. Defendant State Farm lost the declaratory judgment action in a jury trial on June 2, 2011, when the jury found in favor of coverage for the underlying tort claim.<sup>11</sup> When the Judgment Order was entered after the jury trial, the initial stay dissolved per the order.

The Circuit Court then entered a Scheduling Order on June 28, 2011, providing a trial date of January 17, 2012 for the wrongful death action.<sup>12</sup> None of the parties objected to the Order. Two months later, on August 30, 2011, Defendant Piper filed a Motion for Stay, asking that the Circuit Court stay the case until Defendant State Farm's Petition for Appeal on the coverage issue was resolved.<sup>13</sup> Plaintiff opposed this motion.<sup>14</sup> On October 31, 2011, the Circuit Court denied Defendant Piper's motion, finding that the appeal should not prevent the trial of the issues in the tort action.<sup>15</sup>

On November June 3, 2011, Defendant State Farm filed a Notice of Appeal to this Court, Case No. 11-1265.<sup>16</sup> It did not perfect this appeal until December 5, 2011, one day before the deadline imposed by this Court.

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<sup>10</sup> Id.

<sup>11</sup> Respondent's Appendix 114-115 (Judgment Order).

<sup>12</sup> Respondent's Appendix 153-156 (Third Amended Scheduling Order).

<sup>13</sup> Respondent's Appendix 126-138 (Defendant Julie Massanopoli Piper's Motion For Stay).

<sup>14</sup> Respondent's Appendix 139-145 (Plaintiff's Memorandum in Opposition to Defendant Piper's Motion for Stay).

<sup>15</sup> Respondent's Appendix 1-3 (Order Denying Defendant Julie Massanopoli Piper's Motion to Stay).

<sup>16</sup> Respondent's Appendix 118-125 (Notice of Appeal).

### III. SUMMARY OF ARGUMENT

The coverage action in this bifurcated case has been decided by the Circuit Court. There remain no unresolved issues from the coverage action that have bearing on the merits of the wrongful death case. At no time prior to Petitioner's August 30, 2011, Motion to Stay did any Defendant object to the Circuit Court's announced intent – as shown in the initial order bifurcating the case – to hear the underlying tort action after the conclusion of the declaratory action. Petitioner now seeks to have this Court issue a Writ of Prohibition forbidding the Circuit Court of Jefferson County from proceeding with the underlying wrongful death despite its failure to object to the bifurcation and scheduling orders.

Petitioner bases her request for this extraordinary writ on her contention that the Circuit Court erred in failing to apply *Christian v. Sizemore*, 181 W.Va. 628, 383 S.E.2d 810 (1989). Petitioner misconstrues that case to require a court to stay the underlying tort action in a bifurcated case until such time as an insurer has exhausted every potential avenue for appeal of the coverage portion of the case. In fact, the only “black letter” law from *Christian* is that a **plaintiff** can pursue a declaratory judgment action against an insurer prior to obtaining a judgment against a defendant in cases where insurance coverage has been denied. Syl. Pt. 2, *Christian*, 181 W.Va. 628, 383 S.E.2d 810. Thus, the Circuit Court's Order Denying Defendant Julie Massanopoli Piper's Motion to Stay was not clearly erroneous as a matter of law.

Petitioner alleges that because Defendant State Farm refuses to make a settlement offer to the Respondent until disposition of its appeal, she “runs the substantial risk of

suffering a verdict in excess of her insurance coverage” in the underlying tort action. That, of course, is State Farm’s choice if it wants to put its insured at risk.

Prohibiting the Circuit Court from proceeding with the underlying tort action in this case actually rewards Defendant State Farm for its attempts to game the judicial system. Every day that State Farm avoids paying a settlement or judgment in this action it also avoids paying interest on the coverage at stake in this trial. Respondent has offered to settle this case for policy limits,<sup>17</sup> but State Farm has yet to offer a penny in response.<sup>18</sup> Staying the wrongful death claim actually discourages State Farm from engaging in any meaningful settlement negotiations.

#### **IV. STATEMENT REGARDING ORAL ARGUMENT AND DECISION**

Plaintiff agrees with Defendant Piper that review of written arguments and record should allow this Court to dispose of the pending case without oral argument. Plaintiff further agrees that argument should proceed under Rule 19 if the Court does schedule oral argument.

#### **V. ARGUMENT**

##### **A. Standard of Law**

“The writ of prohibition shall lie as a matter of right in all cases of usurpation and abuse of power, when the inferior court has not jurisdiction of the subject matter in controversy, or, having such jurisdiction, exceeds its legitimate powers.” W.Va. Code §53-1-1. Prohibition is an extraordinary writ, and West Virginia’s Supreme Court of Appeals “has limited the exercise of its original jurisdiction to circumstances of an extraordinary nature.” *State ex rel. West Virginia Nat. Auto Ins. Co., Inc. v. Bedell*, 223

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<sup>17</sup> Respondent’s Appendix 154 (June 6, 2011 Correspondence).

<sup>18</sup> Respondent’s Appendix 155 (June 15, 2011 Correspondence).

W.Va. 222, 229, 672 S.E.2d 358, 365 (2008). In cases where the petitioner claims not that there is an absence of jurisdiction, but that the lower court has exceeded its legitimate powers, this Court considers

(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*, 1999 W.Va. 12 (1996). However, "whenever the Court believes that a prohibition petition is interposed for the purpose of delay or to confuse and confound the legitimate workings of the criminal or civil process in the lower courts, a rule will be denied." *Hinkle v. Black*, 164 W.Va. 112, 119, 262 S.E.2d 744, 748 (1979).

**B. A writ of prohibition does not lie in this case, as the Defendant's petition fails to demonstrate that the lower tribunal exceeded its legitimate powers in issuing its Order Denying Defendant Piper's Motion to Stay.**

The Petitioner's request must fail, because it does not meet the standards announced by this Court in *State ex rel. Hoover v. Berger*. Petitioner does not allege that the Circuit Court was without jurisdiction in this action. Instead, she alleges that the court below exceeded its legitimate authority in issuing its order denying stay. This statement is odd, since the Petitioner did not object contemporaneously to either the court's order allowing bifurcation and staying the original tort action or the court's Scheduling Order

following entry of the Judgment Order. In fact, the Petitioner jointly moved for the original order of bifurcation and stay. It got exactly what it wanted.

There is no statute specifically addressing the particular issue at hand, therefore, this Court should evaluate Petitioner's prayer for a writ of prohibition by applying the five factors iterated in *State ex re. Hoover v. Berger*, giving emphasis and particular weight to factor three, whether the lower tribunal's order is clearly erroneous as a matter of law. 199 W.Va. at 12, 483 S.E.2d at 12. Analyzing this case in light of these factors, this Court should find a writ of prohibition unwarranted in these circumstances.

**1. The Circuit Court's denial of Defendant Julie Massanopoli Piper's Motion to Stay was not clearly erroneous.**

Evaluating a Petitioner's request for a writ of prohibition, the Court must give substantial weight to factor 3, the question of whether the lower tribunal's decision was based on clear error as a matter of law. *State ex rel. Hoover*, Syl. Pt. 4. In the instant case, the Petitioner has offered no legal basis for her motion, nor has she cited any rule or statute that requires the stay of one portion of a bifurcated case while the losing party appeals a loss.

Petitioner cites the Circuit Court's rejection of her claim that *Christian v. Sizemore* as dispositive of Motion to Stay the wrongful death action at this time as clearly erroneous as a matter of law. In fact, *Christian* does not apply or offer any guidance regarding staying one part of a bifurcated action in order to give a party opportunity to endlessly litigate and appeal the other portion of the action. *Christian* does not require this Court to allow a piecemeal interlocutory appeal of a ruling which does not completely resolve any of the remaining claims in this case.

The issue in *Christian* was “whether a plaintiff in a personal injury action may amend the complaint to add a count for declaratory judgment . . . [on insurance coverage.]” 181 W.Va. at 629, 383 S.E.2d at 811. The Court determined that allowing the Plaintiff to bring a declaratory judgment action on insurance coverage in the same case with the underlying tort action was desirable because it enhanced judicial economy by avoiding multiple lawsuits and the possibility, as here, of separate proceedings in different courts.” *Id.* at 632. The Court’s concerns in *Christian* about judicial economy were related to actions being brought in different trial courts. The Court offered no opinion on the issue of staying an underlying tort action pending appeal of a coverage case.

The only “black letter” law from *Christian* is that a plaintiff can pursue a declaratory judgment action prior to obtaining a judgment against a defendant in cases where insurance coverage has been denied, and that courts have discretion to determine whether coverage issues should be resolved before the underlying tort claims. Syl. Pt. 2, *Christian*, 181 W.Va. 628, 383 S.E.2d 810. The coverage action in this case has been decided. There is no valid reason for the Circuit Court not to hear the wrongful death portion of the case now. The Circuit Court’s Order Denying Defendant Julie Massanopoli Piper’s Motion to Stay was not clearly erroneous as a matter of law. The Circuit Court did not exceed its legitimate powers in denying that motion, and a writ of prohibition is not warranted in this case. Most importantly, it was in the court’s discretion to do so.

**2. Weighing the Petitioner's failure to satisfy the clearly erroneous factor against the potential of prejudice to both the Petitioner and Respondent if the underlying tort action is stayed requires a finding that a writ of prohibition is not warranted in this case.**

Petitioner alleges that her prayer for a writ of prohibition also satisfies factors one and two of the general guidelines articulated in *State ex rel. Hoover*.<sup>19</sup> It is true that the Petitioner satisfies factor one. Unless this Court grants a writ of prohibition, the scheduled trial on the Plaintiff's wrongful death claim will be heard on January 17, 2012. However, she does not satisfy factor two, whether she will be damaged or prejudiced in a way that will not be correctable on appeal.

Petitioner alleges that because Defendant State Farm refuses to make a settlement offer to the Respondent until disposition of its appeal, she "runs the substantial risk of suffering a verdict in excess of her insurance coverage" in the underlying tort action. (Petition 8). Petitioner misses the point: State Farm does not have the right to endlessly delay an underlying action simply to exhaust its appeals. Respondent has a right to a trial on the wrongful death action **regardless** of insurance coverage. Moreover, Petitioner retains the right to appeal the outcome of the underlying tort action regardless of whether or not Defendant State Farm is granted an appeal in the coverage action.

Additionally there is a substantial risk of prejudice to the Petitioner should the Court prohibit the wrongful death action from proceeding. The automobile collision giving rise to these actions occurred on October 27, 2007, and this litigation has been ongoing for over two years now. Cases do not get better with time, witnesses die or disappear, memories fade, and evidence can go missing. Adding another year of waiting

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<sup>19</sup> As Petitioner makes no claim regarding factors four and five of the *State ex rel. Berger* guidelines, Respondent will not address them at this time.

and delay before the Respondent and the beneficiaries of the estate can have their day in Court would be extremely prejudicial to them.

**C. To promote judicial economy and basic fairness, this Court should deny the Petition for a writ of prohibition.**

Despite Petitioner's repeated reliance on *Christian v. Sizemore*, there is simply nothing in that case that requires a court to stay the underlying wrongful death action in a wrongful death case pending resolution of appeal of the coverage action. However, the Court's explanation of its decision to remand the case to allow the Plaintiff to add the coverage action to the underlying tort claim informs consideration of the question at hand:

Permitting an adjudication of the respective rights and duties of the parties in the same proceeding as the underlying tort action also enhances judicial economy by avoiding multiple lawsuits and the possibility . . . of separate proceedings in different courts. Declaratory judgment also provides a prompt means of resolving policy coverage disputes so that the parties may know in advance of the personal injury trial whether coverage exists. This facilitates the possibility of settlements . . .

*Christian*, 181 W.Va. at 632, 383 S.E.2d at 814 (citations omitted).

Petitioner's primary reason for requesting this writ of prohibition appears to be her concern over the possibility of a verdict in excess of Defendant State Farm's policy limits. **Respondent has offered to settle the wrongful death claim for the policy limits**; however, to date, State Farm has refused to offer a single penny to settle this case.

In fact, in its Petition for Appeal, State Farm included a Motion for Stay that relied heavily on arguments regarding judicial economy. These arguments are particularly outrageous. Review of the timeline of State Farm's legal maneuvers shows that it has essentially been holding this litigation hostage for its sole benefit. The Circuit Court issued its Order bifurcating the trial and staying the underlying tort action on July

22, 2010. That Order did not give State Farm the right to appeal the jury's decision and continue the stay on the underlying trial. No Defendant raised objection to that order.

Following conclusion of the coverage action, the Circuit Court issued its Scheduling Order in the wrongful death action on June 28, 2011. Defendant did not object to the Scheduling Order, nor did she move to stay the order. It was not until August 30, 2011 – nearly three months after conclusion of the jury trial on the coverage issue – that Petitioner filed a Motion to Stay. Although State Farm filed its Notice of Appeal on June 3, 2011, it waited until December 5, 2011, one day before this Court's deadline, to perfect the appeal. These are not the actions of parties concerned about the underlying tort action going forward; these are the actions of an insurance company delaying and delaying and delaying.

Every day that it can delay a decision in the wrongful death action is another day that State Farm can withhold payment on the policy and not have to pay interest on it. If the Court grants this petition for a writ of prohibition, the Respondent is prejudiced and judicial economy is sacrificed, but State Farm receives a huge boon.

If the writ is granted, State Farm is rewarded for essentially confusing and confounding “the legitimate workings of the criminal or civil process in the lower courts,” precisely the behavior this Court decried in *Hinkle v. Black*, 164 W.Va. at 119, 262 S.E.2d at 748 (1979). Granting Petitioner's request for a writ of prohibition will allow State Farm to continue gaming the system and frustrate the goals of fairness and judicial economy.

## VI. CONCLUSION

This Petition for a writ of prohibition is another in a long string of procedural maneuvers designed to benefit State Farm and State Farm only. Petitioner has failed to meet the requirements for a writ of prohibition. Most importantly, the Circuit Court's decision was not clearly erroneous. Although Petitioner alleges that the Circuit Court's refusal to grant a stay violates *Christian v. Sizemore*, that case simply does not require that an underlying tort action be stayed pending appeal of a coverage action. The wrongful death portion of this bifurcated action has been languishing for two years. The Circuit Court has considered and disposed of the coverage action, and should now be allowed to proceed with the underlying tort action before evidence is lost or destroyed. Petitioner respectfully asks that this Court deny Petitioner's request for the extraordinary writ of prohibition.

**ROBIN SKINNER PRINZ,**  
**ADMINISTRATOR OF THE ESTATE OF**  
**KYLE HOFFMAN, JR**  
By Counsel



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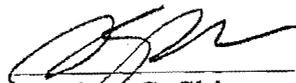
CERTIFICATE OF SERVICE

I, Stephen G. Skinner, of the Skinner Law Firm, counsel for the Petitioner, Robin Skinner Prinz, as Personal Representative of the Estate of Kyle Hoffman, Jr., certify that I served Respondent Robin Skinner Prinz's Response to Petition for Writ of Prohibition, by United States Mail on the 14<sup>th</sup> day of December 2011 upon the following

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