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12-0117

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

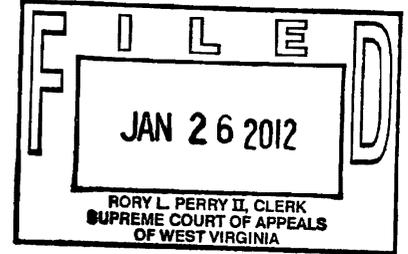
**STATE OF WEST VIRGINIA ex rel.,  
ANGELA Y. SMITH,**

**Petitioner below**

v.

**WEST VIRGINIA CRIME VICTIMS COMPENSATION FUND and  
THE COURT OF CLAIMS FOR THE STATE OF WEST VIRGINIA,**

**Respondents.**



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**PETITION FOR WRIT OF CERTIORARI**

ANGELA Y. SMITH,

Petitioner,

v.

Claim No.: CV-09-0776  
West Virginia Court of Claims

Docket No.: \_\_\_\_\_

WEST VIRGINIA CRIME VICTIMS  
COMPENSATION FUND and  
THE COURT OF CLAIMS FOR  
THE STATE OF WEST VIRGINIA,

Respondents.

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**The Clear and Apparent Intent of the West Virginia Legislature was to Include Compensation for Damages in the Action Herein**

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## QUESTION PRESENTED

Does the term “lost scholarship” as defined by West Virginia Code § 14-2A-3(m) which includes among that which is defined as same “. . . or other monetary scholastic assistance” include unpaid student loans owed by the claimant’s decedent at the time of decedent’s death as a victim of murder?

## STATEMENT OF THE CASE

The facts of the case giving rise to the present petition are undisputed (see *Order* at Appendix pages 3 - 4). On July 5, 2008 Donte Newsome, a student at Marshall University, was shot and killed by Jeral Garner. Garner was indicted for murder and is presently serving a prison sentence in this State and other felony charges are pending elsewhere. The remaining facts attendant to the offense are not essential for the Court’s consideration, other than to note that it is undisputed that Mr. Newsome was an innocent victim and in no sense contributed to his own demise.

Petitioner herein, Angela Smith, Mr. Newsome’s mother, made a claim to the West Virginia Crime Victims Compensation Fund and the Court of Claims of the State of West Virginia, for which an award of Eight Thousand One Hundred Eighty Four Dollars and Ninety Nine Cents (\$8,184.99) was made as reimbursement for medical expenses and funeral and burial costs. Mrs. Smith thereafter requested a hearing which was ultimately held on October 7, 2011, in which she appeared in person and by undersigned counsel. The primary focus of that hearing was to obtain a determination with respect to the Petitioner’s claim for reimbursement of amounts of unpaid student loans granted to Mr. Newsome to which Mr. Newsome’s parents are co-signers or guarantors. By *Order* entered December 27, 2011, and submitted to undersigned counsel as “final deposition” on January 4, 2012, this Court held, *inter alia* “upon first glance,

W.Va. Code § 14-2A-3(m) would appear to support the Claimant's position that lost scholarship in fact does refer to student loan payments. But a closer reading of the statute shows that the intent of the legislature was to allow compensation for scholarships awarded based on merit or other award-specific factors" (Appendix Page 3). The Petitioner maintains, and the single issue placed before the Court, is that the Court of Claims erred in reaching that determination. In fact, by its own terms, and considering the context of the statute and its apparent intent, the unpaid student loans fall within the statutory meaning of "other monetary scholastic assistance" as found in West Virginia Code §14-2A-3(m) and accordingly are compensable under law.

### **SUMMARY OF ARGUMENT**

As referenced, *ante*, the Petitioner's single issue regards the application of West Virginia Code §14-2A-3(m) as it defines "lost scholarship" is inclusive of the within action in that "lost scholarship" is inclusive of the student loans as contemplated by the within action. The Petitioner further contends that the tribunal below erred in its finding that it is contrary to the legislative intent, as articulated in West Virginia Code §14-2A-2, to apply that preclusion. In support of the Petitioner's argument, as appears, *infra*, the applicable authorities, when read together with the definitions as used in education and business, the financial award in this case falls squarely within that which the legislature intended. Accordingly, the subject financial lost should be determined as compensable and paid by the West Virginia Crime Victims Compensation Fund.

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

While the Petitioner asserts that the law, as applied to the facts of this case, are straightforward, it appears to be a case of first impression and susceptible to the provisions of

Rule 20(a)(1) *et seq.*

## ARGUMENT

### Jurisdiction

Jurisdiction in *certiorari* is appropriate in this case as provided by West Virginia Code §53-3-2 (2008), see Syl. Pt. 1 *Foster Foundation v. Gainer and the West Virginia Court of Claims* \_\_\_\_\_ S.E.2d \_\_\_\_\_, Docket No. 35627, (W.Va. 2011), “A Writ of Certiorari will lie from a inferior tribunal, acting in a judicial or quasi judicial capacity, where substantial rights are alleged to have been violated and where there is no other statutory right or review given.” citing Syl. Pt. 4, in part, *North v. Board of Regents*, 233 S.E.2d 411 (W.Va. 1977). “*Certiorari* is an extraordinary remedy resorted to for the purpose of supplying a defect of justice in cases obviously entitled to redress and yet unprovided for by ordinary forms of proceeding.” *Foster, Supra*, citing Syl. Pt. 1, *Poe v. Machine Works*, 24 W.Va. 517 (1884).

### **The Clear and Apparent Intent of the West Virginia Legislature was to Include Compensation for Damages in the Action Herein**

“The Legislature finds and declares that a primary purpose of government is to provide the safety of citizens in the inviolability of their property. To the extent that innocent citizens are victims of crime, particularly violent crime, and are without adequate redress for injury to their person or property, this primary purpose of government is defeated.” West Virginia Code §14-2A-2. Here, it is uncontested that the Petitioner’s decedent was an innocent victim of crime, and one of violence resulting in his death. As a consequence, not only did the decedent forfeit his life, but left unpaid and unused student loans for which, as discussed more fully below, are clearly compensable. The phrase “without adequate redress for injury to their person and property . . .”

could not be more applicable to this case. Here the reference is clear to include both injury to the person and property, both of which were lost by the Petitioner's decedent and the Petitioner.

There is certainly little redress to this loss through an individual claim against the killer of young Mr. Newsome. This section further elevates the entitlement under the statutory scheme, the loss implicated here to a *property right* as contemplated by both the West Virginia and United States Constitution. West Virginia Code §14-2A-3(e) provides “ ‘economic loss’ means an economic detriment consisting only of allowable expenses, work loss and replacement services loss. If criminally injurious conduct causes death, economic loss includes a defendant's economic loss and a defendant's replacement service loss. Non-economic detriment is not economic loss, however, economic loss may be caused by pain and suffering or physical impairment. For purposes of this article, the term ‘economic loss’ **includes lost scholarship as defined in this section.**” (Emphasis supplied).

Subsection (m) of that section provides that “‘Lost scholarship’ means a scholarship, academic award, stipend or **other monetary scholastic assistance** which has been awarded or conferred upon a victim in conjunction with a post secondary school education program in which the victim is unable to receive or use, in whole or in part, due to injuries received from criminally injurious conduct” (emphasis added). It is apparent that in formulating this provision, the legislature intended, through its broad and sweeping terms to include all of that which is within the ambit of that which was received, but unused, by a victim in that connection. It would certainly be counter-intuitive to conclude that the legislature, in spite of those terms, intended to limit the potential compensation for unused merit scholarships, academic or athletic scholarships for which the student has not obligated himself financially while not addressing a clear property

right obtained through personal financial obligation.

**“Lost Scholarship” as Monetary Scholastic Assistance  
Which has been Awarded or Conferred**

The tribunal below found that the terms awarded or conferred to be decisive in its determination of ineligibility in the case at bar. While the conjunctive “or” clearly indicates an intent to encompass a broader range of meaning, one would not have to examine the phrase beyond the term “awarded” as applied to financial [monetary] assistance.

Award letters tell you exactly how much financial support the school is able to provide for the upcoming year. The most common sources are:

Grants: Money that does not have to be repaid. Includes the Federal Pell Grant, Federal Supplemental Educational Opportunity Grant (FSEOG), institutional grants, and state-sponsored grants.

Work-Study: Money earned by working, either on campus (for the school) or off campus (for a private nonprofit organization or public agency).

Student loans: Money that must be repaid. May include the Federal Stafford (subsidized and unsubsidized), Federal PLUS, Federal Grad PLUS, Federal Perkins, state loan programs, and private student loans.

Source: Sallie Mae [https://www1.salliemae.com/get\\_student\\_loan](https://www1.salliemae.com/get_student_loan)

A simply search including the terms “financial aid award” results in a consistent result that includes student loans among that which can be awarded to students.

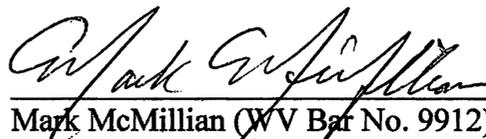
*Blacks Law Dictionary*, Eighth Edition (2004), defines “award” as: To grant by formal process, or by judicial decree <the company awarded the contract to the low bidder> <the jury awarded punitive damages>.

Moreover, subsection (m) includes the terms “other monetary [financial] scholastic assistance.” The very institution of higher learning implicated here, Marshall University

publishes the following, “In fact, approximately seventy-two percent (72%) of Marshall University undergraduate students receive financial assistance in the form of grants, loans, student employment and/or academic scholarships. <http://www.marshall.edu/wpmu/sfa>. See also, <http://finaid.wvu.edu/aid> “Financial aid primarily comes in four (4) basic forms: scholarships. . . , grants. . . , employment. . . loans. . . .” West Virginia University publishes similar language, see <http://finaid.wvu.edu/aid>.

### CONCLUSION

Petitioner prays that this Court order that the unpaid student loans in this action be found compensable, the decision of the Respondents be vacated with instructions consistent with the Order of this Court, along with such other relief this Court deems proper under law.



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**CERTIFICATION**

This hereby certifies the contents of the appendix are true and accurate copies of items contained in the record of the lower tribunal and the petitioner has conferred in good faith with all parties to the appeal in order to determine the contents of the appendix.

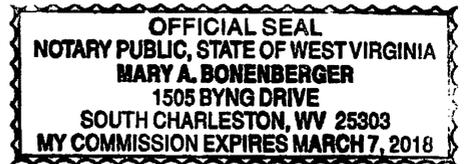


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STATE OF WEST VIRGINIA,  
COUNTY OF KANAWHA,

This document was sworn to or affirmed before me on the 26<sup>th</sup> day of January, 2012.

Mary A. Bonenberger  
NOTARY PUBLIC



My commission expires: March 7, 2018