

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

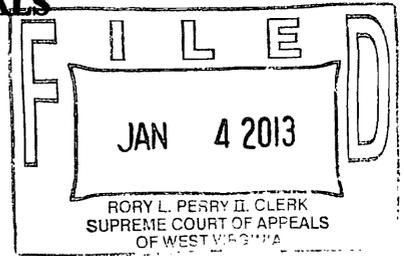
**STATE OF WEST VIRGINIA ex rel.,  
ANGELA Y. SMITH,**

**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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**REPLY BRIEF OF PETITIONER ANGELA Y. SMITH**

ANGELA Y. SMITH,

Petitioner,

v.

Docket No.: 12-0117  
(Crime Victims' Case No.: CV-09-0776-Y)

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

Respondents.

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**REPLY BRIEF OF PETITIONER ANGELA Y. SMITH**

Comes now the Petitioner Angela Y. Smith, by appointed counsel Mark McMillian, and for her Reply to the *Brief of the West Virginia Crime Victims Compensation Fund and the Court of Claims for the State of West Virginia* respectfully asserts the following.

**INTRODUCTION**

The parties to the within action agree, without dispute, that Petitioner's Decedent (son) was the innocent victim of murder while attending Marshall University and accordingly is entitled to compensation under Article 2A of Chapter 14 of the West Virginia Code (Compensation Awards to Victims of Crimes). It is further agreed that the single issue in dispute is whether under West Virginia Code §14-2A-3(m) the term "lost scholarship" includes certain unpaid student loans which were unused because of the untimely death of the decedent Donte Newsome. Respondents further concede that *certiorari* is the appropriate legal mechanism by which the case *sub judice* may be reviewed, and that the standard of review is *de novo*. (Brief of Respondents pp. 1-3).

## ARGUMENT

“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 interest conduct. (West Virginia Code §14-2A-3(m)).

In the decision below, and now before this Court, the Respondents place the focus in applying the statute primarily upon the terms “awarded or conferred”. Respondents posit, in essence, that these terms connote a predicate that the “monetary scholastic assistance” be of a gratuitous nature and not subject to repayment. Respondents further assert that where a statute is of doubtful meaning, the government entity charged with execution of statute has great discretion in the application of the same. (Brief of Respondents pp. 4). However, as asserted in Petitioner’s Brief, the statute in question was constructed so as to clearly encompass that which is under consideration here, and not doubtful as to its meaning.

In addition to the definitions, examples extracted from legal jurisprudence and from West Virginia institutions of higher learning and other sources, the United States Department of Education, in discussion of various loan programs uses the following language, “Direct loans are generally awarded as part of a larger ‘award package’ which may contain other types of aid as well . . .” (emphasis added) ([www.direct.ed.gov/applying.html](http://www.direct.ed.gov/applying.html)). Examples of the word *conferred* being used in connection with a loan are also regularly found in our jurisprudence, i.e. “Although the court stated that the loan was conferred to Patriot, not directly to the Defendant . . .” *Breen v. Judge*, 4A. 3d 326, 335 (Conn. 2010).

Simply stated, the words *awarded* and *conferred*, were not intended to be restricted to the meanings attributed by the Respondents. This is particularly true in view of the Legislature's inclusion of the words "or other monetary scholastic assistance" in defining the term "lost scholarship".

Moreover, in defining the term "Lost scholarship" the Legislature, for the second time used the word scholarship, clearly indicating that it intended to include that term as is sometimes given a narrow meaning, followed by additional terms that expand that meaning to include various other types of "scholastic assistance" which are consistent with the terms used in higher education that reflect opportunities for assistance to students, which include various forms of student loans. While, as argued by Petitioner in her brief, these include loans with various repayment obligations, including in-kind service, in virtually all cases such loans are accompanied by advantages to students such as opportunities for deferral of repayment based upon individual professional progress, reduced interest terms and other benefits to the recipient. Hence, it cannot be said that the subject loans are not a form of "monetary scholastic assistance."

### **CONCLUSION**

For reasons appearing above and in the brief formerly filed by Petitioner, the Petitioner respectfully prays that this Court find in her favor, determine that the controlling statute includes the student loans addressed herein and order that the Respondents render compensation to the Petitioner consistent with that determination, along with such further and additional relief this Court finds proper under law.

Angela Smith, Petitioner

By counsel



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COMPENSATION FUND,

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**CERTIFICATE OF SERVICE**

Undersigned counsel for the Petitioner hereby certifies that a true and exact copy of the accompanying *Reply Brief of Petitioner Angela Y. Smith* was served upon, John R. Homburg, Esquire and Richard Olsen, Esquire, counsel for the Respondents, by U.S. Mail to West Virginia Legislature, Joint Committee on Government and Finance, Legislative Services Division, 1900 Kanawha Blvd. East, Building 1, Room 132-E, Charleston, West Virginia, 25305-0610, and by U.S. Mail to the West Virginia Court of Claims and Crime Victims Compensation Fund, 1900 Kanawha Boulevard, East, Room W-334, Charleston, West Virginia, 25305-1610, on this the 4<sup>th</sup> day of January, 2013.



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