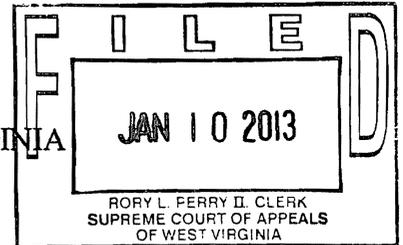


No. 12-0993

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA



JOHN D. LONGANACRE
d/b/a LONGANACRE FUNERAL HOME

Plaintiff Below, Petitioner,

v.

(Circuit Court of Greenbrier County
Civil Action No. 12-C-98)

FARMERS MUTUAL INSURANCE COMPANY,
a West Virginia corporation,

Defendant Below, Respondent.

RESPONSE IN OPPOSITION TO PETITION FOR APPEAL

*(re: Petitioner's Notice of Appeal from an Order of the
Circuit Court of Greenbrier County Entered on July 26, 2012)*

**Defendant Below/Respondent, FARMERS
MUTUAL INSURANCE COMPANY,
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STATEMENT OF THE CASE

On June 22, 2010, Becky A. Orndol and Richard W. Alderson¹ (hereinafter “Orndol Plaintiffs”) filed suit in the Circuit Court of Greenbrier County, West Virginia, against several Defendants including the Petitioner, Longanacre Funeral Home (hereinafter “Longanacre”). (APP 10). Longanacre is a licensed West Virginia Funeral Home located in Ronceverte, WV. (APP 10). Orndol Plaintiffs are the children and legal beneficiaries of Marlene Walkup Anderson. (APP 11). Marlene Walkup Anderson was married to Melvin Anderson who died intestate on November 17, 1989. (APP 11).

Melvin Anderson was originally buried in a plot at Greenbrier Memorial Gardens (hereinafter “GMG”) in Lewisburg, Greenbrier County, West Virginia. (APP 11). On or about December 15, 2007, Marlene Walkup Anderson had her late husband, Melvin Anderson, disinterred and then reinterred at the Bennett Family Cemetery in Blue Sulphur Springs, Greenbrier County, West Virginia.(APP 11). Marlene Walkup Anderson died on January 9, 2008, leaving the Orndol Plaintiffs among her beneficiaries. (APP 11).

On or about November 5, 2009, Melvin Anderson was again disinterred and moved from the Bennett Family Cemetery back to the vault at GMG. (APP 13). This move was done at the request of Melvin Anderson’s sister, Betty F. Anderson, and the move was accomplished by Longanacre and GMG. (APP 13). Longanacre and Betty F. Anderson obtained all of the necessary State permits prior to moving Melvin Anderson’s body. (APP 13). In addition, on July 21, 2009, the Circuit Court of Greenbrier County found that Betty F. Anderson and her siblings were the sole legal heirs of Melvin Anderson and that once each of them signed an affidavit indicating that they were in favor

¹ Richard Alderson died following the filing of his civil action and was dismissed as a party, leaving only his sister, Becky A. Orndol, as a plaintiff.

of the move, it could be accomplished. Betty F. Anderson and each of her siblings signed such an affidavit prior to the move. (APP 24).

The Orndol Plaintiffs claimed in their June 22, 2010 Complaint (hereinafter, the “Orndol Complaint”) that Longanacre and GMG (1) failed to inform Plaintiffs of the second move of Melvin Anderson’s body; (2) wrongfully exerted dominion over the property of Plaintiffs when Melvin Anderson was interred in the crypt at GMG without their permission; (3) wrongfully converted the property of Plaintiffs by removing the military marker or headstone from Melvin Anderson’s grave at the Bennett Family Cemetery; and (4) negligently disturbed the grave of Marlene Andersen during the disinterment of Melvin Anderson. (APP 10).

Longanacre hired counsel and filed an Answer and Motion to Dismiss. A hearing was held on the Motion to Dismiss on February 22, 2011, and by Order dated March 21, 2011, the Circuit Court of Greenbrier County, West Virginia, denied the motion to dismiss. (APP 13).

By letter dated July 20, 2011, Barry L. Bruce, counsel for Longanacre, wrote to Farmers Mutual Insurance Company (hereinafter “Farmers”) and provided it with a copy of the Orndol Complaint, as well as a copy of the Scheduling Order entered in that case. (APP 104). It is important to note that this was the first time Farmers had been made aware of the Orndol Complaint. Despite the fact that suit was filed on June 22, 2010, Farmers received no notice of any claim or suit until Mr. Bruce’s letter dated July 20, 2011. The case proceeded for at least one year prior to Farmers being informed of the suit.

On August 10, 2011, Farmers wrote to John D. Longanacre, denying coverage and informing him that there was no duty on the part of Farmers to indemnify or defend. (APP 105). Farmers cited to three provisions of the insurance contract which operated to preclude coverage. (APP 105). First, the allegations against Longanacre contained in the Orndol Complaint did not meet the definition

of an occurrence as set forth in the Farmers policy. (APP 105). Second, the allegations in said Complaint asserted conversion as well as wrongful/intentional acts by Longanacre, and were therefore specifically excluded under the policy. (APP 105). Third, Longanacre did not comply with the express policy provisions in that it failed to promptly notify Farmers of a claim and failed to promptly send copies of legal papers, demands and notices to Farmers. (APP 105). The relevant language of Longanacre's policy is as follows:

PRINCIPAL COVERAGES

"We" will pay those sums which the "insured" becomes legally obligated to pay as "damages" due to bodily injury or property damage, including mental anguish, to which this insurance applies. The "bodily injury", "property damage", or mental anguish must be caused by an "occurrence" which takes place in the "coverage territory", and the "bodily injury", "property damage", or mental anguish must occur during the policy period.

(APP 106.)

"Occurrence" is defined by the policy as follows:

SECTION V DEFINITIONS

13. Occurrence means an accident, and includes repeated exposure to similar conditions.

(APP 106.)

On April 17, 2012, the Circuit Court of Greenbrier County entered an Order granting summary judgment to Longanacre and dismissing the Orndol Complaint. (APP 122). In granting summary judgment, the Court made the following findings which are relevant to the instant case:

(1) Longanacre was immune from civil liability and that he had no duty to inform the Orndol Plaintiffs of the move of Mr. Anderson; (2) Longanacre exercised an abundance of caution by refusing to disinter Melvin Anderson without court approval and a disinterment permit; (3) the Orndol Plaintiff had no standing to file suit for the removal of Melvin L. Anderson from the Bennett

Family Cemetery because she was not the surviving spouse or a next of kin relative; (4) Longanacre did not wrongfully exert dominion over or convert the property of the Orndol Plaintiffs by removing Melvin L. Anderson's military marker; (5) the disinterment was completed professionally and did not disturb or damage any property at the Bennett Family Cemetery; (6) there was no disturbance or desecration to the grave site of Marlene Anderson; and (7) GMG did not mishandle Mr. Anderson's body. (APP 122-133).

Following the dismissal of the Orndol Complaint, Longanacre filed suit against Farmers, alleging common law bad faith. (APP 2). The crux of Longanacre's Complaint was that Farmers refused to provide a defense to him. (APP 2). Longanacre argues that because the Orndol Complaint alleged, among numerous other things, the negligent disturbance of Marlene Anderson's grave, Farmers had a duty to defend that case. (APP 2). Farmers filed a motion to dismiss the bad faith complaint. (APP 35). By Order dated July 26, 2012, the Circuit Court of Greenbrier County granted Farmers' motion, and the case was dismissed. (APP 137). It is from this Order which Petitioner has filed the instant appeal.

SUMMARY OF ARGUMENT

The essence of the claims made in the Orndol Complaint allege intentional acts. These claims do not constitute an "occurrence" under the terms of the insurance policy held by Petitioner, Longanacre, with Farmers and therefore are not covered. The term "occurrence" is defined under Longanacre's policy with Farmers as an accident, and includes repeated exposure to similar conditions. The term "accident" as contained in the definition of occurrence is not ambiguous. *American Modern Home Insurance Co., v. Corra*, 222 W. Va. 797, 671 S.E.2d 802 (2008). An accident is defined as "a chance event or event arising from unknown causes." *Id.* at 801, 806. The meaning of the terms "occurrence" and "accident" include events that are unexpected or unforeseen.

Id. “In other words, conduct engaged in knowingly is not an ‘accident’ and thus not an ‘occurrence’ . . .” *Id.*

The Orndol Plaintiffs claimed in their June 22, 2010 Complaint that Longanacre and GMG (1) failed to inform Plaintiffs of the second move of Melvin Anderson’s body; (2) wrongfully exerted dominion over the property of Plaintiffs when Melvin Anderson was interred in the crypt at GMG without their permission; and (3) wrongfully converted the property of Plaintiffs by removing the military marker or headstone from Melvin Anderson’s grave at the Bennett Family Cemetery.

All of these claims allege intentional acts and are therefore are not an accident. Longanacre did not accidentally fail to inform anyone of the movement of the body. He did not accidentally move Melvin Anderson’s body. He did not accidentally remove the military marker, rather he purposefully moved it to the new grave site. All of these claims allege intentional acts and therefore are not an accident and not an occurrence under the terms of Longanacre’s policy with Farmers. Accordingly, the Circuit Court was correct in ruling that those claims were not covered and that there was no duty to defend.

The intentional movement of Melvin Anderson’s body “set all other causes in motion” and therefore it was the efficient proximate cause of the alleged loss. *See, Murray v. State Farm Fire and Casualty Co.*, 203 W. Va. 477, 509 S.E.2d 1 (1998). When, as in this case, there are several factors causing an injury, some of which are covered and some of which are not, it is the efficient proximate cause which determines coverage. *Id.* If the efficient proximate cause is not covered, then the insurance policy does not apply and there is no duty to indemnify or defend. *Id.* Again, it is clear from a reading of the entire Orndol Complaint that it is, at its essence, a complaint for intentional acts and therefore the Circuit Court was correct in ruling that Farmers had no duty to indemnify or defend.

STANDARD OF REVIEW

“Appellate review of a circuit court's order granting a motion to dismiss a complaint is *de novo*.” Syl. Pt. 2 *State Ex Rel. McGraw v. Scott Runyan Pontiac Buick, Inc.*, 194 W. Va. 770; 461 S.E.2d 516 (1995). Under Rule 12(b)(6) of the West Virginia Rules of Civil Procedure, a Court may dismiss any complaint that fails to state a claim upon which relief may be granted. *See, e.g.*, W. Va. R. Civ. P. 12(b)(6) (2007); *Collia v. McJunkin*, 178 W. Va. 158, 159, 358 S.E.2d 242, 243 (1987).

STATEMENT REGARDING ORAL ARGUMENT

Pursuant to Rules 10(c)(6) and 18 of the West Virginia Rules of Appellate Procedure, Farmers requests that this Court grant it the opportunity to present oral argument. Oral argument is necessary, pursuant to the requirements listed in W. Va. R.A.P. 18(a) for the following reasons and those apparent to the Court. The parties have not waived oral argument. W. Va. R.A.P. 18(a)(1). The issues presented in this appeal are clearly not frivolous. W. Va. R.A.P. 18(a)(2). While authoritative decisions exist relative to rulings of the circuit court, an analysis of the issues is warranted. W. Va. R.A.P. 18(a)(3).

Farmers believes that this case is suitable for a Rule 19 oral argument the case involves assignments of error in the application of settled law. *See* W.Va. R.A.P. 19(a)(1).

ARGUMENT

I. The Intentional Acts of the Petitioner in Disinterring Melvin Anderson and Moving His Body Do Not Constitute An Occurrence Under the Policy With Farmers and, Therefore, There Was No Duty to Indemnify or Defend.

Under West Virginia Law, the “[determination of the proper coverage of an insurance contract when the facts are not in dispute is a question of law.” Syl. Pt. 2, *Tackett v. American Motorists Insurance Co.*, 213 W. Va. 524, 584 S.E. 2d 158 (2003). “Where the provisions of an insurance contract are clear and unambiguous they are not subject to judicial construction or

interpretation, but full effect will be given to the plain meaning intended.” Syl. Pt. 3, *Soliva v. Shand, Morahan & Co.*, 176 W. Va. 430, 345 S.E.2d 33 (1986).

Generally, an insurer’s duty to defend is broader than its duty to indemnify. See, *Horace Mann Insurance Co. v. Leeber*, 180 W. Va. 375, 378, 376 S.E.2d 581, 584 (1988). “An insurer must defend its insured if a claim against an insured could, without amendment, impose liability for risks the policy covers.” *Erie v. Edmond*, 785 F. Supp. 2d 561, 565 (N.D.W.Va. 2011), quoting *Boyer v. HI-LAD, Inc.* 216 W. Va. 634, 609 S.E.2d 895, 912 (2004). “Included in the consideration of whether [an] insurer has a duty to defend is whether the allegations in the complaint . . . are reasonably susceptible of an interpretation that the claim may be covered by the terms of the insurance policy.” Syl. Pt. 5, *W.Va. Fire & Casualty Co. V. Stanley*, 216 W. Va. 40, 41, 602 S.E.2d 483 (2004), quoting *Bruceton Bank v. U.S. Fid. and Guar, Ins.*, 199 W. Va. 548, 486 S.E.2d 19 (1997). “For the duty to defend to arise, the underlying complaint need not specifically and unequivocally make out a claim within the coverage.” *Id.*, quoting *Aetna Casualty & Surety Co. v. Pitrolo*, 176 W. Va. 190, 342 S.E.2d 156, 160 (1986). “Rather the underlying claims must be reasonably susceptible of an interpretation that they are covered by the insurance policy.” *Edmund*, 785 F. Supp. at 565. “A court must liberally construe any questions regarding the insurer’s duty to defend in favor of the insured.” *Id.*, citing *Pitrolo*, 342 S.E.2d at 160.

The insurance policy issued to Longanacre by Farmers provides certain liability and property damage coverage caused by an occurrence that occurs during the policy period. The relevant language is as follows:

PRINCIPAL COVERAGES

“We” will pay those sums which the “insured” becomes legally obligated to pay as “damages” due to bodily injury or property damage, including mental anguish, to which this insurance applies. The “bodily injury”, “property damage”, or mental anguish must be

caused by an “occurrence” which takes place in the “coverage territory”, and the “bodily injury”, “property damage”, or mental anguish must occur during the policy period.

“Occurrence” is defined by the policy as follows:

SECTION V DEFINITIONS

13. Occurrence means an accident, and includes repeated exposure to similar conditions.

This Court has examined an almost identical definition of occurrence. *American Modern Home Insurance Co., v. Corra*, 222 W. Va. 797, 671 S.E.2d 802 (2008). In *Corra*, The Court held that the term “accident” as contained in the definition of occurrence is not ambiguous. An accident is defined as “a chance event or event arising from unknown causes.” *Id.* at 801, 806. The meaning of the terms “occurrence” and “accident” include events that are unexpected or unforeseen. *Id.* “In other words, conduct engaged in knowingly is not an “accident” and thus not an “occurrence”. . .” *Id.*

Corra stands for the proposition that if the policyholder commits an intentional or knowing act, there is no “occurrence” under the policy regardless of whether the policyholder expected or intended the resulting damage. Or at the very least, any intentional or knowing act by a policyholder carries a presumption that the policyholder expected or intended the resulting damage. Either way, when a policyholder commits an intentional or knowing act, there is no “occurrence” under the policy. This reading of *Corra* is bolstered by a reading of Justice Starcher’s dissent which proposed a two-step inquiry when applying the “occurrence” language to a particular set of facts. Justice Starcher, in an argument soundly rejected by the majority, proposed that “a policyholder may be denied coverage only if the policyholder (1) committed an intentional act *and* (2) expected or intended the specific resulting damage.” *Corra*, 122 W. Va. at 803, 808 (Starcher *dissenting*).

The overwhelming majority of the Orndol Plaintiffs' allegations against Longanacre concerned intentional and knowing acts, and therefore do not constitute occurrences under the policy. The Orndol Plaintiffs claim in their June 22, 2010 Complaint that Longanacre and GMG (1) failed to inform Plaintiffs of the second move of Melvin Anderson's body; (2) wrongfully exerted dominion over the property of Plaintiffs when Melvin Anderson was interred in the crypt at GMG without their permission; and (3) wrongfully converted the property of Plaintiffs by removing the military marker or headstone from Melvin Anderson's grave at the Bennett Family Cemetery.

All of these allegations allege intentional acts by Longanacre. He did not accidentally fail to inform anyone of the movement of the body. He did not accidentally move Melvin Anderson's body. As the Complaint states, he obtained the necessary permits and the circuit court's approval before moving the body. He did not accidentally remove the military marker -- he purposefully moved it to the new grave site. There is no question that these allegations involved intentional knowing acts. Therefore, they do not meet the definition of an occurrence, and are not covered under the applicable policy.

Petitioner admits in his brief that he intentionally and knowingly removed the body of Melvin Anderson. However, he argues that the intentional movement of the body is an occurrence under the policy because his actions were authorized by a court and were not illegal. This argument is based upon a faulty reading of *American Modern Home Insurance Co., v. Corra*, 222 W. Va. 797, 671 S.E.2d 802 (2008). While *Corra* dealt with a situation where a homeowner knowingly permitted underage drinking, it was the intentional acts in *Corra* which precluded coverage, not the fact that the homeowner had broken the law. *Id.* Simply put, there is nothing in *Corra* which indicates that intentional acts somehow become accidents because those intentional acts are not illegal. *Id.* If the Petitioner's view of *Corra* was correct, then the *Corra* Court could have simply found that the

homeowners' actions were illegal and therefore there was no occurrence. No analysis of what constitutes an accident or knowing and intentional acts would have been necessary.

Petitioner's reading of *Corra* is further undermined by at least one case decided since *Corra*. See, *Essex Insurance Co. v. Tri-Area Amusement Co.*, 2010 U.S. Dist. Lexis 2035 (USDC NDWV 2010). Citing *Corra*, the U.S. District Court in *Essex* found that the term "occurrence" is defined as an accident and "accident" is defined as a chance event arising from unknown causes. *Id* at 13. There is no discussion of whether the actions of the insured were legal or illegal because that is irrelevant to the analysis of what constitutes an occurrence. Again, Petitioner's reading of *Corra* is simply faulty. Accordingly, there was no occurrence under the applicable insurance policy, and Farmers was not obligated to provide a defense, rendering the circuit court's dismissal of the bad faith complaint proper.

II. The Intentional Acts of Longanacre Were the Efficient Proximate Cause of the Injury Alleged in the Orndorf Complaint and, Therefore, the Allegations Do Not Meet the Definition of an Occurrence Under the Applicable Policy.

The overwhelming majority of the Orndorf Plaintiffs' allegations against Longanacre concerned intentional and knowing acts and therefore do not constitute occurrences under the policy. The Orndorf Plaintiffs also alleged in their complaint that Longanacre "negligently disturbed the grave of Marlene Walkup Anderson during the disinterment of Melvin Anderson." Although the word "negligent" is used in the Orndorf Complaint, it is intentional conduct which is actually described. See, *W. Va. Fire & Casualty Co. V. Stanley*, 216 W. Va. 40, 41, 602 S.E.2d 483, 497 (2004). There was no allegation that Marlene Walkup Anderson's body was accidentally dug up, moved or somehow harmed in any way. All of the acts complained of by the Orndorf Plaintiffs arose directly from the intentional movement of Melvin Anderson's body. In fact, the circuit court ultimately determined that there was no disturbance or desecration to the grave site of Marlene

Anderson. It is clear from a reading of the entire Orndol Complaint that it is, at its essence, a complaint for intentional acts. See, Syl. Pt. 4, *Smith v. Animal Urgent Care, Inc.*, 208 W. Va. 664, 542 S.E.2d 827 (2000).

In *Murray v. State Farm Fire and Casualty Co.*, 203 W. Va. 477, 509 S.E.2d 1 (1998), this Court held that when there are several factors causing an injury, some of which are covered and some of which are not, it is the efficient proximate cause which determines coverage. If the efficient proximate cause is not covered, then the insurance policy does not apply and there is no duty to indemnify or defend. In syllabus point 8, the Court in *Murray* held as follows:

When examining whether coverage exists for a loss under a first party insurance policy when the loss is caused by a combination of covered and specifically excluded risks, the loss is covered by the policy if the covered risk was the efficient proximate cause of the loss. No coverage exists for the loss if the covered risk was only a remote cause of the loss, or conversely if the excluded risk was the efficient proximate cause of the loss. The efficient proximate cause doctrine looks to the quality of the links in the chain of causation. The efficient proximate cause is the predominating cause of the loss.

Id., at syllabus pt. 8.

The Court in *Murray* further stated that “the proximate cause to which the loss is to be attributed is the dominant, efficient one that sets the other causes in operation.” *Id.* at 487. “[W]here the insured risk itself set into operation a chain of causation in which the last step may have been an excepted risk, recovery may be allowed. *Id.*, citing J. Appleman, *5 Insurance Law and Practice* § 3.083 (1969).

The crux of the allegations in the Orndol Complaint were that Longanacre wrongfully disinterred and reinterred Melvin Anderson’s body. Everything they complained of flows from the intentional movement of Melvin Anderson’s body, and thus the intentional acts of Longanacre were

the predominating cause of the alleged loss. It is the excluded conduct (the intentional movement of the body) which set into operation a chain of causation, not the insured risk. *See, Id.*

While the Orndol Complaint alleges negligence, there was no allegation that Marlene Walkup Anderson's body was accidentally dug up, desecrated, moved or somehow harmed in any way. All of the acts complained of by the Orndol Plaintiffs arose directly from the intentional movement of Melvin Anderson's body. Without that intentional movement, there simply would have been no case to begin with. The movement of Melvin Anderson's body "set all other causes in motion," and therefore it is the efficient proximate cause of the alleged loss. *Murray*, 203 W. Va. at 487, 11. A fair reading of the Orndol Complaint shows that the alleged negligent disturbance of Marlene Walkup Anderson's grave was based solely on the fact that Melvin Anderson's body was moved.

This argument is bolstered by the Circuit Court of Greenbrier County's findings in its Order granting summary judgment to Longanacre in the underlying action. The Court found that the disinterment was completed professionally and did not disturb or damage any property at the Bennett Family Cemetery. The Court further found that there was no disturbance or desecration to the grave site of Marlene Walkup Anderson. Accordingly, the circuit court was correct in ruling that Farmers had no duty to indemnify or defend.

Petitioner relies heavily on the fact that the Orndol Plaintiff was ultimately determined to only have standing to make the negligence claim. Petitioners state in their brief that "[t]he obvious argument is that without the intentional moving of Mr. Anderson's body there would have been no claim for negligence, but that is simply not true because the Orndol Plaintiffs only had standing to bring the claim of negligence." (*See* Petitioner's Brief, p. 13). While it is true that the Orndol Plaintiffs lacked standing to sue over the movement of Melvin Anderson's body, it does not change the fact that the majority of the claims as contained in the Complaint were related to the movement

of the body. It is the allegations in the Complaint and the policy itself which determine whether a duty to defend exists. Syl. Pt. 5, *W.Va. Fire & Casualty Co. v. Stanley*, 216 W. Va. 40, 41, 602 S.E.2d 483 (2004), quoting *Bruceton Bank v. U.S. Fid. and Guar, Ins.*, 199 W. Va. 548, 486 S.E.2d 19 (1997). The fact that the bulk of the Orndol Complaint was dismissed for a lack of standing is irrelevant.

In a similar vein, Petitioner also relies heavily on the circuit court's March 21, 2011 Order, which states, in pertinent part, as follows:

In this case the Defendants disinterred and reinterred their loved one, Melvin Anderson. Although the Defendants appear to be acting within the confines of the Court Order which allowed such disinterment, the *manner* in which the disinterment took place is the thrust of the Plaintiff's Complaint. As Syllabus Point 2 of *Whitehair* indicates, even an authorized disinterment may be carried out in a way that is actionable. The Plaintiff has accused the Defendants of negligently mishandling the grave of Marlene Walkup Anderson during the authorized disinterment of Melvin Anderson. Under *Whitehair*, this action should stand.

(APP 85-86).

The fact that the negligence claim survived the motion to dismiss is irrelevant to the coverage analysis. It does not, as Petitioner argues on page 12 of his brief, somehow make the negligence claim the predominate cause of the alleged loss. Petitioner would have this Court look only to the sole allegation which survived the motion to dismiss in examining the efficient proximate cause issue. Again, it is the Complaint itself, prior to much of it being dismissed, which must be examined. *Id.* All of the acts complained of by the Orndol Plaintiffs in their complaint arose directly from the intentional movement of Melvin Anderson's body. Without that intentional movement, there simply would have been no case to begin with. The movement of Melvin Anderson's body "set all other causes in motion" and, therefore, it is the efficient proximate cause of the alleged loss.

CONCLUSION

WHEREFORE, for all the reasons stated herein, the Respondent, Farmers Mutual Insurance Company, respectfully requests that the decision of the Circuit Court of Greenbrier County, West Virginia, dismissing Petitioner's Complaint, be affirmed.

Respectfully submitted this 10th day of January, 2013.

**Defendant Below/Respondent, FARMERS
MUTUAL INSURANCE COMPANY,
By Counsel:**



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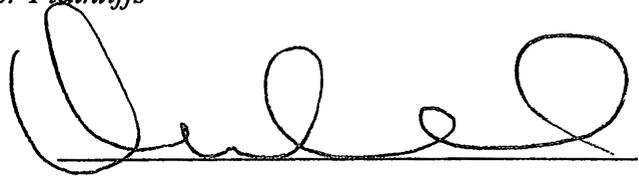
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McNeer, Highland, McMunn and Varner, L.C.
Of Counsel

CERTIFICATE OF SERVICE

This is to certify that on this 10th day of January, 2013, the undersigned counsel served the foregoing “**RESPONSE IN OPPOSITION TO PETITION FOR APPEAL** (re: *Petitioner's Notice of Appeal from an Order of the Circuit Court of Greenbrier County Entered on July 26, 2012*)” upon counsel of record *via facsimile* and/or by depositing a true copy in the United States Mail, postage prepaid, in an envelope addressed as follows:

Barry L. Bruce, Esquire
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Fax (304) 645-4183
Counsel for Plaintiffs

A handwritten signature in black ink, appearing to read 'Bruce', written over a horizontal line.