

# MCNEER, HIGHLAND, McMUNN AND VARNER, L.C.

EMPIRE BUILDING - 400 WEST MAIN STREET  
P. O. DRAWER 2040

CLARKSBURG, WV 26302-2040  
TELEPHONE (304) 626-1100  
FACSIMILE (304) 623-3035



Writer's Direct Telephone  
(304) 626-1132

Writer's E-Mail Address  
DTVarner@WVLawyers.com

September 19, 2013

Clarksburg Attorneys  
C. David McMunn  
James A. Varner, Sr.<sup>1</sup>  
James N. Riley  
Dennis M. Shreve  
Geraldine S. Roberts  
Michael D. Crim<sup>2</sup>  
Debra Tedeschi Varner<sup>4</sup>  
Judy L. Shanholz<sup>3</sup>  
Sam H. Harrold, III  
Jeffrey D. Van Volkenburg  
Richard R. Marsh  
Allison S. McClure

Of Counsel  
Catherine D. Munster

James E. McNeer  
(1924 - 2006)  
Cecil B. Highland, Jr.  
(1918 - 2002)  
J. Cecil Jarvis  
(1949 - 2007)  
William L. Fury  
(1917 - 2010)

Senior Legal Assistants  
Millie L. Kennedy  
Diana L. Bedell

## Other Locations

Martinsburg Office  
275 Aikens Center  
P. O. Box 2509  
Martinsburg, WV 25402-2509  
Telephone (304) 264-4621  
Facsimile (304) 264-8623

Robert W. Trumble  
Suzanne M. Williams-McAuliffe<sup>1,3</sup>  
Mary E. Binns-Davis

Parkersburg Office  
813 Grand Central Avenue,  
Suite 201 (Vienna, WV 26105)  
P. O. Box 1507  
Parkersburg, WV 26102  
Telephone (304) 422-7193  
Facsimile (304) 422-7196

Steven R. Bratke<sup>2</sup>

Kingwood Office  
107 West Court Street  
P. O. Box 585  
Kingwood, WV 26537  
Telephone (304) 329-0773  
Facsimile (304) 329-0595

James T. Dailey, Jr.  
Mark E. Gaydos  
Woodrow E. Turner<sup>4</sup>  
Cody E. Nett

Elkins Office  
One Randolph Avenue  
P. O. Box 1909  
Elkins, WV 26241-1909  
Telephone (304) 636-3553  
Facsimile (304) 636-3607

Stephen G. Jory  
Harry A. Smith, III<sup>2</sup>  
Rebecca A. Judy

<sup>1</sup> Registered Nurse in West Virginia  
<sup>2</sup> Also Admitted to Practice in Ohio  
<sup>3</sup> Also Admitted to Practice in New Mexico  
<sup>4</sup> Also Admitted to Practice in Pennsylvania  
<sup>5</sup> Certified Public Accountant in West Virginia  
<sup>6</sup> Also Admitted to Practice in North Carolina

**VIA FACSIMILE (304) 558-3815  
AND REGULAR U.S. MAIL**

Rory Perry, Clerk  
Edyth Nash Gaiser, Deputy Clerk  
West Virginia Supreme Court of Appeals  
State Capitol Building, Room E-317  
1900 Kanawha Blvd., East  
Charleston, WV 25305

**Re: Hess Oil Company, Inc.  
v. AIG Domestic Claims, et al.  
In the Supreme Court of Appeals of W. Va.  
No. 12-0719**

Dear Mr. Perry and Ms. Gaiser:

Hess Oil Company, Inc., ("Hess") respectfully submits this correspondence in response to the September 17, 2013, supplemental filing submitted by the Chartis Claims, Inc. (f/k/a AIG Domestic Claims, Inc.) and Commerce and Industry Insurance Co. (together, the "AIG Defendants") pursuant to Rule 10(i) of the West Virginia Rules of Appellate Procedure.

The AIG Defendants presented this Court with a misplaced interpretation of this Court's holding in *Triad Insulation, Inc. v. Nationwide Mutual Fire Insurance Co.*, 2013 WL 3184656 (W. Va. June 24, 2013) (memorandum decision) for the purpose of providing purported additional authority in support of the AIG Defendants' position on appeal. At the outset, the Court found no substantial question of law in *Triad*, issuing a memorandum decision and, accordingly, *Triad* is of no consequence to the instant appeal.

**EXHIBIT A**

Rory Perry, Clerk  
Edyth Nash Gaiser, Deputy Clerk  
West Virginia Supreme Court of Appeals  
September 19, 2013  
Page 2

Further, unlike Triad Insulation, corporate-plaintiff in *Triad*, which is and was a viable corporate entity, Hess was a dissolved corporation before the AIG Defendants pulled the insurance coverage for environmental claims that had been remediated for more than ten (10) years by the AIG Defendants. As a dissolved corporation, the only individuals that could act on behalf of Hess, or who would be liable for a judgment against Hess, were its former shareholders. In the instant appeal, the AIG Defendants brought post-dissolution claims against a dissolved Hess arising out of the insurance relationship. As such, Hess is entitled to bring its claims arising out of the insurance relationship through its former shareholders acting on behalf of the dissolved and nonexistent corporation. *Triad*, is at opposite to the facts in *Hess*, as the plaintiff-shareholder, Gilligan, attempted to assert individual causes of action under an insurance policy belonging only to an existing and viable corporation which was disallowed under established corporate law.

Hess does not dispute this Court's holding in *Elmore v. State Farm Mut. Ins. Co.*, 202 W. Va. 430, 504 S.E.2d 893 (1998), but the same is not applicable in the instant appeal, as third-party bad faith claims are not at issue. Further, the former shareholders of a dissolved Hess cannot be viewed in the same light as the individual plaintiff, Galligan, in the *Triad* case when evaluating their status in the context of an insurance policy as Hess was long dissolved and its corporate fiction dissolved, rendering its former shareholders ultimately liable for any judgment against Hess from AIG's bad faith insurance conduct. Accordingly, the *Triad* case, has no relevance to instant appeal.

Very truly yours,



Debra Tedeschi Varner

DTV:mj

cc: John H. Tinney, Esq. / John H. Tinney, Jr., Esq. (Via Fax (304) 720-3315)  
Christopher P. Ferragamo, Esq. (Via Fax (202) 457-1678)  
Kathleen M. Sullivan, Esq. (Via Fax (212) 849-7100)  
Michael J. Romano, Esq. (Via Fax (304) 326-7800)

**CERTIFICATE OF SERVICE**

This is to certify that on the 19th day of September, 2013, the undersigned counsel served the foregoing "***HESS OIL COMPANY, INC.'S MOTION FOR LEAVE TO FILE AND SERVE RESPONSE TO RESPONDENT'S RULE 10(i) CORRESPONDENCE***" upon counsel of record *via facsimile* and/or by placing true copies thereof in the United States Mail, postage prepaid, in envelopes addressed as follows:

**Fax (304) 720-3315**

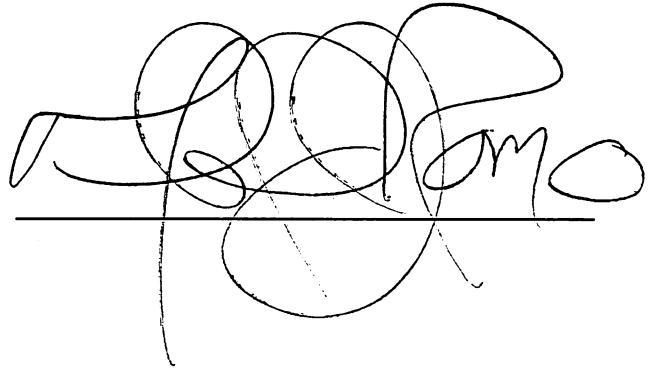
John H. Tinney, Esquire  
John H. Tinney, Jr., Esquire  
The Tinney Law Firm PLLC  
222 Capitol Street, Suite 500  
Charleston, WV 25301  
*Co-Counsel for AIG Domestic Claims, n/k/a  
Chartis Claims, Inc., and Commerce &  
Industry Insurance Company*

**Fax (212) 849-7100**

Kathleen M. Sullivan, Esquire  
Quinn, Emanuel, Urquhart & Sullivan LLP  
51 Madison Avenue  
New York, NY 10010  
*Co-Counsel for AIG Domestic Claims, n/k/a  
Chartis Claims, Inc., and Commerce &  
Industry Insurance Company*

**Fax (202) 457-1678**

Christopher P. Ferragamo, Esquire  
Jackson & Campbell, P.C.  
1120 Twentieth Street, N.W., South Tower  
Washington, D.C. 20036  
*Co-Counsel for AIG Domestic Claims, n/k/a  
Chartis Claims, Inc., and Commerce &  
Industry Insurance Company*



A handwritten signature in black ink, appearing to read 'C. Ferragamo', is written over a horizontal line. The signature is highly stylized and cursive.



MULTI TRANSMISSION REPORT

TIME : 2013-SEP-19 12:09PM  
TEL NUMBER :  
NAME :

FILE NUMBER : 090  
DATE : SEP-19 11:43AM  
DOCUMENT PAGES : 006  
START TIME : SEP-19 11:43AM  
END TIME : SEP-19 12:07PM  
SUCCESSFUL

TEL NUMBER

- ☎13045583815
- ☎13047203315
- ☎12024571678
- ☎12128497100
- ☎13043267800

UNSUCCESSFUL

PAGES SENT