

No. 13-0812

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

SCHOOLHOUSE LIMITED LIABILITY COMPANY,
a West Virginia Limited Liability Company,

Defendant below, Petitioner herein,

v.

(Civil Action No. 12-C-33(R))

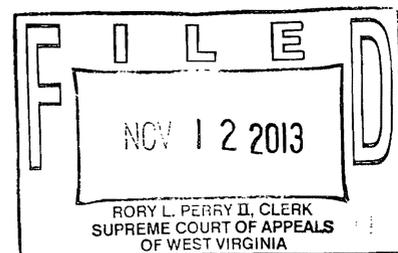
CREEKSIDE OWNERS ASSOCIATION,
a West Virginia not-for-profit homeowners association,
individually and on behalf of two or more unit owners,

Plaintiff below, Respondent herein,

and

WIL-KEN, INC., a West Virginia corporation;
BUILDERS GROUP, INC., a West Virginia corporation;
BG MILLWORK, INC., a West Virginia corporation;
SMITH BACKHOE AND DOZER SERVICE, LLC,
a West Virginia limited liability company; R.E.H., INC.,
a West Virginia corporation; DAVIS ELECTRICAL SERVICE, INC.
a West Virginia corporation; COOPER ASPHALT, INC., a
West Virginia corporation; RELIABLE ROOFING COMPANY,
a West Virginia corporation; D'JERICO, LLC,
a West Virginia limited liability company;
OLD SPRUCE REALTY AT SNOWSHOE, LLC,
a/k/a ReMax Old Spruce Properties, a West Virginia limited
liability company,

Defendants below, Respondents herein.



FROM THE CIRCUIT COURT OF POCAHONTAS COUNTY, WEST VIRGINIA
THE HONORABLE JAMES A. ROWE

**BRIEF IN SUPPORT OF PETITION FOR APPEAL
ON BEHALF OF SCHOOLHOUSE LIMITED LIABILITY COMPANY**

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TO: THE HONORABLE JUSTICES OF THE SUPREME COURT OF
APPEALS OF WEST VIRGINIA

ASSIGNMENT OF ERROR

The Circuit Court of Pocahontas County, West Virginia, committed reversible error when it dismissed Schoolhouse Limited Liability Company's cross-claims for indemnification against the Settling Defendants even though the undisputed facts show that all of the claims against Schoolhouse Limited Liability Company arise directly or indirectly from the Settling Defendants' alleged negligent workmanship.

STATEMENT OF THE CASE

I. Nature of the Pleadings and Causes of Action

On or about August 28, 2012, Creekside Owners Association ("Plaintiff") filed its Amended Complaint against Schoolhouse Limited Liability Company ("Schoolhouse"), the developer of a condominium complex at Snowshoe Mountain, Pocahontas County, West Virginia; Wil-Ken, Inc. ("General Contractor"), the general contractor on the project; Builders Group, Inc., BG Millwork, Inc., Smith Backhoe and Dozer Service, LLC, R.E.H., Inc., Davis Electrical Service, Inc., Cooper Asphalt, Inc., and Reliable Roofing Company, the subcontractors on the project (collectively, "Subcontractors"); the architect/engineering service on the project, D'Jerico, LLC ("Architect"); and, Old Spruce Realty at Snowshoe, LLC, a/k/a ReMax Old Spruce Properties ("Realtor"), the real estate company that marketed the project to prospective buyers. A.R. 1-21. The Plaintiff asserted causes of action against Schoolhouse for (1) breach of contract, (2) breach of the implied warranty of quality, (3) breach of express warranty, (4) negligent development, (5) statutory affiliate liability, (6) fraud and misrepresentation, (7) negligent misrepresentation, (8) civil conspiracy, (9) joint venture, and (10) breach of the obligation of good faith. A.R. 1-21. The Plaintiff asserted causes of action against the General Contractor for (1) negligence, (2) breach of express warranty, (3) civil conspiracy, (4) joint venture, and (5) breach of the obligation of good faith. A.R. 1-21. As against the Realtor, the Plaintiff asserted causes of action for (1) breach of express warranty, (2) fraud and

misrepresentation, (3) negligent misrepresentation, (4) civil conspiracy, (5) joint venture, and (6) breach of the obligation of good faith. A.R. 1-21. As against the Subcontractors, the Plaintiff alleged (1) negligence and (2) breach of the obligation of good faith. A.R. 1-21. The Plaintiff alleged (1) professional negligence and (2) breach of the obligation of good faith against the Architect. A.R. 1-21. On or about September 21, 2012, Schoolhouse answered the Plaintiff's Amended Complaint, and, importantly for the purpose of this appeal, asserted cross-claims of contribution and indemnity against the General Contractor, Subcontractors, Architect, and Realtor. A.R. 22-44.

The Plaintiff filed a Second Amended Complaint on or about December 3, 2012, which joined defendants, Elkins Builders Supply Company, LLC; Minighini Construction, LLC; Southern States Marlinton Cooperative, Incorporated; Randy King d/b/a Mountain Artisan Masonry; Bruce K. Howell d/b/a BK Construction (hereinafter, collectively included in the term "Subcontractors"). A.R. 45-67. These new defendants all served as subcontractors on the project and were added as defendants in the Plaintiff's causes of action for negligence and breach of the obligation of good faith. A.R. 45-67.

It is clear from the Amended Complaint and Second Amended Complaint that Schoolhouse did not design or construct the subject condominium complex. *See* A.R. 1-21, 45-67. Schoolhouse simply sold the condominium complex that the Architect, General Contractor, Subcontractors, and Realtor designed, constructed, and marketed. In fact, the allegations in Paragraphs 53 through 61 of the Amended Complaint focus on the allegedly negligent design and construction of the condominium complex. A.R. 7-8. Further, Paragraphs 64 through 68 also focus on the design and construction of the complex, repeatedly stating that "[a]s a result of the failure of the major building components..." the condominium association has been harmed. A.R. 8-9. Only after a majority of the units were sold to unit owners did the condominium association form, meaning that, though the unit owners had the opportunity to inspect and view the units prior to purchase and ensure the units

met the representations of Schoolhouse, the alleged defects were not discovered until after the sales of the units. A.R. 6-8.

Moving to the substantive allegations against Schoolhouse, it is clear that all of the allegations rest upon the faulty design and construction. Within Count I of the Amended Complaint, alleging breach of contract against Schoolhouse, the Plaintiff repeatedly relies upon the phrase “suitable for residential and recreational use,” meaning that it alleges that Schoolhouse breached its contracts with the purchasers by failing to provide units and elements of the complex that were suitable for residential and recreational use. A.R. 9-10. Schoolhouse was not the party responsible for the design of the complex or the construction of the complex — the Architect, General Contractor, and Subcontractors were. A.R. 2-5.

Count II of the Amended Complaint alleges breach of the implied warranty of quality against Schoolhouse. A.R. 10-11. Count II repeatedly references the phrases “suitable for the ordinary uses of real estate of the type contracted for” and “free from defective materials.” A.R. 10-11. Count III of the Amended Complaint alleges breach of express warranty, focusing again on the quality of the complex. A.R. 11. Thus, once again, the crux of the cause of action is the defective design and construction and the alleged low-quality materials, none of which Schoolhouse participated in or provided. A.R. 11.

Count IV of the Amended Complaint alleges negligent development against Schoolhouse. A.R. 11-12. This cause of action uses the phrases “suitable for the ordinary uses of real estate of the type contracted for,” “free from defective materials,” and “according to sound engineering and construction standards and in a workmanlike manner.” A.R. 11-12. Schoolhouse used the Settling Defendants to ensure that the complex was suitable for the ordinary purposes of that type of real estate, free from defective materials, and constructed in accordance with sound engineering and construction standards and in a workmanlike manner. Thus, the Settling Defendants were responsible for these aspects of the project, not Schoolhouse.

Count VIII of the Amended Complaint alleges statutory affiliate liability against Schoolhouse. A.R. 14-15. This cause of action focuses on Schoolhouse's affiliation with the General Contractor and Realtor and one of the non-settling defendant, alleging that, because of the affiliation with these entities, Schoolhouse is liable for their, or their subcontractors', breaches of warranty or breaches of duties of care. A.R. 14-15. Though the statute referenced in that count speaks for itself, if any breaches of warranty or breaches of duty occurred, those breaches arose primarily from the actions of the Settling Defendants, Wil-Ken and Spruce, or their contractors, not the actions of Schoolhouse.

Count IX and Count X of the Amended Complaint allege fraud and misrepresentation against Schoolhouse. A.R. 15-16. The allegations of these counts focus on representations that the units were luxury and premium properties. A.R. 15-16. Count IX further alleges that Schoolhouse knew of the poor design and construction of the complex. A.R. 15-16. No evidence has been produced to show that Schoolhouse knew of the alleged poor design and construction, and, once again, the crux of the count is the poor design and construction for which the Settling Defendants were responsible. Without the poor design and construction, no fraud or misrepresentations would have taken place. Further, such conduct cannot take place without the actor knowing of the falsity of the representation.

Count XI against Schoolhouse, relating to civil conspiracy, once again is dependent solely upon the alleged poor design and construction because without the alleged poor design and construction, no civil conspiracy to sell poorly designed and constructed units would exist. A.R. 17. Further, Count XII and XIII relate to the previous counts alleged. A.R. 17-18. Because the previous counts alleged against Schoolhouse all relate to the alleged poor design and construction, Count XII and XIII do, as well.

II. Chronology and Procedural History of Settlement

In May, 2013, the Parties conducted a multi-day mediation in Morgantown, West Virginia, utilizing Charles S. Piccirillo and Ben Mishoe as mediators. A.R. 105. At the mediation, the Plaintiff

settled its claims with the General Contractor; Architect; Realtor (with the exception of certain claims that may be covered under a CNA errors and omissions insurance policy); and, several of the subcontractors, including Builders Group, Inc., BG Millwork, Inc., Smith Backhoe and Dozer Service, LLC, R.E.H., Inc., Davis Electrical Service, Inc., Cooper Asphalt, Inc., and Reliable Roofing Company (collectively, "Settling Defendants"). A.R. 105-106. Several defendants, including Schoolhouse, Southern States, and Mr. King, participated in the mediation but did not resolve their claims with the Plaintiff. A.R. 106. Several other defendants, including Elkins Builders Supply Company, Minighini Construction, and Mr. Howell, did not participate in the mediation. A.R. 106. Elkins Builders Supply Company has been dismissed from the suit, and Minighini Construction and Mr. Howell have not participated in the suit. A.R. 106. The settlement reached at the mediation also included settlement of Westfield Insurance Company's declaratory judgment action. A.R. 106.

The Mediation Settlement Agreement provided for the prejudicial dismissal of each Settling Defendant from the litigation and a dismissal of all cross-claims *among the Settling Defendants*. A.R. 78-82. Obviously, because Schoolhouse was not a party to the Mediation Settlement Agreement, nowhere within the Agreement did it agree to a dismissal of the Settling Defendants or a dismissal of its cross-claims against them. *See* A.R. 78-82. Additionally, the Mediation Settlement Agreement did not discuss or provide for a dismissal of Schoolhouse's cross-claims against the Settling Defendants. A.R. 78-82. Essentially, the Settling Defendants only contractually agreed to a dismissal of the cross-claims among them. A.R. 80. After Schoolhouse's counsel brought it to the Parties' attention that Schoolhouse did not agree to a dismissal of its cross-claims against the Settling Defendants, the Settling Defendants filed their Joint Motion to Approve Settlement and Dismiss Claims on June 17, 2013. A.R. 68-76. The Settling Defendants requested in the Joint Motion that the Circuit Court of Pocahontas County, West Virginia, approve the settlement reached at the mediation and dismiss all of the cross-claims against the Settling Defendants, including those

asserted by Schoolhouse. A.R. 70. Schoolhouse opposed the Joint Motion but only with respect to its claims for implied indemnity against the Settling Defendants. A.R. 83-92.

Following the Plaintiff's filing of a reply in support of the Joint Motion, the Circuit Court held a hearing on the Joint Motion. A.R. 78, 93-110. On July 8, 2013, the Circuit Court entered its Order Approving Settlement and Dismissing All Claims, finding that the settlement reached between the Plaintiff and Settling Defendants was a good faith settlement and that the settlement extinguished Schoolhouse's implied indemnity claims because Schoolhouse's remaining liability was based upon its own conduct and independent claims asserted against it. A.R. 111-115. On August 9, 2013, the Plaintiff's President executed a Settlement Agreement and Release confirming that court-approved settlement. A.R. 119-128. Thereafter, the Plaintiff and Settling Defendants filed a Joint Motion to Amend the July 8, 2013 Order to include language pursuant to Rule 54(b) of the West Virginia Rules of Civil Procedure. A.R. 116-118. On August 12, 2013, the Circuit Court entered its Revised Order Approving Settlement and Dismissing All Claims Against Settling Defendants, which included Rule 54(b) language, thus making the Order a final order subject to appeal. A.R. 129-133. Following the entry of the Revised Order, the Plaintiff submitted, and the Circuit Court entered "Plaintiff's Stipulation of Dismissal of All Claims of Vicarious Liability for Work Performed by or Products Supplied by the Settling Defendants and Order Approving Said Dismissal." A.R. 134-135. This document stipulates that the Plaintiff released any and all other entities that are or may be deemed vicariously liable for the work performed or products supplied by the Settling Defendants insofar as those entities have indemnification claims, whether contractual or implied, against the Settling Defendants. A.R. 134.

SUMMARY OF ARGUMENT

The Circuit Court of Pocahontas County, West Virginia, committed reversible error when it dismissed Schoolhouse's claims for implied indemnification against the Settling Defendants because it did not give Schoolhouse the benefit of the Rule 12(b)(6) standard and instead simply assumed that

because the Plaintiff has made allegations of independent wrongdoing against Schoolhouse, Schoolhouse cannot pursue its right to implied indemnification against the Settling Defendants. In essence, the Circuit Court's decision eliminated Schoolhouse's ability to litigate the issue of its liability for the allegations in the Plaintiff's Amended and Second Amended Complaints and, if successful, pursue indemnification from the Settling Defendants. Schoolhouse is entitled to the chance to prove it is without fault and enforce its right to implied indemnification. Eliminating that right, without following the applicable standard contained in the West Virginia Rules of Civil Procedure and without any independent proof from the Plaintiff or Settling Defendants, is a misapplication of the law and subjects the decision to reversal.

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Pursuant to Rule 18(a) of the West Virginia Rules of Appellate Procedure, oral argument is unnecessary in this case because the dispositive issues have been authoritatively decided previously, and the facts and legal arguments are adequately presented in this brief and the record on appeal. Oral argument would not significantly aid the decisional process.

STANDARD OF REVIEW

A circuit court order granting a motion to dismiss a complaint is reviewed under a de novo standard. Syl. Pt. 2, State ex rel. McGraw v. Scott Runyan Pontiac-Buick, Inc., 194 W. Va. 770, 461 S.E.2d 516 (1995).

ARGUMENT

The Circuit Court of Pocahontas County, West Virginia, committed reversible error when it dismissed Schoolhouse's cross-claims for indemnification, specifically implied indemnity, against the Settling Defendants. Implied indemnity is an equitable remedy that allows the indemnitee, who has had to pay damages caused by another individual, to recover those payments from the indemnitor, the party who caused the damages. Syl. Pt. 2, Hill v. Joseph T. Ryerson & Son, Inc., 165 W. Va. 22, 268 S.E.2d 296 (1980). To recover on a claim of implied indemnity, the indemnitee must

prove that (1) a third party sustained an injury, (2) for which the faultless indemnitee has become subject to liability because of a positive duty created by statute or common law, and (3) for which the indemnitor should bear fault for causing because of the relationship between the indemnitor and indemnitee. Syl. Pt. 4, Harvest Capital v. W. Va. Dept. of Energy, 211 W. Va. 34, 560 S.E.2d 509 (2002).

In non-product liability multi-party civil actions, a good faith settlement between a plaintiff and a defendant will not extinguish the faultless non-settling defendant's right to seek implied indemnity. Syl. Pt. 7, Hager v. Marshall, 202 W. Va. 577, 505 S.E.2d 640 (1998). In such cases, the faultless non-settling defendant, liable either vicariously or derivatively, may still seek implied indemnity from the primarily-liable party. *See* Syl. Pts. 5-6, Dunn v. Kanawha County Bd. of Educ., 194 W. Va. 40, 459 S.E.2d 151 (1995); Woodrum v. Johnson, 210 W. Va. 762, 559 S.E.2d 908 (2001) (recognizing that the hospital, whose liability arose from the physician's negligence while providing care at the hospital, may exercise its right to indemnity against the physician following the physician's settlement with the plaintiffs).

A non-settling defendant who is without fault may continue pursuing an implied indemnity claim against a settling defendant even if the settling defendant entered into a good faith settlement. *See* Ruckdeschel v. Falcon Drilling Co., L.L.C., 225 W. Va. 450, 693 S.E.2d 815 (2010). In Ruckdeschel, the plaintiffs filed a wrongful death suit against Halliburton and two of its subcontractors for wrongful death. *Id.* at 453, 818. Later, the plaintiffs amended their complaint to assert independent causes of action against each of the defendants for negligence. *Id.* Following the assertion of the independent causes of action, Halliburton filed cross-claims against the subcontractors for indemnity — contractual as to one subcontractor and implied as to the other — and contribution. *Id.* Following Halliburton's and the subcontractors' settlements with the Plaintiffs, the subcontractor against whom the contractual indemnity cause of action was alleged pursued

dismissal of the claim. Id. The circuit court granted the dismissal of the contractual indemnity and contribution claims, and Halliburton appealed. Id.

On appeal, the subcontractor against whom the implied indemnification action was alleged argued that Halliburton could no longer pursue that claim against it. Id. at 458, 823. Halliburton argued that, procedurally, the issue was not properly before the court because that subcontractor was not a party to the appeal. Id. After determining that the issue was properly before the court because Halliburton's appeal impacted both subcontractors, the court entertained the argument that the implied indemnification claim was no longer viable. Id. The court considered Syllabus Point 2 of Hill and Syllabus Point 4 of Harvest Capital. Id. The court also considered the Hager rule that a good faith settlement extinguishes an implied indemnity claim unless the non-settling defendant is without fault. Id.

In finding that Halliburton's claim against the subcontractor was extinguished, the court stated,

[i]n light of the fact that all the Defendants have entered into good faith settlements with the Plaintiffs and the Plaintiffs' claims against the Defendants have been dismissed, there is no judgment against any of the Defendants requiring any Defendant to pay damages to the Plaintiff. Further, no non-settling Defendant remains in the litigation. Consequently, there is no basis for any implied indemnification claim by Halliburton.

Id. (emphasis added). Thus, this dicta indicates that if a non-settling defendant remains in the litigation, that non-settling defendant may pursue an implied indemnification claim against the settling defendants.

Here, Schoolhouse's liability is derived solely from the actions of the Settling Defendants. But for the Settling Defendants' actions in the selection of materials and the design and construction of the condominium complex, Schoolhouse would have no liability in this suit. Though it is alleged that Schoolhouse is liable for breach of contract, breach of the implied warranty of quality, breach of express warranty, negligent development, statutory affiliate liability (with respect to Wil-Ken, EBS, and Spruce), fraud and misrepresentation, negligent misrepresentation, civil conspiracy (with respect to Wil-Ken, EBS, and Spruce), joint venture (with respect to Wil-Ken, EBS, and Spruce),

and breach of the obligation of good faith, an examination of the allegations of the Amended Complaint reveals that all of the alleged liability of Schoolhouse stems directly from the actions of the Settling Defendants, and not any independent actions of Schoolhouse. Without the claims for defective construction (termed negligence in the Amended Complaint), the causes of action asserted against Schoolhouse would not have arisen because Schoolhouse could not have breached any duties, made any misrepresentations, or “conspired” to sell allegedly poorly-designed and poorly-constructed units and common areas.

We must also examine the issue with respect to the language of the Revised Order and the standard relative to the dismissal of claims. The Circuit Court stated

[f]irst, the Plaintiff asserts that Schoolhouse, as developer, selected the type of roof materials that were to be used on the project. The Plaintiff alleges that the type of roof materials that Schoolhouse selected were improper for this application. While any claim for improper installation is being dismissed as part of the settlement, the independent claim against Schoolhouse regarding the selection of roof materials would remain and have no relation to the work performed by the Settling Defendants.

Additionally, the Plaintiff asserts that Schoolhouse, as developer, improperly directed Cooper Asphalt regarding the thickness of the asphalt for the project. While any negligent workmanship claims against Cooper Asphalt are being dismissed as part of the settlement, the independent claim that Schoolhouse provided negligent instruction to Cooper Asphalt would remain and have no relation to the work of Cooper Asphalt.

A.R. 112-113, 130-131. These two alleged actions of independent liability appear to be the factual basis of the Circuit Court’s decision that Schoolhouse was independently liable. However, the record is absolutely void of any evidence to support such factual basis. In fact, Schoolhouse denies it selected the roofing materials and directed Cooper Asphalt regarding the thickness of the project’s asphalt.

On a motion to dismiss, a trial court must appraise the sufficiency of a cause of action under a Rule 12(b)(6) motion to determine whether it is beyond doubt that the complainant can prove no set of facts in support of the claim that would entitle him to relief. Syl. Pt. 3, Chapman v. Kane Transfer Co., 160 W. Va. 530, 236 S.E.2d 207 (1977). To the extent a court considers matters outside the pleadings in ruling on a motion to dismiss, such motion may be converted to a Rule 56

motion for summary judgment. Id. Of course, with a Rule 56 motion for summary judgment, the trial court must determine whether there are any genuine issues of material fact. W. Va. R. Civ. P., R. 56(b). If so, the questions of fact must be presented to a jury for resolution.

Thus, considering the allegations of the Amended Complaint, it is clear that there are no allegations within it that Schoolhouse improperly selected any materials or improperly directed any work performed on the project, as averred by the Plaintiff at the hearing but unsubstantiated by any documentation or other proof. Additionally, in dismissing the implied indemnity claim, we must apply the Rule 12(b)(6) standard to that claim, not to the Plaintiff's actual Amended Complaint. It must be determined whether it is beyond doubt that Schoolhouse can prove no set of facts in support of its cross-claims that would entitle it to relief. Taking Schoolhouse's cross-claim, on its face, it is clear that Schoolhouse has alleged enough to overcome the Rule 12(b)(6) standard because Schoolhouse denies any and all wrongdoing and alleges that, if it is liable, any damages were the result of the negligence or wrongful conduct of other parties. A.R. 41. If the Plaintiff or Settling Defendants had wished to overcome this standard and convert the motion into a Rule 56 motion, they would have needed to prove that there is no genuine issue of material fact that Schoolhouse has independent liability for the damages alleged. Simply put, the Plaintiff and Settling Defendants cannot prove there is no genuine issue simply on averments alone. Finally, although there are certain causes of action solely asserted against Schoolhouse, the sole basis of those causes of action is the Settling Defendants' misconduct and negligence, not that of Schoolhouse.

Essentially, the Circuit Court's ruling gave the Plaintiff the benefit of the Rule 12(b)(6) standard without also affording Schoolhouse the benefit of that same standard. This is reversible error. Schoolhouse has asserted a cause of action for implied indemnity that is based on theories that it is not at fault, and any fault it may have is solely the result of others' actions. Schoolhouse is entitled to the benefit of the Rule 12(b)(6) standard and the Rule 56 standard. The Plaintiff and Settling Defendants have not met their burdens under either standard. Thus, Schoolhouse is entitled

to continue pursuing its claims of implied indemnity against the Settling Defendants and present evidence in support of its allegations that the Settling Defendants are entirely at fault for the Plaintiff's alleged damages.

CONCLUSION

The Circuit Court of Pocahontas County, West Virginia, in dismissing Schoolhouse's claims for implied indemnification against the Settling Defendants, took as true the Plaintiff's allegations and proffer of independent negligence and liability on the part of Schoolhouse, without affording Schoolhouse the same benefit. In determining whether to dismiss Schoolhouse's claims, the benefit of the doubt and the broad Rule 12(b)(6) and 56 standards should have been provided to Schoolhouse instead. Extinguishing Schoolhouse's ability to prove it is without fault and seek implied indemnification is contrary to the common law and is reversible error.

WHEREFORE, based upon all the foregoing reasons, the Petitioner, Schoolhouse Limited Liability Company, respectfully requests this Honorable Court enter an Order granting his Petition for Appeal and enter an Order reversing the circuit court's decision dismissing its cross-claims for indemnification against the Settling Defendants.

Respectfully submitted this 11th day of November, 2013.

**Petitioner, SCHOOLHOUSE LIMITED
LIABILITY COMPANY, By Counsel:**



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a/k/a ReMax Old Spruce Properties, a West Virginia limited
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Defendants below, Respondents herein.

FROM THE CIRCUIT COURT OF POCAHONTAS COUNTY, WEST VIRGINIA
THE HONORABLE JAMES A. ROWE

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of November, 2013, I served the foregoing ***“BRIEF IN SUPPORT OF PETITION FOR APPEAL ON BEHALF OF SCHOOLHOUSE LIMITED LIABILITY COMPANY”*** and ***“APPENDIX OF EXHIBITS (re: Petitioner’s Notice of Appeal***

from July 8, 2013 Order Approving Settlement and Dismissing All Claims Against Settling Defendants and Supplement to its Notice of Appeal from August 12, 2013 Revised Order Approving Settlement and Dismissing All Claims Against Settling Defendants),”

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