

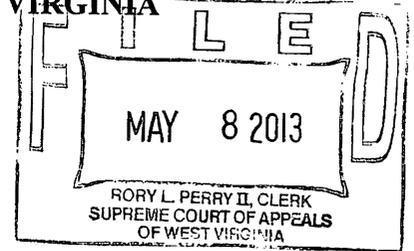
IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

No. 12-1500

UNITED SERVICES AUTOMOBILE ASSOCIATION,  
Defendant Below,  
Petitioner,

v.

KIMBERLY LUCAS,  
Plaintiff Below,  
Respondent.



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REPLY BRIEF OF PETITIONER

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Submitted by:

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## I. STATEMENT REGARDING ORAL ARGUMENT

Petitioner, United Services Automobile Association (“USAA”), maintains its position and agrees with Respondent, Kimberly Lucas, regarding oral argument. Petitioner respectfully requests oral argument under the Revised Rules of Appellate Procedure Rules 20(a)(1) and 20(a)(2). As the matter before this court is the construction of W. Va. Code § 33-6-36, a matter of first impression, Revised Rule 18(a) does not preclude the need for oral argument.

## II. ARGUMENT

### A. Relevant Facts

Petitioner agrees with the majority of Respondent’s Statement of Relevant Facts. Respondent was injured in a car accident as the result of the alleged negligence of another driver, Francis McComas, Jr. (“Mr. McComas”), who is now deceased. *See* Petitioner’s Appendix Volume 1 at 4, 39-44. At the time of the accident, Mr. McComas was driving a 1998 Chevrolet Silverado that was covered under an insurance policy issued by State Farm Insurance Company. *See* Petitioner’s Appendix Volume 2 at 593, and Petitioner’s Appendix Volume 1 at 39.

Mr. McComas was previously married to Felecity N. Cooper (also previously known as Felecity N. Puckett) (“Ms. Cooper”) from February 18, 2006 to October 16, 2007. *See* Petitioner’s Appendix Volume 2 at 592. On March 1, 2006, Mr. McComas, at the request of Ms. Cooper, was added as an Operator to Ms. Cooper’s USAA insurance policy. *See* Petitioner’s Appendix Volume 1 at 35. After Mr. McComas was added to the policy, the policy covered three total vehicles — a 2004 Chevy Colorado, a 1996 Ford Explorer, and a 1991 Chevy S-10. *See* Petitioner’s Appendix Volume 1 at 101 and 139. Mr. McComas and Ms. Cooper separated on May 7, 2007. *See* Petitioner’s Appendix Volume 2 at 592. On August 17, 2007, Mr.

McComas was removed as an Operator under Ms. Cooper's policy at the request of Ms. Cooper. See Petitioner's Appendix Volume 2 at 592.

In accordance with Ms. Cooper's request, Mr. McComas was removed from the policy on August 17, 2007. See Petitioner's Appendix Volume 1 at 325. On that same date, Petitioner sent Mr. McComas a packet entitled "*Automobile Policy Packet*". See Petitioner's Appendix Volume 2 at 473. On August 20, 2007, Petitioner sent Mr. McComas a letter referencing coverage related to change in a marital status and included a USAA agent for him to contact. See Petitioner's Appendix Volume 2 at 469. Ten days later, Petitioner sent another "*Automobile Policy Packet*" to Mr. McComas that included a Declarations page stating that his coverage had been cancelled as of August 18, 2007. See Petitioner's Appendix Volume 2 at 472.

B. Standard of Review

As stated in Petitioner's Brief, a circuit court's summary judgment ruling is reviewed *de novo*. *Estate of Helmick ex rel. Fox v. Martin*, 192 W. Va. 501, 4534 S.E.2d 335 (W. Va. 1994); *Cunningham v. West Virginia-American Water Co.*, 193 W. Va. 450, 457 S.E.2d 127 (W. Va. 1995); *Hanlon v. Chambers*, 195 W. Va. 99, 464 S.E.2d 741 (W. Va. 1995); *HN Corp. v. Cyprus Kanawha Corp.*, 195 W. Va. 289, 465 S.E.2d 391 (W. Va. 1995); *Gooch v. West Virginia Department of Public Safety*, 195 W. Va. 357, 465 S.E.2d 628 (W. Va. 1995); *Greenfield v. Schmidt Baking Co.*, 199 W. Va. 447, 485 S.E.2d 391 (W. Va. 1997).

C. Respondent Has Incorrectly Interpreted the Plain Language of W.Va. Code §33-6-36, as the Statute Clearly Mandates that USAA Had No Obligation to Provide Notice or Offer Mr. McComas Coverage After His Divorce From Ms. Cooper.

In her brief, Respondent incorrectly interprets the plain language of W.Va. Code § 33-6-36 by failing to see that the notice provision is tied to the length of time a former spouse is on a policy – not how long the entire policy has been in effect. The statute states:

(a) In the event of death, legal separation or termination of the marital relationship of the named insured, **the named insured or spouse covered by a motor vehicle liability policy for a period of two or more years** shall, upon request of the named insured or spouse within thirty days of the expiration of said policy, be issued his or her own individual motor vehicle liability insurance policy providing the same coverage as the original policy through the same insurer, without any lapse in coverage: Provided, That any such named insured or spouse may elect to increase or decrease the amount of coverage in his or her respective policies without affecting any privilege provided by this section. Any named insured or spouse requesting an individual policy pursuant to this section shall be entitled to the continuation of all rights and privileges afforded by section one-a [§ 33-6A-1a] and section four [§ 33-6A-4] of article six-a of this chapter which were accrued under the original policy: Provided, however, That this section shall not apply to any motor vehicle liability insurance policy canceled, nonrenewed or terminated pursuant to the provisions of section one [§ 33-6A-1] or section four [§ 33-6A-4], article six-a of this chapter.

(b) Insurers shall notify all named insureds at policy issuance or the first renewal after the effective date of this section and upon any change or termination of the policy for reasons other than those provided in sections one [§ 33-6A-1] and four [§ 33-6A-4] of article six-a of this chapter of the right of the named insured or spouse to continue coverage as provided by this section.

(c) The commissioner shall promulgate rules in accordance with the provisions of chapter twenty-nine-a [§§ 29A-1-1 et seq.] of this code regarding the form of such notice and procedures required by this section.

W. Va. Code § 33-6-36 (2012) (emphasis added). West Virginia Courts have ruled “[i]t is basic in our law and universally accepted that where the language of a statute is free from ambiguity, its plain meaning is to be accepted and applied without resort to interpretation.” *Crockett v. Andrews*, 153 W. Va. 714, 172 S.E.2d 384 (W. Va. 1970). *See also Mingo County Redevelopment Auth. v. Green*, 207 W. Va. 486, 534 S.E.2d 40 (W. Va. 2000); *Lavender v. McDowell County Bd. of Educ.*, 174 W. Va. 513, 327 S.E.2d 691 (W. Va. 1984); *UMW v. Miller*, 170 W. Va. 177, 291 S.E.2d 673 (W. Va. 1982); *State ex rel. Fox v. Board of Trustees of the Policemen’s Pension or Relief Fund of the City of Bluefield*, 148 W. Va. 369, 135 S.E.2d 262 (W. Va. 1964); *State v. Epperly*, 135

W. Va. 877, 65 S.E.2d 488 (W. Va. 1951). W. Va. Code § 33-6-36(a) specifically speaks to situations of divorce and legal separation, and requires that only a named insured or spouse covered by a policy for two or more years be entitled to his or her own insurance policy. Here, it is clear that Mr. McComas was only covered under Ms. Cooper's USAA policy from March 1, 2006 until August 17, 2007 – a period that was well short of two (2) years.

Respondent maintains that “notice” is required for all policies that have been in existence for at least two years. However, if that were the intent of the drafters, the statute would read something like “In the event of death, legal separation or termination of the marital relationship of the named insured, *either* the named insured or spouse covered by a motor vehicle liability policy *in existence for a period of two or more years* shall . . . be issued his or her own individual motor vehicle liability insurance policy . . .” Instead, the statute reads, “In the event of death, legal separation or termination of the marital relationship of the named insured, the named insured or spouse covered by a motor vehicle liability policy *for a period of two or more years* shall . . . be issued his or her own individual motor vehicle liability insurance policy . . .” Further, drafters used commas to set off the phrase “the named insured or spouse covered by a motor vehicle liability policy for a period of two or more years shall,” which clearly defines the type of person who is entitled to his or her own coverage – a named insured or spouse covered by a policy for a period of two or more years. Had the drafters intended for a former spouse to be continued on an insurance policy that had been in existence for a period of more than two years, they would have clearly expressed that in the statute. Respondent's interpretation of the statute is preposterous when you consider that policy coverage of

any length could result in notice of continued vehicle liability insurance if a former spouse was once covered under a policy in existence for at least two years.

In furtherance of its argument, USAA's position is identical to that of the West Virginia Insurance Commissioner's office, which has the effect of statutory law. *Simon v. American Casualty Co. of Reading, PA*, 146 F.2d 208 (4th Cir. 1944). Regulations of the Insurance Commissioner's office may not be waived or set aside by state officers as though they are contracts between parties, as they are given the authority of statutory law. *Id.* The provision of the State Code of Regulations, which set forth the form of notice for W.Va. Code § 26-6-30, 114 C.S.R. 38 provides that:

If you have had your auto policy two full years and the named insured either dies, becomes legally separated, or the marital relationship ends (eg. Divorce), then each named insured and the named insured's spouse has the right to request their own separate policy with this company.

Appendix A of 114 C.S.R. 38 (underlining added). This provision unequivocally provides that only if you (in this case Frances N. McComas) had the policy for two (2) years, would you be entitled to continued coverage. Here, Mr. McComas was not listed on the policy for two (2) years, he did not request continued coverage from USAA after his divorce, and he was not entitled to notice or continued coverage.

### III. CONCLUSION

The ruling of the Circuit Court of Cabell County, West Virginia, which granted Respondent's Declaratory Judgment should be reversed, and Petitioner's Motion for Summary Judgment should be granted. The Circuit Court of Cabell County, West Virginia, erred in the interpretation of W. Va. Code § 33-6-36, as USAA had no obligation to provide notice or offer

Mr. McComas coverage after his divorce from Ms. Cooper because Mr. McComas had not been covered for a period of two (2) years under Ms. Cooper's policy.

Respectfully Submitted:



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Respondent.

CERTIFICATE OF SERVICE

The undersigned attorney does hereby certify that on this 8<sup>th</sup> day of  
May, 2013, the foregoing "*Reply Brief of Petitioner*" and was served upon  
counsel of record by hand delivering a true and correct copy thereof by United States mail,  
postage prepaid and properly addressed, as follows:

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