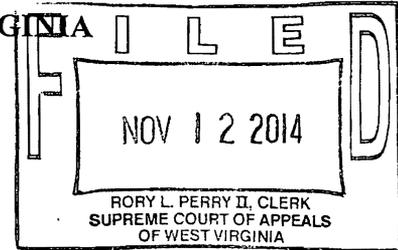


IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA



**ENERGY CORPORATION OF AMERICA
and JOHN D. SOLLON**

Petitioners,

v.

**Supreme Court Docket No. *14-1168*
(Harrison County Circuit Court,
Civil Action No. 14-C-215)**

**THE HONORABLE J. LEWIS MARKS,
JUDGE OF THE CIRCUIT COURT OF HARRISON
COUNTY, and ERIN ELIZABETH GILMORE,
ERIKA LOIS GILMORE and RON R. GILMORE**

Respondents.

PETITION FOR WRIT OF PROHIBITION

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PETITION FOR WRIT OF PROHIBITION

COMES NOW, the Defendants, Energy Corporation of America and John D. Sollon, Jr., by counsel Michael P. Markins and Jennifer A. Lynch of Mannion & Gray Co., L.P.A. and pursuant to Rule 14 of the West Virginia Rules of Appellate Procedure and West Virginia Code § 53-1-1, *et seq.* and hereby file this Writ of Prohibition. Energy Corporation of America (hereinafter, "ECA") and John D. Sollon Jr., respectfully request this Court to exercise its original jurisdiction and issue a rule to show cause in prohibition against Respondent, Judge John Lewis Marks, thereby prohibiting him from enforcing an Order denying Defendants ECA and John D. Sollon, Jr.'s Motion to Sever and Motion to Dismiss in Civil Action No. 14-C-215. In support of their petition, ECA and John D. Sollon, Jr. state as follows:

QUESTIONS PRESENTED

1. Whether the Circuit Court of Harrison County exceeded its legitimate authority and/or committed clear legal error in ruling that the allegations against Defendants ECA and Mr. Sollon and the actions of the State Auto Defendants arose out of the same transaction and are inextricably intertwined under Rule 20 of the West Virginia Rules of Civil Procedure?

2. Whether the Circuit Court of Harrison County exceeded its legitimate authority and/or committed clear legal error in ruling that the claims asserted against Defendants ECA and Mr. Sollon should not be severed from the claims asserted against State Auto, despite proper joinder, to cure the prejudicial effect of having the claims discovered and tried together.

3. Whether the Circuit Court of Harrison County exceeded its legitimate authority and/or committed clear legal error in denying Defendants' Motion to Dismiss when the venue has already previously been ruled improper for the Plaintiffs' claims against ECA and Mr. Sollon?

STATEMENT OF JURISDICTION

This Petition for Writ of Prohibition is filed pursuant to Article VIII, Section Three of the West Virginia Constitution, granting the Supreme Court of Appeals original jurisdiction in prohibition, and pursuant to West Virginia Code § 53-1-1. The Supreme Court of Appeals has stated, "[a] writ of prohibition will not issue to prevent a simple abuse of discretion by a trial court. W.Va. Code § 53-1-1." State ex rel. Peacher v. Sencindiver, 160 W.Va. 314, 233 S.E.2d 425 (1977). Additionally, this Court has further elaborated that, "[t]he writ [of prohibition] lies as a matter of right whenever the inferior court (a) has no jurisdiction or (b) has jurisdiction but exceeds its legitimate powers and it matters not if the aggrieved party has some other remedy adequate or inadequate." State ex rel. Valley Distributors, Inc. v. Oakley, 153 W.Va. 94, 99, 168 S.E.2d 532, 535 (1969).

The West Virginia Supreme Court of Appeals analyzes several factors when a petition for a writ of prohibition appears before them. In State ex rel. Hoover v. Berger, 199 W. Va. 12, 483 S.E.2d 12 (1996) Syllabus Point 4, the Court presented,

In determining whether to entertain and issue the writ of prohibition for cases not involving an absence of jurisdiction but only where it is claimed that the lower tribunal exceeded its legitimate powers, this Court will examine five factors: (1) whether the party seeking the writ has no other adequate means, such as direct appeal, to obtain the desired relief; (2) whether the petitioner will be damaged or prejudiced in a way that is not correctable on appeal; (3) whether the lower tribunal's order is clearly erroneous as a matter of law; (4) whether the lower tribunal's order is an oft repeated error or manifests persistent disregard for either procedural or substantive law; and (5) whether the lower tribunal's order raises new and important problems or issues of law of first impression. These factors are general guidelines that serve as a useful starting point for determining whether a discretionary writ of prohibition should issue. Although all five factors need not be satisfied, it is clear that the third factor, the existence of clear error as a matter of law, should be given substantial weight.

Furthermore, in deciding the third factor, the West Virginia Supreme Court will use a de novo standard of review as held in, State ex rel. Thrasher Engineering, Inc. v. Fox, 218 W. Va. 134, 624 S.E.2d 481 (2005).

Further, in the context of motions to sever and issues dealing with venue, this Court has consistently held Writs of Prohibition are appropriate mechanisms to present issues to this Court. *See* State ex rel. J.C. v. Mazzone, 759 S.E.2d 200 (W. Va. 2014); *See also* State ex rel. Riffle v. Ranson, 195 W. Va. 121 (W. Va. 1995)

In the present case, pursuant to the original jurisdiction of this Court, ECA and John D. Sollon, Jr., seek relief in the form of a Writ of Prohibition as the Circuit Court of Harrison County has exceeded its legitimate authority and committed clear legal error by denying ECA and Mr. Sollon's, Motion to Sever and Motion to Dismiss pursuant to Rule 20 of the West Virginia Rules of Civil Procedure. Further, these parties will be damaged and prejudiced by the

Circuit Court's denial of their Motions and the prejudice to be suffered cannot be adequately remedied upon appeal of this matter. The issue currently before this Court is strictly a matter of law. There is no other remedy which ECA and Mr. Sollon can pursue which would be able to correct this error committed by the Circuit Court. Additionally, the error of law is a common one often repeated and addressed by the Supreme Court of Appeals of West Virginia which has recognized that personal injury tort claims and insurance bad faith claims should not intermix.

Lastly, for a Writ of Prohibition to be granted, this Court stated in Hinkle v. Black, 164 W.Va. 112, 262 S.E.2d 744 (1979),

In determining whether to grant a rule to show cause in prohibition when a court is not acting in excess of its jurisdiction, this Court will look to the adequacy of other available remedies such as appeal and to the over-all economy of effort and money among litigants, lawyers and courts; however, this Court will use prohibition in this discretionary way to correct only substantial, clear-cut, legal errors plainly in contravention of a clear statutory, constitutional, or common law mandate which may be resolved independently of any disputed facts and only in cases where there is a high probability that the trial will be completely reversed if the error is not corrected in advance.

In the instant matter, the Circuit Court of Harrison County has exceeded its legitimate authority and committed clear legal error by ruling that the Plaintiffs' claims against the ECA Defendants and State Auto Defendants arise out of the same "transaction or occurrence" and/or failing to sever pursuant to Rule 20 of the West Virginia Rules of Civil Procedure. The issue currently before this Court is purely a matter of law. ECA and Mr. Sollon stand to be gravely harmed by the Circuit Court's intertwining of two vastly different issues and allowing this matter to proceed in an improper venue where prejudice to these Defendants will undoubtedly result. This error must be remedied before this matter is submitted to a jury as there is no adequate remedy available through the appeals process.

STATEMENT OF THE CASE

On or about May 17, 2012, Erin Gilmore was operating a 2008 Nissan Versa traveling North on Interstate 79 towards Pittsburgh, in the Commonwealth of Pennsylvania. The aforementioned car was owned by Plaintiff Ron Gilmore, who had given Erin Gilmore consent to operate the Nissan Versa. On this day, Erika Gilmore was a passenger in the Nissan Versa which was driven by Erin Gilmore. Further, at this same time and place, Defendant John D. Sollon was traveling North on Interstate 79 directly behind the Plaintiffs, Erin and Erika Gilmore in a 2008 Ford F-150 XLT. This vehicle was owned by Defendant Energy Corporation of America who employed Mr. Sollon and who gave Mr. Sollon consent to operate it.

1. Claims asserted against ECA and Sollon

Plaintiffs assert that Mr. Sollon “acted in a negligent, grossly negligent and reckless manner by speeding, failing to maintain control of the Ford F-150, following too closely to traffic in front of him, being voluntarily distracted or otherwise negligent, grossly negligent and reckless in the operation of the Ford F-150, causing the Ford F-150 to “rear end” the Nissan Versa being driven by Plaintiff Erin Gilmore and carrying passenger, Erika Gilmore.” *See Plaintiff’s Complaint, Appendix p. 3.* Further, Plaintiffs allege that at all relevant times, “Mr. Sollon was acting in the capacity of employee of Defendant ECA within the scope of his employment, thus making ECA directly and vicariously liable for his acts or omissions under the agency theories of respondeat superior, master-servant, principal-agent, and/or employer-employee.” *See Appendix, p. 3.* Additionally, Plaintiffs allege that as a result of Mr. Sollon’s negligent conduct, Plaintiffs sustained personal injuries and Plaintiff Ron Gilmore’s Nissan Versa suffered property damage to the Nissan Versa. More specifically, Plaintiffs Erin and Erika Gilmore, allege that as a result of the crash they have incurred “bodily injury, physical pain,

emotional distress and loss of enjoyment of life, as a result of the conduct of Mr. Sollon on the date of the crash.” *See Appendix, pp. 3, 4.*

Furthermore, Plaintiffs’ complaint sets forth that Mr. Sollon’s conduct in driving a vehicle on the highway was unlawful due to his failure to keep a proper lookout, failure to maintain control of his vehicle, following too closely to traffic in front of him, driving too fast for the conditions, and being impaired or distracted in operating a vehicle, all of which “proximately cause or contributed to the crash and resulting in injuries and damages to each of the Plaintiffs, Erin, Erika, and Ron Gilmore. *Appendix, p. 4.* Accordingly, the Plaintiffs, allege that they are entitled to damages and relief jointly and severally from Defendants ECA and Mr. Sollon as a result of the Defendants unlawful, negligent, grossly negligent, and reckless conduct.

2. Claims asserted against State Auto and Holmes

Plaintiffs allege that Defendant State Auto issued a contract of insurance to the Plaintiffs which provided payment of \$1,000.00 of medical payments coverage to them if anyone who was insured under them were injured through the operation or use of an automobile. State Auto is not the liability insurer of ECA or Mr. Sollon. Neither ECA, nor Mr. Sollon have any connection to State Auto. Accordingly, Plaintiffs state that State Auto was under a legal duty to pay all valid coverages, including the medical payments coverage, promptly once they were given notice of a claim by their insureds. Plaintiffs allege that Defendant State Auto “has failed and refused to pay the medical coverage to the Plaintiffs and has also failed to respond to communications with them concerning the payment of the medical payments coverage, as well as other matters.” *See Appendix, p. 5.* Further, Plaintiffs state that “they have on numerous occasions requested information without any response from State Auto and Holmes until November 7, 2013 when Holmes disregarded Plaintiffs’ submission dated October 23, 2013.” *See Appendix, pp. 5, 6.*

In addition, Plaintiffs allege that State Auto and Holmes have not accepted or rejected their claim or indicated why the claim have been denied which is required by law. As a result, Plaintiffs assert that “Holmes and State Auto violated West Virginia insurance law, acted in an intentional and malicious conduct which proximately caused and contributed to Plaintiffs’ damages, and demonstrated that this type of conduct occurred with such frequency in this claim, and has occurred in other claims involving State Auto insureds to demonstrate a general business practice of Defendants State Auto and Holmes in this state and other states.” *Appendix, pp. 7,8.*

3. Procedural History

Prior to the institution of the present suit, Plaintiffs filed a similar suit against only ECA and Mr. Sollon in Harrison County, West Virginia, bearing Civil Action Number 13-C-136-2. That suit, however, was dismissed because venue for the subject motor vehicle accident was found to not be proper in Harrison County, West Virginia as ECA is a domestic corporation with officers residing in counties other than Harrison County, West Virginia. *See Appendix, pp. 9-16.*

With the filing of the present suit, ECA and Mr. Sollon proffered that Plaintiffs have joined claims against unrelated Defendants State Auto and Holmes, in an effort to procedurally fence venue in Harrison County, West Virginia to the prejudice of all Defendants. In response to Plaintiffs filing the instant suit, ECA and Mr. Sollon submitted a Motion to Sever and Motion to Dismiss and Supporting Memorandum to the Circuit Court of Harrison County. *See Appendix pp. 17-55.* However, on September 30, 2014, Judge Marks entered an Order denying Defendants ECA and Mr. Sollon's Motion to Sever and Motion to Dismiss. It is from this Order denying the Motion to Sever and Motion to Dismiss that ECA and Mr. Sollon now seek a writ of prohibition. *See Appendix, pp. 56-61.*

SUMMARY OF ARGUMENT

The Plaintiffs' Complaint sets forth two distinct and separate causes of action. The first claim arises from alleged tortious behavior relating to an auto accident involving the Plaintiffs, ECA, and Mr. Sollon. The second claim arises from contractual and bad faith claims relating to an insurance policy provided through Defendants State Auto and Ms. Holmes. Pursuant to Rule 21 of the West Virginia Rules of Civil Procedure, these claims should be severed. These claims neither arise from the same transaction or occurrence, nor do they contain a question of law or fact common to all the defendants. Severance in this matter is necessary to prevent manifest injustice in the trial of this matter. Prejudice and confusion would most certainly result by intertwining the Plaintiff's tort claims with claims of bad faith. Lastly, because severance in this matter leads to a reconsideration of proper venue for the Defendants, ECA and Mr. Sollon, the lower Court should re-dismiss the claims against these Defendants pursuant to Rule 12(b)(3). The Circuit Court already previously ruled Harrison County improper venue when the Plaintiff originally filed claims against ECA and Mr. Sollon without the State Auto Defendants.

STATEMENT REGARDING ORAL ARGUMENT

The Defendants, ECA and Mr. Sollon, state the facts and legal arguments are of sufficient complexity that this matter would be aided by oral argument. Therefore, ECA and Mr. Sollon believe oral arguments are necessary under the standard set forth in Rule 18(a) of the West Virginia Rules of Appellate Procedure.

LAW AND ARGUMENT

1. The Harrison County Circuit Court exceeded its legitimate powers and/or committed a clear error as a matter of law when it ruled that the claims subject to this dispute arose from the same transaction or occurrence and satisfy Rule 20 of the West Virginia Rules of Civil Procedure.

Pursuant to Rule 21 of the West Virginia Rules of Civil Procedure, parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. Although Rule 21 does not provide a set standard for courts to apply in deciding whether parties or claims are misjoined or should be severed, courts have looked to Fed. R. Civ. P. 20 for guidance in making their decisions. Acevedo v. Allsup's Convenience Stores, Inc., 600 F.3d 516, 521 (5th Cir. 2010). Under Rule 20, which is entitled "Permissive Joinder of Parties," defendants may be joined in a single action only if: (1) the claims against them are with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and (2) a question of law or fact common to all defendants will arise in the action. Fed. R. Civ. P. 20(a)(2). Thus, "even if a plaintiff's claims arise out of the same transaction and there are questions of law and fact common to all defendants," joinder may still be refused "in the interest of avoiding prejudice and delay, ensuring judicial economy, or safeguarding principles of fundamental fairness." *Acevedo*, 600 F.3d at 521. Moreover, as set forth by the Supreme Court of Appeals of West Virginia, when a court evaluates a motion for severance of claims, many factors must be considered but courts must never forget that "the overriding concern is the provision of a fair and impartial trial to all litigants." Bennett v. Warner, 372 S.E.2d 920, 926 (W. Va. 1988). Generally, where different causes of action against different defendants are stated in one complaint, severance as to defendants who have no interest in any cause of action should be ordered. Hessol v. Hathaway, 177 Misc. 336, 340 (N.Y.S. 1941).

Moreover, as recently recognized by this Court, even if claims are properly joined, under the right circumstances, including the avoidance of prejudice, severance is appropriate. State ex rel. J.C. v. Mazzone, FN 31, 759 S.E.2d 200 (W. Va. 2014) *citing* Dantzler-Hoggard v. Graystone

Acad. Charter Sch., No. 12-0536, 2012 U.S. Dist. LEXIS 79163, 2012 WL 2054779, at *10 (E.D. Pa. June 6, 2012); Robinson v. Dart, No. 13C1502, 2014 U.S. Dist. LEXIS 7696, 2014 WL 222711, at *5 (N.D. Ill. Jan. 21, 2014); Brighton Collectibles, Inc. v. RK Texas Leather Mfg., No. 10-CV-419-GPC (WVG), 2013 U.S. Dist. LEXIS 82089, 2013 WL 2631333, at *2 (S.D. Cal. June 11, 2013); Gsouri v. Farwest Steel Corp., No. C105769BHS, 2011 U.S. Dist. LEXIS 54089, 2011 WL 1827343, at *2 (W.D. Wash. May 12, 2011).

- a. **The complaint fails to allege a right to relief arising out of the same transaction, occurrence, or series of transactions sufficient to warrant the joinder of ECA and Mr. Sollon to the insurance bad faith claims asserted against State Auto.**

Plaintiffs' Complaint sets forth distinct and separate causes of action regarding the Defendants' conduct and the incidents that followed the accident in 2012. Specifically, Plaintiffs' claims against Defendants ECA and Mr. Sollon revolve around the 2012 car accident and injuries that resulted, while Plaintiffs' claims against State Auto and Ms. Holmes are based solely on insurance policies regarding the payment of medical bills. Thus, the joinder of all Defendants is not warranted pursuant to Rule 20 based on the fact that these claims arise out of two separate transactions: (1) the acts of ECA and Mr. Sollon in regard to the cause of the accident, and (2) the behavior of State Auto and Ms. Holmes in regard to the Plaintiffs' insurance policy. In fact, in prior written submissions, Plaintiffs conceded that the claim against State Auto did not exist at the time of the initial Complaint dismissed by Judge Bedell. As such, it is evident that that claims do not arise from the same set of facts or occurrence. Rather, State Auto's alleged actions are separate and distinct from the allegations asserted against ECA and Sollon.

b. The joinder of the claims against ECA and Sollon with the claims asserted against State Auto will create undue prejudice to ECA and Sollon.

This Court has tacitly and repeatedly recognized that personal injury tort claims and insurance bad faith claims do not mix. For example, in State ex rel. State Farm Fire & Casualty Co. v. Madden, 451 S.E. 2d 721 (W. Va. 1994), a pedestrian who was injured in a slip and fall accident outside a restaurant brought action not only against the restaurant company to recover personal injuries, but also brought claims against the restaurant's liability insurer and adjuster for unfair insurance trade practices. The lower court allowed joinder of the insurer and adjuster as defendants, but this Court held that the insurer could only be joined as a defendant if the claims were bifurcated. In this matter, the connection between ECA, Mr. Sollon and State Auto is even more attenuated than the *State Farm v. Madden* defendants as there is no relationship between ECA, Mr. Sollon and State Auto. If it is unfair and prejudicial for a tort defendant to discover and try a case with his own insurance company, it is even more unfair and prejudicial for a tort defendant to discover and try a first party bad faith case with an insurance company totally unrelated to them.

As set forth by this Court, in evaluating a motion for severance of claims, many factors must be considered but courts must never forget that "the overriding concern is the provision of a fair and impartial trial to all litigants." Bennett v. Warner, 372 S.E.2d 920, 926 (W. Va. 1988). Moreover, even if claims are properly joined, they may be severed to avoid prejudice. State ex rel. J.C. v. Mazzone, FN 31, 759 S.E.2d 200 (W. Va. 2014). Here, the Defendants ECA and Mr. Sollon will be prejudiced by having to defend and distinguish at trial the presentation of irrelevant evidence unrelated to the claims against them. Not only is there a risk of jury confusion as to which Defendant is responsible for what act, but also there is a chance

Defendants ECA and Mr. Sollon will be prejudiced by the presentation of evidence regarding the behavior of the Plaintiffs' insurance carrier. Lastly, the addition of State Auto to the claims asserted against ECA and Sollon unnecessarily inject issues of insurance into a tort liability matter. Ultimately, ECA and Mr. Sollon have a substantial right to have their liability decided without any mention of insurance, especially when that mention of insurance involves allegations of unfair trade practices by an insurance carrier unrelated to them.

As an additional matter, ECA and Sollon will further be prejudiced if the claims remain together as it will have to present a case in an already established improper venue. As stated previously, prior to the presentation of the instant case, the Circuit Court of Harrison County had already ruled that a Pennsylvania accident involving defendants from Kanawha and Monongalia Counties is not properly venued in Harrison County, West Virginia.

As set forth above, there is no connection between the claims asserted against ECA and Sollon and the claims asserted against State Auto. The claims do not involve common questions of law and should be decided separately and independently. This Court has consistently held that issues of insurance should not be intertwined with a tort liability claim. As such, the claims against ECA and Mr. Sollon should be severed from the claims asserted against State Auto so that ECA and Mr. Sollon are not prejudiced by having the claims against them heard in Harrison County with a Defendant that is a stranger to them.

- 2. Following severance, the Circuit Court of Harrison County should reassert its prior dismissal of the action, without prejudice, for filing a Complaint in an improper forum.**

When severance takes place, other jurisdictions have ruled that courts must determine whether the severed claims are still appropriate claims to be heard in the initial venue or jurisdiction. For example, in a very similar case, the Texas Court of Appeals held that

following the severance of an injured motorist's negligence and *respondeat superior* claims against truck driver and truck driver's employer from motorist's underinsured motorist benefits claim against his UIM insurer, correct venue for motorist's negligence and respondeat superior claims was the county in which truck driver resided and where employer had its principal place of business, rather than the county in which motorist resided. *See In re James Michael Reynolds and Pelhams Industrial Warehouse, Inc.* 369 S.W.3d 638 (Tex. Ct. App. 2012). Further, the Texas Appellate Court held that the venue of claims against the truck driver and employer in the injured motorist's county was derivative only, and that no basis existed for maintaining venue in the Texas county following severance. *Id.* A similar situation exists in the present case, the subject Pennsylvania motor vehicle accident is not properly venued in Harrison County absent its bootstrapping to the claims asserted against State Auto.

Additionally, the Supreme Court of Colorado noted that although “joinder of claims increases judicial efficiency and allows for all parties to resolve their disputes in one sitting, these considerations do not always outweigh the justifications for proper venue.” *Spencer v. Sytsma*, 67 P.3d 1 (Colo. 2003). As set forth previously, the Circuit Court of Harrison County, West Virginia has already decided that the claims asserted against ECA and Sollon are not properly venued in this forum. Instead of accepting this ruling, Plaintiffs have asserted a separate and distinct cause of action against their medical payments insurer in an effort to bootstrap venue on these Defendants. Where the defendants in an action “did not act in concert, or engage in the same tortious act, there is no reason why venue should not have to be satisfied as to both defendants.” *Id.*

In the September 30, 2014 Order denying ECA and Mr. Sollon's Motion to Sever and Motion to Dismiss, the court cites *Morris v. Crown Equipment Corp.*, in support of its position. 633

S.E.2d 292, 219 S.Ct. 347 (W.Va. 2006). However, this case actually supports ECA and Mr. Sollon's Motion to Dismiss. In *Morris*, an out of state resident was injured while using equipment sold and distributed by a West Virginia Corporation. The lower court granted Defendants' Motion to Dismiss. Ultimately, on appeal, this Court held that the Plaintiff's action could remain in West Virginia state court. This Court stated the language of W.Va. Code 56-1-1(a)(1) allows the case to be venued in either the residence of the defendant or where the cause of action arose. In the present case, the Defendants ECA and Mr. Sollon do not reside in Harrison County. Additionally, the incident giving rise to this litigation actually occurred outside the state of West Virginia. Therefore, venue in Harrison County Circuit is improper in this matter as only the Plaintiffs are residents of Harrison County.

As the above cases indicate, if venue does not exist separately for a defendant after severance, dismissal for improper venue is appropriate. Plaintiffs will still have a remedy available against all defendants and none of the Defendants will be prejudiced. Plaintiffs can file their claims against ECA and Sollon in Monongalia County, West Virginia, while retaining their suit against State Auto in Harrison County, West Virginia.

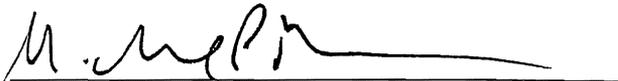
CONCLUSION

In closing, the Complaint set forth by the Plaintiffs discusses distinct and separate causes of action. The Circuit Court of Harrison County exceeded its legitimate powers and/or committed clear legal error in denying ECA and Mr. Sollon's Motion to Sever. The claims arising from the auto accident and the claims arising from the insurance coverage should be severed pursuant to Rule 21. Severance will prevent manifest injustice which may result from jury confusion and prejudice due to hearing both claims together. Additionally, because this severance leads to a reconsideration of proper venue for Defendants, ECA and John D. Sollon

Jr., this Court should re-dismiss the claims against them pursuant to Rule 12(b)(3) as venue is not appropriate in Harrison County, West Virginia, as already determined by the Court.

WHEREFORE, for the reasons set forth hereinabove, Energy Corporation of America and John D. Sollon, Jr., respectfully move this Honorable Court, pursuant to §53-1-1 of the West Virginia Rules of Appellate Procedure, to issue a rule to show cause why a writ should not be granted prohibiting the Circuit Court of Harrison County from enforcing an order that, denies severance of claims and will ultimately unjustly prejudice the Defendants at the trial of this matter.

Respectfully submitted,



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Counsel for Petitioners

CERTIFICATE OF SERVICE

I, Michael P. Markins, counsel for Petitioners, do hereby certify that I have this 12th day of November, 2014, served the foregoing "Petition for Writ of Prohibition" and "Appendix" thereto via U.S. First Class Mail upon counsel of record and the parties to whom a rule to "show cause" should also be served at their respective offices, to wit: The Honorable John Lewis Marks, Jr., Judge of the Circuit Court of Harrison County, West Virginia, Harrison County Courthouse, 301 West Main Street, Clarksburg, WV 26301.



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Counsel for Petitioners

VERIFICATION

STATE OF WEST VIRGINIA:

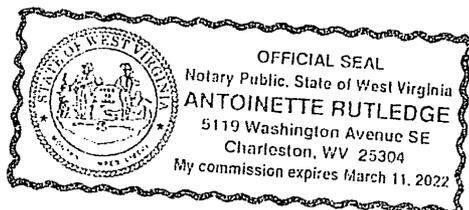
COUNTY OF Kanawha, to-wit:

I, Robert Adkins, after being first duly sworn upon oath, state that I am Corporate Counsel for Energy Corporation of America, a Petitioner named in the foregoing "Petition for Writ of Prohibition," that I have read the same, along with the Attached "Appendix," and that the facts and allegations therein contained are true and correct to the best of my belief and knowledge.

Robert Adkins
ROBERT ADKINS

Taken, sworn to, and subscribed before me this 11TH day of November, 2014.

My commission expires March 11, 2022.



Antoinette Rutledge
Notary Public