

**IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA**

---

**No. 16-0290**

---

**AMERICAN NATIONAL PROPERTY AND CASUALTY COMPANY,  
Petitioner and Plaintiff Below,**

**vs.**

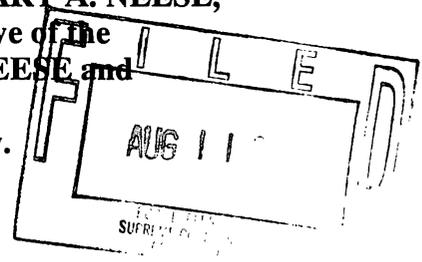
**TARA CLENDENEN, JAMES CLENDENEN, MARY A. NEESE,  
Administratrix and Personal Representative of the  
Estate of Skylar Neese, deceased, DAVID NEESE and  
MARY A. NEESE, individually,  
Respondents and Defendants Below.**

**AND**

**ERIE INSURANCE PROPERTY AND CASUALTY COMPANY,  
Petitioner and Plaintiff Below,**

**vs.**

**MARY A NEESE, Individually and as Administratrix  
of the Estate of Skylar Neese, DAVID NEESE, TARA  
CLENDENEN, and PATRICIA SHOAF,  
Respondents and Defendants Below.**



---

**RESPONDENT TARA L. CLENDENEN'S SUMMARY RESPONSE**

---

---

**Civil Action Nos. 1:14-cv-155 and 1:14-cv-172  
In the United States District Court for the  
Northern District of West Virginia  
(Honorable Irene M. Keeley, Judge)**

---

**Counsel for Respondent Tara L. Clendenen:**

**J. Michael Benninger  
W. Va. State Bar # 312  
Benninger Law PROFESSIONAL LIMITED LIABILITY COMPANY  
P. O. Box 623  
Morgantown, WV 26507  
(304) 241-1856  
[mike@benningerlaw.com](mailto:mike@benningerlaw.com)**

## **RESPONDENT TARA L. CLENDENEN'S SUMMARY RESPONSE**

This Summary Response is submitted pursuant to Rule 10(e), *West Virginia Rules of Appellate Procedure*, on behalf of Respondent Tara L. Clendenen in response to *Petitioner American National Property and Casualty Company's Brief Regarding Certified Questions*.

### **ARGUMENT**

#### **Respondent Tara L. Clendenen is an innocent co-insured.**

This case arises from the death of Skylar A. Neese on July 6, 2012. Shelia R. Eddy acknowledged her responsibility for causing Ms. Neese's untimely death and pled guilty to first degree murder on January 24, 2014, in the Circuit Court of Monongalia County, West Virginia. Respondent Tara L. Clendenen is Shelia R. Eddy's mother, and there is no allegation that Respondent Tara L. Clendenen engaged in any act or omission which would trigger the intentional or criminal act exclusions contained in her homeowner's policy. AR98-AR99. *See, Icenhour v. Continental Ins. Co.*, 365 F.Supp.2d 743 (S.D. W.Va. 2004); *Hawkins v. Glens Falls Ins. Co.*, 115 W.Va. 68, 177 S.E. 442 (1934).

#### **Ambiguity is created by the conflicting and irreconcilable provisions of the ANPAC policy.**

The fundamental premise upon which the District Court certified its two questions to the West Virginia State Supreme Court is that each of the two ANPAC policy provisions at issue in the case were unambiguous. AR520. However, Respondent Tara L. Clendenen asserted below "that the criminal or intentional act exclusions in the homeowner's policies conflict with the severability clauses in those policies, creating an ambiguity that, under West Virginia law, must be resolved in favor of the defendants." AR526. Thus, it is urged that this Court exercise its inherent authority expressed in *Syl. Pt. 3, Kincaid v. Mangum*, 189 W.Va. 404, 432 S.E.2d 74

(1993), to reformulate the certified questions to reflect that the severability clause and intentional or criminal act exclusions are irreconcilable, reasonably susceptible to two different meanings, and are, therefore, ambiguous. *Syl. Pt. 1, Prete v. Merchants Property Ins. Co. of Ind.*, 159 W.Va. 508, 223 S.E.2d 441 (1976). The District Court’s statement that “the case-dispositive issue is which clause in the insurance policies should prevail over the other” underscores the fact that ambiguity exists between and among the relevant provisions of the ANPAC policy.

AR 516. Accordingly, the policy language and terms in question should be subject to this Court’s judicial construction in favor of Respondent Tara L. Clendenen pursuant to the principles set forth in *State Farm Mut. Auto. Co. v. Allstate Ins. Co.*, 154 W.Va. 448, 175 S.E.2d 478 (1970); *Solida v. Shand, Morahan & Co., Inc.*, 176 W.Va. 430, 345 S.E.2d 33 (1986); *National Mut. Ins. Co. v. McMahon & Sons, Inc.*, 177 W.Va. 734, 356 S.E.2d 488 (1987); *D’Annunzio v. The Security-Connecticut Life Ins. Co.*, 186 W.Va. 39, 410 S.E.2d 275 (1991).

**The analysis and holding in *Minkler* should apply here.**

Although there is currently a split of authority on the issues presented here, Respondent Tara L. Clendenen urges this Court to adopt and apply the reasoning and holding in *Minkler v. Safeco Ins. Co. of Am.*, 49 Cal. 4th 315, 232 P.3d 612 (2010), and answer the certified questions consistent therewith. *See also, Premier Ins. Co. v. Adams*, 632 So.2d 1054 (1994); *Catholic Diocese of Dodge City v. Raymer*, 16 Kan.App.2d 488, (1992).

**CONCLUSION**

Respondent Tara L. Clendenen requests that this Court reformulate the certified questions presented for review to include its holding that ambiguity exists in the ANPAC policy created by the severability and asserted policy exclusions, and that this Court’s answers to the

certified questions be made in such a manner as to require ANPAC to provide her a defense and personal liability coverage in the underlying civil action filed by the Neeses.

Respectfully submitted,

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

J. Michael Benninger

W. Va. State Bar # 312)

Benninger Law PROFESSIONAL LIMITED LIABILITY COMPANY

P. O. Box 623

Morgantown, WV 26507

(304) 241-1856

[mike@benningerlaw.com](mailto:mike@benningerlaw.com)

*Counsel for Respondent Tara Clendenen*

## CERTIFICATE OF SERVICE

I, J. Michael Benninger, counsel for Respondent Tara L. Clendenen, do hereby certify that on August 10, 2016, the foregoing *Respondent Tara L. Clendenen's Summary Response* was duly served upon counsel of record by depositing true and exact copies thereof in the regular course of the United States Mail, First Class, postage prepaid, addressed as follows:

Margaret L. Miner, Esquire  
Shuman, McCuskey & Slicer, PLLC  
1445 Stewartstown Road, Suite 200  
Morgantown, WV 26505  
*Counsel for Plaintiff ANPAC*

Dwayne E. Cyrus, Esquire  
Shuman, McCuskey & Slicer, PLLC  
P. O. Box 3953  
Charleston, WV 25339  
*Counsel for Plaintiff ANPAC*

Laurie C. Barbe, Esquire  
Steptoe & Johnson, PLLC  
P. O. Box 1616  
Morgantown, WV 26507-1616  
*Counsel for Plaintiff Erie Insurance Property & Casualty Co.*

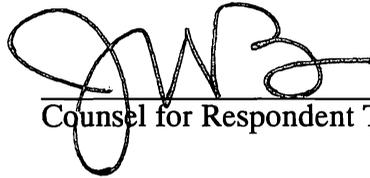
Amy M. Smith, Esquire  
Steptoe & Johnson, PLLC  
400 White Oaks Boulevard  
Bridgeport, WV 26330  
*Counsel for Plaintiff Erie Insurance Property & Casualty Co.*

William L. Frame, Esquire  
Wilson, Frame & Metheney, PLLC  
151 Walnut Street  
Morgantown, WV 26505  
*Counsel for Respondents Mary A. Neese and David Neese*

Paul W. Gwaltney, Esquire  
Trevor K. Taylor, Esquire  
Taylor Law Office  
34 Commerce Drive, Suite 201  
Morgantown, WV 26501  
*Counsel for Defendant Patricia Shoaf*

Jacqueline L. Sikora, Esquire  
Sikora Snead, PLLC  
177 Walnut Street  
Morgantown, WV 26505  
*Guardian ad litem for Defendant Shelia R. Eddy*

Bader C. Giggenbach, Esquire  
Brewer & Giggenbach  
P. O. Box 4206  
Morgantown, WV 26504  
*Guardian ad litem for Defendant Rachel Shoaf*

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

Counsel for Respondent Tara L. Clendenen