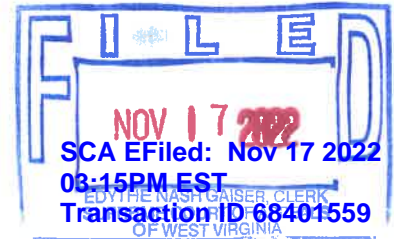


**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

1100 East Main Street, Suite 501
Richmond, Virginia 23219-3517
www.ca4.uscourts.gov



November 14, 2022

West Virginia Supreme Court of Appeals
State Capitol Room E317
1900 Kanawha Boulevard East
Charleston, WV 25305

No. 20-2052, Westfield Insurance Company v. Sistersville Tank
Works, Inc.
5:18-cv-00100-JPB-JPM

Dear Edythe Gaiser:

Enclosed is a certified copy of this court's order/opinion certifying a question of law to the West Virginia Supreme Court of Appeals.

Robert N. Edwards, Jane Price, Douglas L. Steele, and Carole Steele, although named and included in the caption as appellees, did not take a position on appeal. In addition, the appeal as to Reagle & Padden, Inc. and David C. Padden was dismissed by separate order.

A copy of this court's public docket is also enclosed. Copies of all public documents filed on appeal are available through the Court's PACER site at: <https://ecf.ca4.uscourts.gov> under the above-referenced docket number.

Please feel free to contact me if you need additional documents.

Sincerely,

/s/ Jeffrey S. Neal
Deputy Clerk

Copies: Patrick Shannon Casey
Sandra Marie Chapman
Ernest Glen Hentschel II
Brent K. Kesner
David Belknap Lunsford
Ryan Paul Orth
Zachary Benjamin Pyers
Cheryl Dean Riley

UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 20-2052

WESTFIELD INSURANCE COMPANY,

Plaintiff – Appellant,

v.

SISTERSVILLE TANK WORKS, INC.; ROBERT N. EDWARDS; E. JANE PRICE, INDIVIDUALLY AND AS EXECUTRIX OF THE ESTATE OF ROBERT G. PRICE, DECEASED; DOUGLAS L. STEELE; CAROL STEELE,

Defendants – Appellees,

and

GARY THOMAS SANDY; PEGGY P. SANDY,

Defendants,

and

REAGLE & PADDEN, INC.; DAVID C. PADDEN,

Third Party Defendants – Appellees.

ORDER

DIANA GRIBBON MOTZ, Senior Circuit Judge:

Appellant, Westfield Insurance Company, brought this declaratory judgment action under the Declaratory Judgment Act, 28 U.S.C. § 2201, and W.Va. Code § 55-13-1 *et seq.* While this case was before the district court, Reagle & Padden, Inc. and David C. Padden (collectively Padden) were joined as third-party defendants. Because the judgment pertaining to Padden has not been properly appealed, we dismiss Padden from this appeal.

In its complaint, Westfield asked the district court to determine whether it owed insurance coverage to Sistersville Tank Works (STW) for three state tort claims brought against them. LA. 28. STW then filed a third-party complaint against Padden as third-party defendants. *See* LA. 142. Padden previously acted as STW's insurance agent to negotiate the insurance contracts with Westfield. LA. 145. STW asserted that if the Westfield policies did not provide coverage for the underlying tort claims, then Padden had been negligent in negotiating the insurance contracts.

The district court entered summary judgment in favor of STW against Westfield, finding that Westfield did owe coverage to STW under the insurance policies. *Westfield Insurance Co. v. Sistersville Tank Works*, 484 F. Supp. 3d 283, 294 (N.D.W. Va. 2020). The district court also entered summary judgment in favor of Padden, concluding that because there was coverage under the Westfield policies, STW had not suffered any injury. *Id.* at 298.

Westfield appealed both judgments. Early in this appeal Padden moved to have the appeal of the judgment in its favor dismissed. Padden argues that Westfield lacks standing

to appeal this judgment, because Westfield was not a party to that dispute nor was it directly impacted by that judgment.

Standing requirements must be met at all stages of litigation. *See Hollingsworth v. Perry*, 570 U.S. 693, 705-06 (2013). To assert standing, a party must “possess a direct stake in the outcome of the case.” *Id.* “[O]nly a party aggrieved by a judgment or order of a district court may exercise the statutory right to appeal therefrom.” *Deposit Guar. Nat’l Bank v. Roper*, 445 U.S. 326, 333 (1980). This court has yet to address whether a party has standing to appeal part of a judgment to which it is not a party, but other Circuits have found that such standing does not exist. *See St. Paul Fire & Marine Ins. Co. v. Universal Builders Supply*, 409 F.3d 73, 83 (2d Cir. 2005).

Each of Westfield’s arguments on appeal is aimed squarely at the part of the judgment that was granted in favor of STW over Westfield. Westfield has asserted no separate error in the judgment in favor of Padden. We can only conclude from this that Westfield has not been aggrieved by the grant of summary judgment in favor of Padden. Thus, Westfield lacks standing to challenge that judgment, and so its appeal against Padden is

DISMISSED.

Entered at the direction of Senior Judge Motz with the concurrence of Judge Agee and Judge Wynn.

FOR THE COURT

/s/ Patricia S. Connor
Clerk

UNPUBLISHED**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 20-2052

WESTFIELD INSURANCE COMPANY,**Plaintiff – Appellant,****v.****SISTERSVILLE TANK WORKS, INC.; ROBERT N. EDWARDS; E. JANE
PRICE, INDIVIDUALLY AND AS EXECUTRIX OF THE ESTATE OF
ROBERT G. PRICE, DECEASED; DOUGLAS L. STEELE; CAROL STEELE,****Defendants – Appellees,****and****GARY THOMAS SANDY; PEGGY P. SANDY,****Defendants,****and****REAGLE & PADDEN, INC.; DAVID C. PADDEN,****Third Party Defendants – Appellees.**

**Appeal from the United States District Court for the Northern District of West Virginia, at
Wheeling. John Preston Bailey, District Judge. (5:18-cv-00100-JPB-JPM)**

Argued: October 26, 2022**Decided: November 14, 2022**

Before AGEE and WYNN, Circuit Judges, and MOTZ, Senior Circuit Judge.

Question of law certified to the West Virginia Supreme Court of Appeals by unpublished order.

ARGUED: Brent K. Kesner, KESNER & KESNER, PLLC, Charleston, West Virginia, for Appellant. Ryan Paul Orth, CASEY & CHAPMAN, PLLC, Wheeling, West Virginia; Zachary Benjamin Pyers, REMINGER CO., L.P.A., Columbus, Ohio; David Belknap Lunsford, HARTLEY LAW GROUP, PLLC, Wheeling, West Virginia, for Appellees. **ON BRIEF:** Ernest G. Hentschel, II, KESNER & KESNER, PLLC, Charleston, West Virginia, for Appellant. Patrick S. Casey, Sandra M. Chapman, CASEY & CHAPMAN, PLLC, Wheeling, West Virginia, for Appellee Sistersville Tank Works, Inc. Kenton H. Steele, REMINGER CO., L.P.A., Columbus, Ohio, for Appellees Reagle and Padden, Inc. and David C. Padden.

ORDER

PER CURIAM:

Appellant, Westfield Insurance Company, brought this action under the Declaratory Judgment Act, 28 U.S.C. § 2201, and W. Va. Code § 55-13-1 *et seq.* Westfield asked the district court to determine whether it owes insurance coverage under West Virginia law to Sistersville Tank Works (STW) for three state tort claims brought against STW. J.A. 28.

The state tort claims at issue were brought by Robert N. Edwards, Deborah S. Edwards, E. Jane Price, Douglas Steele, and Carol Steele (collectively the “Claimants”). The Claimants allege that they developed latent illnesses as a result of exposure to chemicals that leaked from tanks manufactured by STW. Each of their illnesses was diagnosed between 2014 and 2016, but allegedly caused by hazardous chemical exposure dating back to the 1960s.

Westfield provided some form of coverage to STW between 1985-2010. The federal district court ordered summary judgment in favor of STW, finding that Westfield owed STW coverage under the 1985-1989 policies. *Westfield Ins. Co. v. Sistersville Tank Works*, 484 F. Supp. 3d 283, 295-97 (N.D.W. Va. 2020). Because coverage existed under those policies, the district court held that the issue of coverage under later policies was moot. *Id.* at 297.

Westfield challenges the district court's ruling on appeal. Central to its contentions, Westfield argues that the district court applied the wrong theory to determine when insurance coverage was triggered under West Virginia law. Finding no controlling appellate decision, constitutional provision, or statute of West Virginia resolving the determinative issue in this matter, we certify the following question of law to the West Virginia Supreme Court of Appeals pursuant to the Uniform Certification of Questions of Law Act, W. Va. Code § 51-1A *et seq.*:

At what point in time does bodily injury occur to trigger insurance coverage for claims stemming from chemical exposure or other analogous harm that contributed to development of a latent illness?

This Court acknowledges that the West Virginia Supreme Court of Appeals may reformulate this question. *See* W. Va. Code § 51-1A-4. In accordance with the requirement in W. Va. Code § 51-1A-6, we identify the names and addresses of counsel of record and unrepresented parties as follows: (1) Counsel of record for Appellant Westfield Insurance Company is Brent K. Kesner and Ernest Glen Hentschel, II, Kesner & Kesner, PLLC, 112

Capitol Street, Charleston, WV 25329; (2) Counsel of record for Appellee STW is Patrick Shannon Casey, Sandra Marie Chapman, and Ryan Paul Orth, Casey & Chapman, PLLC, 1140 Chapline Street, Wheeling, WV 26003; (3) Counsel of record for Appellees Reagle & Padden, Inc. and David C. Padden is Zachary Benjamin Pyers, Reminger Co. LPA, Suite 800, 200 Civic Center Drive, Columbus, OH 43215; and (4) Counsel of Record for Appellees Robert Edwards, Jane Price, Douglas Steele, and Carol Steele is David Belknap Lunsford, Hartley Law Group, PLLC, 7 Pine Avenue, 2001 Main Street, Wheeling, WV 26003.

I.

West Virginia law provides that a certification order must contain “the facts relevant to the question, showing fully the nature of the controversy out of which the question arose.” W. Va. Code § 51-1A-6. Accordingly, we set forth those facts below.

STW is currently defending itself against three West Virginia state tort claims alleging that negligence in manufacturing its products contributed to latent illnesses suffered by the Claimants. Each of the Claimants was diagnosed with their latent illness between 2014 and 2016. However, they each allege that decades of exposure to hazardous chemicals in STW-manufactured tanks caused their recently-diagnosed illnesses.

Westfield Insurance Company acknowledges that it insured STW under several policies from 1989-2010. The district court also found that it provided insurance to STW from 1985-1989, although Westfield contests that finding. *See Westfield Ins. Co.*, 484 F.

Supp. 3d at 295-97. It is uncontested that Westfield did not provide insurance to STW in 2014-2016, the years that the Claimants' illnesses were diagnosed.

Critical to determination of the question of whether Westfield owes coverage to STW is when bodily injury occurs under the insurance policies so as to trigger coverage for a latent bodily injury or illness. The district court and the parties here acknowledge that this is a question of West Virginia state law that has yet to be addressed by the West Virginia Supreme Court of Appeals. *See Westfield Ins. Co., 484 F. Supp. 3d at 295.*

At least four trigger of coverage theories can be employed to determine whether latent bodily injury or property damage has occurred within an insurance policy period. *Id.* at 294. These theories are "(1) exposure trigger, (2) injury-in-fact trigger, (3) manifestation trigger, and (4) continuous or multiple trigger." *Id.* Westfield argues that the manifestation theory of coverage should apply, while STW argues for application of the continuous theory of coverage. The West Virginia Supreme Court of Appeals could apply any one of these theories in the context of latent illness claims.

The district court applied a continuous coverage theory to this case, determining that any policy in place throughout the alleged period of harm was triggered by these claims. *Westfield Ins. Co., 484 F. Supp. at 295.* The court held that Westfield owed coverage to STW under the 1985-1989 policies. *Id.* at 296. Finding coverage under those policies, the court determined that evaluating coverage under the 1989-2010 policies is now moot. *Id.* at 297.

Westfield challenges several aspects of the district court judgment. First, Westfield argues that the district court erred in applying the continuous trigger coverage theory, instead of the manifestation theory, to find coverage under any of these policies. Westfield also contends that the district court erred in failing to decide the question of coverage under the 1989-2010 policies and in considering the 1985-1989 policies, because they were not properly before the court.

II.

Lower courts applying West Virginia law that have previously considered the first question—the coverage trigger question—have reached different outcomes.

The district court relied on two West Virginia circuit court opinions to apply the continuous trigger theory of coverage. *See U.S. Silica Co. v. Ace Fire Underwriters Ins. Co.*, 2012 LEXIS 4449 (W. Va. Cir. Nov. 27, 2017); *Wheeling Pittsburgh Corp. v. Am. Ins. Co.*, Civil Action No. 93-C-340, 2003 WL 23652106 (W. Va. Cir. Oct. 18, 2013).

Federal district courts in West Virginia, however, have concluded that West Virginia law calls for application of the manifestation theory in similar contexts. *See State Auto Prop. & Cas. Ins. Co. v. H. E. Neumann Co.*, 2016 WL 5380925 (S.D.W. Va. Sept. 23, 2016); *Westfield Ins. Co. v. Mitchell*, 22 F. Supp. 3d 619 (S.D.W. Va. 2014).

III.

Several factors counsel in favor of certification in this case. There is no controlling West Virginia precedent guiding the choice of trigger of coverage theory. Due to the long history of West Virginia housing a substantial chemical industry, this question is likely to be a matter of exceptional importance for the State.

The answer to this question may be determinative of coverage in this case. If the West Virginia Supreme Court of Appeals holds that the manifestation theory of coverage is applicable, then there will likely be no coverage under any of Westfield's policies. If, on the other hand, the West Virginia Supreme Court of Appeals finds the continuous coverage theory or some other theory applies, this court may need to determine whether the district court otherwise erred in finding coverage under the 1985-1989 policies and whether the district court properly determined that coverage under the 1989-2010 policies was moot.

IV.

Accordingly, pursuant to the privilege made available by W. Va. Code § 51-1A-3, we respectfully hereby ORDER: (1) that the question stated above be certified to the West Virginia Supreme Court of Appeals for answer; (2) that the Clerk of this Court forward to the West Virginia Supreme Court of Appeals, under the official seal of this Court, a copy of this Order of Certification, together with the original or copies of the record before this

Court to the extent requested by the West Virginia Supreme Court of Appeals; and (3) that the Clerk of this Court fulfill any request for all or part of the record simply upon notification from the Clerk of the West Virginia Supreme Court of Appeals.

QUESTION CERTIFIED

FOR THE COURT

/s/ Patricia D. Connor
Clerk

General Docket
United States Court of Appeals for the Fourth Circuit

Court of Appeals Docket #: 20-2052

Docketed:

Nature of Suit: 4110 Insurance

10/01/2020

Westfield Insurance Company v. Sistersville Tank Works, Inc.

Appeal From: United States District Court for the Northern District of West Virginia at Wheeling

Fee Status: fee paid

Case Type Information:

- 1) Civil Private
- 2) private
- 3) null

Originating Court Information:

District: 0424-5 : 5:18-cv-00100-JPB-JPM

Court Reporter: Kimberly A. Criswell, Court Reporter

Coordinator

Court Reporter: Cindy L. Knecht, Official Court Reporter

Presiding Judge: John Preston Bailey, U. S. District Court Judge

Date Filed: 06/13/2018

Date Order/Judgment:

Date Order/Judgment EOD:

**Date NOA
Filed:**

**Date Rec'd
COA:**

09/04/2020

09/04/2020

09/30/2020

09/30/2020

Prior Cases:

None

Current Cases:

None

WESTFIELD INSURANCE COMPANY
Plaintiff - Appellant

Ernest Glen Hentschel, II
Direct: 304-345-5200
Email: egh@kesnerlaw.com
[COR NTC Retained]
KESNER & KESNER, PLLC
P. O. Box 2587
Charleston, WV 25329

Brent K. Kesner
Direct: 304-345-5200
Email: bkesner@kesnerlaw.com
[COR NTC Retained]
KESNER & KESNER, PLLC
P. O. Box 2587
Charleston, WV 25329

v.

SISTERSVILLE TANK WORKS,
INCORPORATED

Patrick Shannon Casey
Direct: 304-231-2405

Defendant - Appellee

Email: pscasey@cclawpllc.com
[COR NTC Retained]
CASEY & CHAPMAN, PLLC
1140 Chapline Street
Wheeling, WV 26003

Sandra Marie Chapman
Direct: 304-231-2405
Email: smchapman@cclawpllc.com
[COR NTC Retained]
CASEY & CHAPMAN, PLLC
1140 Chapline Street
Wheeling, WV 26003

Ryan Paul Orth
Direct: 304-231-2405
Email: rporth@cclawpllc.com
[COR NTC Retained]
CASEY & CHAPMAN, PLLC
1140 Chapline Street
Wheeling, WV 26003

ROBERT N. EDWARDS
Defendant - Appellee

David Belknap Lunsford
Direct: 304-233-0777
Email: dlunsford@hartleylawgrp.com
[COR NTC Retained]
HARTLEY LAW GROUP, PLLC
7 Pine Avenue
2001 Main Street
Wheeling, WV 26003

DEBORAH S. EDWARDS
Terminated: 02/25/2022
Defendant - Appellee

E. JANE PRICE, individually and as Executrix of the
Estate of Robert G. Price, deceased
Defendant - Appellee

David Belknap Lunsford
Direct: 304-233-0777
[COR NTC Retained]
(see above)

CAROL STEELE
Defendant - Appellee

David Belknap Lunsford
Direct: 304-233-0777
[COR NTC Retained]
(see above)

DOUGLAS L. STEELE
Defendant - Appellee

David Belknap Lunsford
Direct: 304-233-0777
[COR NTC Retained]
(see above)

GARY THOMAS SANDY
Defendant

PEGGY P. SANDY
Defendant

v.

REAGLE & PADDEN, INC.
Third Party Defendant - Appellee

Zachary Benjamin Pyers
Direct: 614-232-2411
Email: zpyers@reminger.com
[COR NTC Retained]
REMINGER CO. LPA
Suite 800
200 Civic Center Drive
Columbus, OH 43215

DAVID C. PADDEN
Third Party Defendant - Appellee

Zachary Benjamin Pyers
Direct: 614-232-2411
[COR NTC Retained]
(see above)

WESTFIELD INSURANCE COMPANY

Plaintiff - Appellant

v.

SISTERSVILLE TANK WORKS, INC.; ROBERT N. EDWARDS; E. JANE PRICE, INDIVIDUALLY AND AS EXECUTRIX OF THE ESTATE OF ROBERT G. PRICE, DECEASED; DOUGLAS L. STEELE; CAROL STEELE

Defendants - Appellees

and

GARY THOMAS SANDY; PEGGY P. SANDY

Defendants

and

REAGLE & PADDEN, INC.; DAVID C. PADDEN

Third Party Defendants - Appellees


10/01/2020	<u>1</u>	Case docketed. Originating case number: 5:18-cv-00100-JPB-JPM. Case manager: MRadday. [20-2052] MR [Entered: 10/01/2020 09:58 AM]
10/01/2020	<u>2</u>	DOCKETING NOTICE issued Re: [<u>1</u>] case Originating case number: 5:18-cv-00100-JPB-JPM.. [20-2052] MR [Entered: 10/01/2020 09:59 AM]
10/14/2020	<u>3</u>	APPEARANCE OF COUNSEL by Zachary B. Pyers for David C. Padden and Reagle & Padden, Inc.. [1000829050] [20-2052] Zachary Pyers [Entered: 10/14/2020 01:26 PM]

10/14/2020 4 DISCLOSURE STATEMENT by David C. Padden and Reagle & Padden, Inc.. Was any question on Disclosure Form answered yes? No [1000829066] [20-2052] Zachary Pyers [Entered: 10/14/2020 01:33 PM]

10/14/2020 5 APPEARANCE OF COUNSEL by Patrick S. Casey for Sistersville Tank Works, Incorporated. [1000829096] [20-2052] Patrick Casey [Entered: 10/14/2020 01:50 PM]

10/14/2020 6 APPEARANCE OF COUNSEL by Brent K. Kesner for Westfield Insurance Company. [1000829139] [20-2052] Brent Kesner [Entered: 10/14/2020 02:17 PM]

10/14/2020 7 DISCLOSURE STATEMENT by Westfield Insurance Company. Was any question on Disclosure Form answered yes? Yes [1000829161] [20-2052] Brent Kesner [Entered: 10/14/2020 02:28 PM]

10/14/2020 8  (ENTRY RESTRICTED) - APPEARANCE OF COUNSEL by Sandra M. Chapman for Sistersville Tank Works, Incorporated. [1000829279] [20-2052] --[Edited 10/19/2020 by MR] Patrick Casey [Entered: 10/14/2020 03:47 PM]

10/14/2020 9 APPEARANCE OF COUNSEL by Ryan P. Orth for Sistersville Tank Works, Incorporated. [1000829283] [20-2052] Ryan Orth [Entered: 10/14/2020 03:48 PM]

10/14/2020 10 DISCLOSURE STATEMENT by Sistersville Tank Works, Incorporated. Was any question on Disclosure Form answered yes? No [1000829300] [20-2052] Patrick Casey [Entered: 10/14/2020 03:57 PM]

10/14/2020 11 Docket correction requested from Sistersville Tank Works, Incorporated. Re: [8] appearance of counsel. Access to appearance of counsel has been restricted to case participants... [20-2052] MR [Entered: 10/14/2020 04:29 PM]

10/15/2020 12 DOCKETING STATEMENT by Westfield Insurance Company. [20-2052] Brent Kesner [Entered: 10/15/2020 10:34 AM]

10/15/2020 15 NOTICE ISSUED re: case caption.. [20-2052] MR [Entered: 10/15/2020 11:04 AM]

10/15/2020 16 DOCKETING FORMS FOLLOW-UP NOTICE ISSUED to Deborah S. Edwards and Robert N. Edwards re: filing of appearance form. Appearance form due on 10/19/2020 from R. Dean Hartley and David Belknap Lunsford, filing of disclosure form Disclosure statement due from Deborah S. Edwards and Robert N. Edwards on 10/19/2020.. [20-2052] MR [Entered: 10/15/2020 11:08 AM]

10/15/2020 17 BRIEFING ORDER filed.. Paper copy requirements are temporarily suspended unless the case is under pre-argument review or being scheduled for argument, in which case a total of four paper copies of formal briefs and appendices are required. Opening Brief and Appendix due 11/24/2020. Response Brief due 12/24/2020 [20-2052] MR [Entered: 10/15/2020 11:10 AM]


10/15/2020 18 APPEARANCE OF COUNSEL by Ernest Glen Hentschel, II for Westfield Insurance Company. [1000830343] [20-2052] Ernest Hentschel [Entered: 10/15/2020 05:27 PM]

10/16/2020 19 Corrected APPEARANCE OF COUNSEL by Sandra M. Chapman for Sistersville Tank Works, Incorporated. [1000831025] [20-2052] Sandra Chapman [Entered: 10/16/2020 03:39 PM]

10/20/2020 20 APPEARANCE OF COUNSEL by David. B. Lunsford for Deborah S. Edwards, Robert N. Edwards, E. Jane Price, Carol Steele, and Douglas L. Steele. [1000833026] [20-2052] --[Edited 12/18/2020 by MR to add Price, Steele, and Steele as party filers] David Lunsford [Entered: 10/20/2020 03:16 PM]

10/20/2020 21 DISCLOSURE STATEMENT by Deborah S. Edwards, Robert N. Edwards, E. Jane Price, Carol Steele, and Douglas L. Steele. Was any question on Disclosure Form

answered yes? No [1000833030] [20-2052] --[Edited 12/18/2020 by MR to add party filers] David Lunsford [Entered: 10/20/2020 03:17 PM]

- 10/26/2020 22 OBJECTION to DOCKETING STATEMENT by Sistersville Tank Works, Incorporated. [20-2052] Patrick Casey [Entered: 10/26/2020 03:39 PM]
- 11/03/2020 23 Initial mediation conference scheduled. [20-2052] LHP [Entered: 11/03/2020 03:20 PM]
- 11/10/2020 24 ORDER filed extending filing time for opening brief and appendix until 12/8/20. Number of days granted: 14. Opening brief and appendix due 12/08/2020. Response brief due 01/07/2021. Paper copy requirements are temporarily suspended unless the case is under pre-argument review or being scheduled for argument, in which case a total of four paper copies of formal briefs and appendices are required. Copies to all parties. [1000845196] [20-2052] TW [Entered: 11/10/2020 09:26 AM]
- 11/19/2020 25 ORDER filed extending filing time for opening brief and appendix until 01/15/2021. Number of days granted: 38. Opening brief and appendix due 01/15/2021. Response brief due 02/16/2021. Paper copy requirements are temporarily suspended unless the case is under pre-argument review or being scheduled for argument, in which case a total of four paper copies of formal briefs and appendices are required. Copies to all parties. [1000851474] [20-2052] MR [Entered: 11/19/2020 11:48 AM]
- 11/30/2020  Mediation forms. [20-2052] LHP [Entered: 11/30/2020 04:56 PM]
- 12/08/2020 26 MOTION by David C. Padden and Reagle & Padden, Inc. to dismiss appeal in part. Date and method of service: 12/08/2020 ecf. [1000861374] [20-2052] Zachary Pyers [Entered: 12/08/2020 08:43 AM]
- 12/08/2020 27 NOTICE ISSUED to Westfield Insurance Company, Deborah S. Edwards, Robert N. Edwards and Sistersville Tank Works, Incorporated requesting response(s) to motion to dismiss appeal in part [26]. Response(s) due 12/18/2020.[1000861595].. [20-2052] MR [Entered: 12/08/2020 10:55 AM]
- 12/15/2020 28 RESPONSE/ANSWER by Westfield Insurance Company to Motion to dismiss appeal in part [26]. Nature of response: in opposition. [20-2052] Brent Kesner [Entered: 12/15/2020 03:15 PM]
- 12/18/2020 29 RESPONSE/ANSWER by Deborah S. Edwards and Robert N. Edwards E. Jane Price, Individually and as Executrix of the Estate of Robert G. Price, deceased; Carol Steele; Douglas L. Steele to Motion to dismiss appeal in part [26]. [20-2052] David Lunsford [Entered: 12/18/2020 11:36 AM]
- 12/18/2020 30 RESPONSE/ANSWER by Sistersville Tank Works, Incorporated to Motion to dismiss appeal in part [26], notice requesting response [27]. [20-2052] Patrick Casey [Entered: 12/18/2020 12:21 PM]
- 01/04/2021 31 REPLY by Reagle & Padden, Inc. and David C. Padden to response [28].. [20-2052] Zachary Pyers [Entered: 01/04/2021 02:49 PM]
- 01/04/2021 32 MOTION by David C. Padden and Reagle & Padden, Inc. to file separate briefs [32]. Date and method of service: 01/04/2021 ecf. [1000875038] [20-2052] Zachary Pyers [Entered: 01/04/2021 04:20 PM]
- 01/04/2021 33 MOTION by David C. Padden and Reagle & Padden, Inc. to suspend Briefing Pending Decision on Appellees' Motion for Partial Dismissal of Appeal. Date and method of service: 01/04/2021 ecf. [1000875053] [20-2052] Zachary Pyers [Entered: 01/04/2021 04:24 PM]
- 01/05/2021 34 ORDER filed deferring action on motion to file separate brief filed by Appellees

Reagle & Padden, Inc. and David C. Padden [32]; granting motion to suspend [33]. Copies to all parties. [1000875919] [20-2052] MR [Entered: 01/05/2021 04:18 PM]

01/14/2022 35 COURT ORDER filed deferring action on Motion to dismiss appeal in part filed by Appellees Reagle & Padden, Inc. and David C. Padden [26]. Copies to all parties. [1001092572] [20-2052] JSN [Entered: 01/14/2022 11:48 AM]

01/14/2022 36 NOTICE ISSUED to Westfield Insurance Company and Deborah S. Edwards, Robert N. Edwards, E. Jane Price, Sistersville Tank Works, Inc., Carol Steele and Douglas L. Steele requesting response to Motion to file separate brief [32]. Response due 01/24/2022.[1001092623]. [20-2052] JSN [Entered: 01/14/2022 12:18 PM]

01/24/2022 37 RESPONSE/ANSWER by Westfield Insurance Company to Motion to file separate brief [32]. [1001096678] [20-2052] Brent Kesner [Entered: 01/24/2022 09:21 AM]

01/24/2022 38 RESPONSE/ANSWER by Sistersville Tank Works, Incorporated to Motion [32], notice requesting response [36]. [1001096862] [20-2052] Patrick Casey [Entered: 01/24/2022 10:42 AM]

01/24/2022 39 ORDER filed granting Motion to file separate briefs [32]. Copies to all parties. [1001096895] [20-2052] JSN [Entered: 01/24/2022 10:57 AM]

01/24/2022 40 BRIEFING ORDER filed. Paper copy requirements are temporarily suspended unless the case is under pre-argument review or being scheduled for argument, in which case a total of four paper copies of formal briefs and appendices are required. [1001096900] Opening Brief and Appendix due 03/07/2022. Response Briefs due 04/04/2022. [20-2052] JSN [Entered: 01/24/2022 10:59 AM]

01/24/2022 41 RESPONSE/ANSWER by Deborah S. Edwards, Robert N. Edwards, E. Jane Price, Carol Steele and Douglas L. Steele to Motion [32]. [1001097366] [20-2052] David Lunsford [Entered: 01/24/2022 04:19 PM]

01/24/2022 42 NOTICE re: Suggestion of Death by Robert N. Edwards. [1001097368] [20-2052] David Lunsford [Entered: 01/24/2022 04:22 PM]

01/26/2022 43 NOTICE ISSUED to Westfield Insurance Company and Robert N. Edwards, David C. Padden, E. Jane Price, Reagle & Padden, Inc., Sistersville Tank Works, Inc., Carol Steele and Douglas L. Steele requesting response to court inquiry. [1001099056] Responses due 02/07/2022. [20-2052] JSN [Entered: 01/26/2022 01:34 PM]

02/07/2022 44 RESPONSE/ANSWER by Sistersville Tank Works, Incorporated to notice requesting response [43], Notice [42]. [1001105531] [20-2052] Patrick Casey [Entered: 02/07/2022 01:34 PM]

02/07/2022 45 RESPONSE/ANSWER by Westfield Insurance Company to notice requesting response [43], Notice [42]. [1001105622] [20-2052] Brent Kesner [Entered: 02/07/2022 02:49 PM]


02/07/2022 46 RESPONSE/ANSWER by Reagle & Padden, Inc. and David C. Padden to Notice [42]. [1001105790] [20-2052] Zachary Pyers [Entered: 02/07/2022 04:09 PM]

02/07/2022 47 RESPONSE/ANSWER by Deborah S. Edwards, Robert N. Edwards, E. Jane Price, Carol Steele and Douglas L. Steele to notice requesting response [43]. [1001105872] [20-2052] David Lunsford [Entered: 02/07/2022 04:51 PM]

02/25/2022 48 COURT ORDER filed dismissing Deborah S. Edwards and her Estate from appeal. Copies to all parties. [1001117120] [20-2052] JSN [Entered: 02/25/2022 10:07 AM]

03/03/2022 49 BRIEF by Westfield Insurance Company. Type of Brief: OPENING. [1001121146] [20-2052] Brent Kesner [Entered: 03/03/2022 02:35 PM]

03/03/2022 50 JOINT APPENDIX by Westfield Insurance Company. Digital media exhibit volume? Yes. [1001121151] [20-2052] Brent Kesner [Entered: 03/03/2022 02:49 PM]

03/03/2022 51  NOTICE ISSUED to Ernest Glen Hentschel, Brent K. Kesner re: digital media. [1001121266] [20-2052] JSN [Entered: 03/03/2022 04:09 PM]

03/03/2022 61 Receipt of paper copy of OPENING BRIEF filed at [49] by Westfield Insurance Company. Number of pages: [64]. Sufficient: Yes. Number of copies: [4]. Received by clerk date: 08/08/2022. [1001208060] [20-2052] TB [Entered: 08/08/2022 03:16 PM]


03/03/2022 64 Digital media retained by court. Content: Policy Exhibits. [1001208113] [20-2052] TB [Entered: 08/08/2022 03:58 PM]

03/03/2022 65 Receipt of paper copy of APPENDIX filed at [50] by Westfield Insurance Company. Total number of volumes (including any sealed): [5]. Total number of pages in all volumes: [2096]. Total number of sealed volumes: 0. Sufficient? Yes. CD/DVD/Other exhibit? Yes. Number of copies: [4]. Received by clerk date: 08/08/2022. [1001208116] [20-2052] TB [Entered: 08/08/2022 04:04 PM]

03/23/2022 52 MOTION by Reagle & Padden, Inc., David C. Padden and Sistersville Tank Works, Incorporated Attorney Zachary B. Pyers, counsel for Reagle and Padden, Inc. and David C. Padden to exceed length limitations for motion. Date and method of service: 03/23/2022 ecf. [1001132902] [20-2052] Zachary Pyers [Entered: 03/23/2022 12:40 PM]

04/01/2022 53 BRIEF by Douglas L. Steele, Carol Steele, Sistersville Tank Works, Incorporated, E. Jane Price and Robert N. Edwards. Type of Brief: RESPONSE. [1001139031] [20-2052] Patrick Casey [Entered: 04/01/2022 12:31 PM]

04/01/2022 62 Receipt of paper copy of RESPONSE BRIEF filed at [53] by Robert N. Edwards, E. Jane Price, Sistersville Tank Works, Incorporated, Carol Steele and Douglas L. Steele. Number of pages: [61]. Sufficient: YES. Number of Copies: [4]. Received by clerk date: 08/08/2022. [1001208087] [20-2052] TB [Entered: 08/08/2022 03:33 PM]

04/04/2022 54  (ENTRY RESTRICTED) BRIEF by Reagle & Padden, Inc. and David C. Padden. Type of Brief: RESPONSE/REPLY. [1001140189] [20-2052] [see corrected brief filed at ecf entry #56]--[Edited 04/05/2022 by JSN] Zachary Pyers [Entered: 04/04/2022 03:51 PM]

04/04/2022 55 Docket correction requested from David C. Padden and Reagle & Padden, Inc.. Re: [54] brief. Access to brief has been restricted to case participants. [1001140278] [20-2052] JSN [Entered: 04/04/2022 04:31 PM]

04/05/2022 56 BRIEF by Reagle & Padden, Inc. and David C. Padden. Type of Brief: RESPONSE. [1001140557] [20-2052]--[Edited 04/19/2022 by JSN] Zachary Pyers [Entered: 04/05/2022 10:16 AM]

04/05/2022 66 Receipt of paper copy of RESPONSE BRIEF filed at [56] by David C. Padden and Reagle & Padden, Inc.. Number of pages: [15]. Sufficient: YES. Number of Copies: [4]. Received by clerk date: 08/12/2022. [1001211199] [20-2052] RHS [Entered: 08/12/2022 02:09 PM]

04/19/2022 57 BRIEF by Westfield Insurance Company. Type of Brief: REPLY. [1001148146] [20-2052] Brent Kesner [Entered: 04/19/2022 11:17 AM]

04/19/2022 63 Receipt of paper copy of REPLY BRIEF filed at [57] by Westfield Insurance Company. Number of pages: [26]. Sufficient: Yes. Number of Copies: [4]. Received by clerk date: 08/08/2022. [1001208090] [20-2052] TB [Entered: 08/08/2022 03:35 PM]

04/21/2022 58 COURT ORDER filed granting Motion to exceed length limitations [52]. Copies to all

parties. [1001150160] [20-2052] JSN [Entered: 04/21/2022 04:48 PM]

- 08/05/2022 60 CASE TENTATIVELY CALENDARED for oral argument during the October 25-28, 2022 argument session. Counsel shall file 4 paper copies of their briefs and appendices within 7 days. Notify Clerk's Office of any scheduling conflict by: 08/15/2022. [1001206864] [20-2052] JLC [Entered: 08/05/2022 10:47 AM]
- 08/15/2022 67 NOTICE REGARDING CONFLICT WITH PROPOSED ARGUMENT DATES by Appellees Reagle & Padden, Inc. and David C. Padden. Argument Session: 10/25/22 - 10/28/22. Days you are available: 10/25/22, 10/26/22, 10/28/22. Identify any other cases you are tentatively scheduled to argue this session: None. . [1001211705] [20-2052] Zachary Pyers [Entered: 08/15/2022 10:31 AM]
- 08/15/2022 68 MOTION by Robert N. Edwards, E. Jane Price, Carol Steele and Douglas L. Steele for oral argument via videoconference.. Date and method of service: 08/15/2022 ecf. [1001212163] [20-2052] David Lunsford [Entered: 08/15/2022 03:32 PM]
- 08/16/2022 69 ORDER filed denying Motion oral argument via video or tele-conference [68]. Copies to all parties. [1001212841] [20-2052] JSN [Entered: 08/16/2022 11:40 AM]
- 09/02/2022 70 CASE CALENDARED for oral argument. Date: 10/26/2022. Session Starting Time: 9:30. Check-in Time: 8:45 - 9:00. Forms due within 7 calendar days. [1001223715] [20-2052] JLC [Entered: 09/02/2022 01:26 PM]
- 09/07/2022 71 ORAL ARGUMENT ACKNOWLEDGMENT by Westfield Insurance Company. Counsel arguing: Brent K. Kesner. Opening argument time: 14 minutes. Answering argument time: 14 minutes. Rebuttal argument time: 6 minutes. .. [1001225079] [20-2052] Brent Kesner [Entered: 09/07/2022 08:46 AM]
- 09/08/2022 72 ORAL ARGUMENT ACKNOWLEDGMENT by Sistersville Tank Works, Incorporated. Counsel arguing: Ryan P. Orth. Answering argument time: 17 minutes. Second counsel arguing: Zachary B. Pyers. Answering argument time: 2 minutes. .. [1001226647] [20-2052] Ryan Orth [Entered: 09/08/2022 12:37 PM]
- 09/09/2022 73 ORAL ARGUMENT ACKNOWLEDGMENT by Reagle & Padden, Inc. and David C. Padden. Counsel arguing: Pyers B. Zachary. Answering argument time: 2 minutes. .. [1001227108] [20-2052] Zachary Pyers [Entered: 09/09/2022 09:40 AM]
- 09/09/2022 74 ORAL ARGUMENT ACKNOWLEDGMENT by Robert N. Edwards, E. Jane Price, Carol Steele and Douglas L. Steele. Counsel arguing: David B. Lunsford. Answering argument time: 1 minutes. .. [1001227115] [20-2052] David Lunsford [Entered: 09/09/2022 09:50 AM]
- 09/29/2022 75 Calendar notice sent. Nature of notice:Updated Entry and Covid Information. Date: 10/26/2022. Session Starting Time: 9:30 AM. Check-in Time: 8:45-9:00 AM. [1001238800] [20-2052] PSC [Entered: 09/29/2022 12:25 PM]
- 10/24/2022 76 MOTION by Westfield Insurance Company for oral argument via videoconference.. Date and method of service: 10/24/2022 ecf. [1001253313] [20-2052] Brent Kesner [Entered: 10/24/2022 02:31 PM]
- 10/25/2022 77 COURT ORDER filed granting Motion oral argument via video or tele-conference [76]. Copies to all parties. [1001254175] [20-2052] JSN [Entered: 10/25/2022 12:01 PM]
- 10/26/2022 78 ORAL ARGUMENT heard before the Honorable G. Steven Agee, James Andrew Wynn and Diana Gribbon Motz. Attorneys arguing case: Mr. Brent K. Kesner for Appellant Westfield Insurance Company, David Belknap Lunsford for Appellees Robert N. Edwards, E. Jane Price, Douglas L. Steele and Carol Steele, Ryan Paul Orth for Appellee Sistersville Tank Works, Incorporated and Zachary Benjamin Pyers for

Appellees Reagle & Padden, Inc. and David C. Padden. Courtroom Deputy: Joseph Coleman. [1001255164] [20-2052] JLC [Entered: 10/26/2022 12:35 PM]

11/14/2022 79 COURT ORDER filed dismissing the appeal as to the Padden appellees. Copies to all parties. [1001264900] [20-2052] JSN [Entered: 11/14/2022 11:33 AM]

11/14/2022 80 OPINION/ORDER CERTIFYING QUESTION to state court in West Virginia. Originating case number: 5:18-cv-00100-JPB-JPM. Copies to all parties and district court. [1001264920] [20-2052] JSN [Entered: 11/14/2022 11:44 AM]