IN THE SUPREME COURT OF APPEALS
OF WEST VIRGINIA
DOCKET NO. 22-848

SCA EFiled: Jul 18 2023
04:43PM EDT
Transaction ID 70423367

WESTFIELD INSURANCE COMPANY,
Petitioner,

v.

SISTERSVILLE TANK WORKS, INC., ROBERT N. EDWARDS, E. JANE PRICE, individually and as Executor of the ESTATE OF ROBERT G. PRICE, DOUGLAS STEELE, CAROL STEELE, GARY THOMAS SANDY, PEGGY SANDY, REAGLE & PADDEN, INC. and DAVID C. PADDEN,
Respondents,

PETITIONER'S REPLY BRIEF

(from the United States Court of Appeals For The Fourth Circuit, Case No. 20-2052)

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STATEMENT OF THE CASE

The present certified question seeks to determine what liability insurance is applicable when a long-established business that was insured over a period of years under different insurance policies becomes the target of latent personal injury claims involving decades of alleged exposure to harmful substances. It asks whether West Virginia law will deem the occurrence triggering insurance coverage to take place when the alleged injuries appear or will instead seek to maximize the amount of insurance coverage available to compensate the claimants by implicating coverage under all of the long-expired policies that were in effect from the time of exposure through the time of manifestation. In simple terms, this certified question proceeding asks whether an occurrence-based insurance policy can ever really expire in the context of an alleged latent injury.

The certified question arises from three separate lawsuits which were filed against Respondent Sistersville Tank Works, Inc. ("STW"), a West Virginia corporation which has been in the business of manufacturing storage tanks since 1984. (JA567-568). While none of the claimants in those lawsuits can point to a single specific leak in a storage tank or other incident in which they were injured by the actions of STW (See JA 1158, 1169-1170 and 1185-1186), all have filed suit against STW and numerous other chemical manufacturers and suppliers in West Virginia Circuit Courts seeking to recover for illnesses which developed long after the insurance policies issued by Westfield Insurance Company ("Westfield") had expired. (See JA499-523, 524-542 and 543-562) The apparent reason for naming STW as a defendant in each of these actions despite the absence of any specific leaks or incidents is found at pg. 2 of the Respondents' *Brief* where the Respondents themselves recognize that STW is "a venue-

giving defendant" whose presence allows the claims against the manufacturers and suppliers to proceed in the Courts of West Virginia.

Westfield is defending STW in each of the subject actions under a reservation of rights (JA1670), but also filed Civil Action No. 5:18-cv-00100 in the United States District Court for the Northern District of West Virginia, seeking a declaratory judgment with respect to whether any of the policies it issued to STW provide coverage for the claims in question. (JA9-77) While there are other reasons why coverage does not exist which are not the subject of the certified question[1], the issue here is Westfield's assertion that coverage has not been triggered because none of the claimants have alleged "bodily injury" which occurred "during the policy period," caused by an "occurrence." (JA74-75)

Because it is undisputed that West Virginia has not specifically addressed the trigger of coverage issue, the parties argued that the District Court should apply one of two competing approaches to determining when a "bodily injury" occurs for purposes of triggering insurance coverage in latent injury cases. The first of these is the "manifestation trigger" approach, which holds that the occurrence is deemed to take place for coverage purposes when the injuries first manifest themselves. See *Mraz v. Canadian Universal Ins. Co.*, 804 F.2d 1325, 1328 (4th Cir. 1986). The second approach, which is advocated by the Respondents and United Policyholders, the *Amicus Curiae*, is the so-called "continuous trigger" approach, which holds that, in order to maximize the amount available to pay claims, coverage will be deemed to apply when the exposure

1 While the Westfield Policies at issue contain a number of relevant exclusions and limitations which eliminate coverage for the claims being asserted against STW in the Underlying Actions, those exclusions and limitations are not the subject of the question certified by the Fourth Circuit Court of Appeals and are therefore not addressed in this Brief. Westfield does not waive its coverage position with respect to any of those additional exclusions and limitations and maintains that no coverage applies to the subject claims under any of its Policies.

first occurs, during the period of progression of the injury, and when the injury manifests itself such that all insurance policies in effect from the time of exposure until the time of manifestation are triggered. See *Imperial Cas. & Indem. Co. v. Radiator Specialty Co.*, 862 F. Supp. 1437, 1441 (E.D.N.C. 1994), aff'd, 67 F.3d 534 (4th Cir. 1995). While the District Court in Civil Action No. 5:18-cv-00100 predicted that West Virginia would apply the "continuous trigger" approach, the United States Court of Appeals for the Fourth Circuit elected to certify the following question to the Court:

> 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.

(JA3) For the reasons set forth below and in its Opening Brief, Westfield respectfully requests that the Court reject the arguments of the Respondents and the *Amicus Curiae* and apply the "manifestation" trigger of coverage approach to latent injury claims stemming from alleged chemical exposure.

ARGUMENT

I. The Respondents' inability to identify any actual evidence to suggest that the claimants' alleged injuries in this case occurred at the time of exposure counsels against application of the continuous trigger theory.

Before addressing the Respondents' arguments in favor of adopting the continuous trigger approach to determining when an injury due to alleged chemical exposure is deemed to occur, it is important to note that the Respondents' *Brief* does not direct the Court to any actual evidence in the form of medical testimony or scientific reports that their alleged exposure to harmful chemicals caused any specific injury at the time of exposure. Instead, the Court is asked to simply assume, without evidence, that some form of injury must have been done as soon as the first exposure occurred and then accumulated over time until a disease was diagnosed. The need for such

assumptions reveals the flaw in the continuous trigger approach and helps to demonstrate why applying it in the instant case is improper.

In the case of *Grain Handling Co. v. Sweeney*, 102 F.2d 464 (2d Cir. 1939), Judge Learned Hand recognized that:

> a disease is no disease until it manifests itself. Few adults are not diseased, if by that one means only that the seeds of future troubles are not already planted; and it is a common place that health is a constant warfare between the body and its enemies[.]

Id., at 466. This reasoning was cited by the United States Court of Appeals for the First Circuit in the case of *Eagle-Picher Indus., Inc. v. Liberty Mut. Ins. Co.*, 682 F.2d 12 (1st Cir. 1982), wherein the Court applied the manifestation trigger approach to determine when a bodily injury had occurred for insurance purposes in cases of latent disease and noted:

> An individual with tiny sub-clinical insults to her lungs would not say that she had any injury or disease, given one expert's testimony that "over 90% of all urban city dwellers have asbestos-related scarring". Rather, she would say that a disease resulted when she had symptoms which impaired her sense of well-being, or when a doctor was able to detect sufficient scarring to make a prognosis that the onset of manifested disease was inevitable. "Injury" is defined by Webster[4] as "hurt, damage, or loss sustained"; it is a broad term which covers the "result of inflicting on a person or thing something that causes loss, pain, distress, or impairment." As sweeping as this definition is, it is difficult to consider sub-clinical insults to the lung to constitute an "injury" when these insults do not cause "loss, pain, distress, or impairment" until, if ever, they accumulate to become clinically evident or manifest.

Id., at 19. Here, the Respondents ask the Court to simply assume that the first exposures caused some damage and then apply the "continuous trigger" approach to find that every policy in effect from the time of that first exposure was triggered by its corresponding fraction of the total accumulated damage. Such an approach is not consistent with existing West Virginia law.

While West Virginia has not directly addressed when a bodily injury occurs in the context of the trigger of coverage issue, it has examined such issues in other contexts. For example, in the

case of *Marlin v. Bill Rich Const., Inc.*, 198 W. Va. 635, 482 S.E.2d 620 (1996), the Court examined a claim by a group of employees that they had been exposed to asbestos fibers while working at a high school and discussed whether their fear of contracting occupational pneumoconiosis was a compensable injury under the workers compensation system, noting:

> Even if, for the purposes of analysis, we credit the conclusion that appellants' lungs have indeed been insulted by the inhalation of asbestos fibers, and that such an insult has resulted in the *fear* of contracting occupational pneumoconiosis or another occupational disease, with the attendant loss of sleep and other effects of which appellants complain, the cited cases provide no authority from which we can conclude, as a matter of law, that the Workers' Compensation Act provides benefits for the fear of contracting occupational pneumoconiosis or some other occupational disease. To conclude that such circumstances make out a compensable claim would, in our view, obliterate the clear requirements of W.Va.Code § 23–4–1 that **a claimant seeking benefits by reason of an occupational disease must demonstrate the *present* existence of such disease and, in the case of a claim for occupational pneumoconiosis, that the claimant *presently* suffers from such disease and meets the statutory time requirements for exposure generally**, and in this State, particularly. From the record before us, it appears that appellants deny that any of them are presently suffering from occupational pneumoconiosis or that any have suffered a perceptible aggravation of an existing occupational pneumoconiosis as a result of their exposure to asbestos at Hundred High School. **We believe that appellee Board must prove the occupational disease or occupational pneumoconiosis criteria set forth in W.Va.Code § 23–4–1, including the present existence of disease, to establish its defense that appellants' physical trauma and insult arising from breathing asbestos fibers raises a claim that is compensable under workers' compensation**.

Id., at 648–49, 633–34. (Emphasis added.) The Court explained its reasoning as follows:

> It is clear that in order to sustain a claim under workers' compensation for an occupational disease other than occupational pneumoconiosis, the claimant must *in fact and presently* suffer from the disease, just as in the case of occupational pneumoconiosis. In *Hobday v. Compensation Commissioner*, 126 W.Va. 99, 27 S.E.2d 608 (1943), this Court considered the compensability of an employee's death from tuberculosis. The issue was whether such employee's death had been caused by silicosis. At the time, W.Va.Code § 23–4–1 did not include its present definition of occupational pneumoconiosis, including silicosis. This Court was interpreting an older definition of silicosis as a compensable condition. After discussing the decedent's substantial amount of exposure to silicon dioxide dust, the Court commented: "**It is not the mere exposure to silicon dioxide dust, however harmful, that justifies compensation. The exposure must produce silicosis,**

which, in turn, must produce the death."

Id., at 647, 632. (Emphasis added.) While this case involves traditional liability insurance as opposed to workers compensation, the commonsense recognition that proving exposure does not equate to proving actual harm still applies. Likewise, in the context of mental or emotional distress claims, West Virginia has repeatedly recognized that an actual physical manifestation of harm is necessary before "bodily injury" will be found to exist. For example, in *Smith v. Animal Urgent Care Inc.* 208 W.Va. 664, 542 S.E. 2d 827 (2000), the Court explained:

> . . . in an insurance liability policy, purely mental or emotional harm that arises from a claim of sexual harassment and lacks physical manifestation does not fall within a definition of "bodily injury" which is limited to "bodily injury, sickness, or disease."

Id. In the same fashion, the Court in *Cherrington v. Erie Ins. Prop. & Cas. Co.*, 231 W. Va. 470, 745 S.E.2d 508 (2013), explained:

> Because there is no indication that Ms. Cherrington's emotional distress has physically manifested itself, we conclude that she has not sustained a "bodily injury" to trigger coverage under Pinnacle's CGL policy.

Id., at 484, 522.

In this case, the claimants have not presented any evidence that some outward manifestation of physical injury or harm was present before they were diagnosed with the medical conditions identified in their complaints against STW. In the absence of such evidence, no "bodily injury" can be said to have occurred during the time any of the Westfield Policies was in effect. Respondents' advocacy for application of the continuous trigger theory can thus be best understood as an improper attempt to avoid identifying actual evidence of bodily injuries to the claimants at the time of exposure and instead rely solely on assumptions of injuries based solely on the timing of the claimants' exposure.

II. The arguments set forth in the *Amicus Curiae's Brief* reveal that the true purpose of the "continuous trigger" approach is not to apply the policy language as written, but to instead maximize the amounts available to pay claims and relieve insureds of the obligation to prove when an injury actually occurred.

In its *Brief,* the *Amicus Curiae,* United Policyholders, directs the Court to cases from other jurisdictions in which Courts have adopted the continuous trigger approach. In one of those cases, *R.T. Vanderbilt Co., Inc. v. Hartford Accident & Indem. Co.*, 171 Conn. App. 61, 156 A.3d 539 (2017), aff'd, 333 Conn. 343, 216 A.3d 629 (2019), the Connecticut Court explained why Courts have adopted the continuous trigger approach as follows:

> In most instances, then, we simply will never know exactly when a particular claimant was exposed to a particular policyholder's asbestos, how much of that policyholder's asbestos was inhaled, when that claimant contracted an asbestos related disease or diseases, and the precise relationship between these events. See *One Beacon American Ins. Co.* v. *Huntsman Polymers Corp.*, supra, 276 P.3d at 1159. **The continuous trigger theory addresses this conundrum by assuming that, in each case, every exposure contributed to the ongoing worsening of the disease throughout the entire period from initial exposure to manifestation**. See J. Michaels et al., supra, 64 U. Kan. L. Rev. 472 (**continuous trigger relieves policyholder of burden of proving what share of damages from progressive disease occurred during each policy period**); id., 487 (continuous trigger acknowledges uncertainty inherent in long-tail toxic tort claims); see also *Ins. Co. of North America* v. *Forty–Eight Insulations, Inc.*, supra, 657 F.2d at 815 ("[M]any of the underlying plaintiffs' complaints against the manufacturers allege both cancer and asbestosis. **To [adopt a fact-based trigger theory that would] treat cancer and asbestosis differently would needlessly complicate settlement and defense of the individual lawsuits**.

R.T. Vanderbilt Co., Inc. v. Hartford Accident & Indem. Co., at 121, 572–73. Thus, one of the primary reasons for adopting the "continuous trigger" approach is to eliminate the burden claimants and insureds would face in proving when an injury actually occurred.

The *Amicus Curiae* directs the Court to the case of *Winding Hills Condo. Ass'n, Inc. v. N. Am. Specialty Ins. Co.*, 332 N.J. Super. 85, 752 A.2d 837 (App. Div. 2000), wherein the New Jersey Court noted:

> An inevitable corollary of requiring the sharing of the indemnification obligation by all carriers who are on the risk at any time from the date of exposure to the date of manifestation is the maximization of coverage available for the protection of the public. **We are aware that in *Owens–Illinois* the Court made clear "[a] rule of law premised *on nothing more* than the result-oriented goal of maximizing coverage has been described as 'judicial legislation.' " *Id.* at 452, 650 *A*.2d 974. (Emphasis added.) Nevertheless it is also clear that the law's solicitousness for victims of mass toxic torts and other environmental contamination is entirely consistent with choosing that conceptually viable trigger theory affording the greatest ultimate redress**.

Id., at 91, 840 (Emphasis added.) However, the New Jersey Court then declined to apply the "continuous trigger" approach to first-party property damage claims, stating:

> No court in this state has, however, applied the continuous-trigger rule rather than the manifest-trigger rule in first-party property damage claims, and that, of course, is the basic issue before us. We conclude that the manifest-trigger rule remains appropriate in first-party property damage claims for a variety of reasons. **First, unlike the situation obtaining in liability coverage, there are no public rights to be concerned about and no right of the public to redress. The interests involved are solely between the insured and the insurer, and, again unlike the situation in liability coverage, the insured has the ability to assure his full protection against his finite potential financial loss simply by obtaining, in each policy year, coverage for the full actual cash value of his property.** Thus, his loss because of damage to the property can be fully compensated for whenever the loss becomes manifest even if it results from a latent progressive condition.
>
> We also have no doubt that the manifest-trigger rule in this situation avoids the inevitable complex problems of apportionment of liability among successive carriers. Clearly, the incurring of such problems adds significantly to litigation costs and eventually to premium costs. **Moreover, we are confident that all premiums would be substantially increased were the carrier's risk to continue indefinitely beyond the policy period.** And because the property owner can fully protect himself in each policy period, we see no offsetting advantage to the insured or to the public at large were we to apply the continuous-trigger rule to first-party property coverage.

Id., at 92, 840 (Emphasis added.)

As these discussions illustrate, the "continuous trigger" approach is premised upon the result-oriented goal of maximizing the amounts available for recovery and eliminating inconvenient problems of proof through "judicial legislation" that extends risk indefinitely beyond

the policy period. While a number of jurisdictions have chosen to obtain the largest pool of insurance possible to pay claims in that fashion by adopting "continuous trigger," the mere fact that they have done so does not establish that their reasoning was sound or mandate that West Virginia join these states in prioritizing convenience for claimants over the enforcement of the clear terms of insurance policies. As Judge Goodwin noted in *Westfield Ins. Co. v. Mitchell*, 22 F. Supp. 3d 619, 623 (S.D.W. Va. 2014):

> Determining exactly when damage begins can be difficult, if not impossible. In such cases . . . the better rule is that the occurrence is deemed to take place when the injuries first manifest themselves . . . . As one court noted, "[t]he tort of negligence is not committed unless and until some damage is done. Therefore, the important time factor, in determining insurance coverage where the basis of the claim is Negligence, is the time when the damage has been suffered."

Id., at 623 (quoting *Mraz v. Canadian Universal Ins. Co., Ltd.*, 804 F.2d 1325, 1328 (4th Cir.1986)).

III. The Respondents' and the *Amicus Curiae*'s reliance upon *Wheeling Pittsburgh Corporation v. American Insurance Company* and *U.S. Silica v. Ace Fire Underwriters Ins. Co.* is misplaced.

In their respective briefing, both the Respondents and the *Amicus Curiae* rely heavily upon the reasoning set forth by the Circuit Courts of Ohio and Morgan Counties in *Wheeling Pittsburgh Corporation v. American Insurance Company* 2003 WL 23652106 (Circuit Court of Ohio County Civil Action No. 93-C-340 October 18, 2013), and *U.S. Silica v. Ace Fire Underwriters Ins. Co.*, 2012 W.Va. Cir. LEXIS 4449. In fact, the *Amicus Curiae* relies on these two decisions to suggest that "[f]or decades West Virginia circuit courts have uniformly applied a 'continuous' trigger of coverage to determine the amounts of insurance available[.]" (Brief of *Amicus Curiae* at p. 2) However, both cases can be distinguished, and neither case squarely addressed the precise issue presented by this certified question.

In the *Wheeling Pittsburgh* case, the Circuit Court of Ohio County was addressing a claim that pollutants continuously and progressively damaged the value of a piece of property. In that regard, the Circuit Court noted:

> [I]t appears that the property damage alleged by the Plaintiffs to have occurred is the result of a continuous, progressive process spanning numerous years and encompassing multiple successive insurance policies. The end result of this continuous process is the alleged progressively deteriorating environmental property damage at issue in the present action.

Wheeling Pittsburgh, at 16. In contrast, the claimants in this case have alleged long-term exposure to harmful chemicals without offering any evidence that they sustained any specific injury or disease while a Westfield policy was in effect. While the damage to the property at issue in *Wheeling Pittsburgh* apparently began with the very first contamination at the time the first policy subject to the ruling was in effect, there is no evidence that the claimants in this case suffered some specific "injury to physical structure of human body," which meets the definition of "bodily injury" at the time of first exposure as discussed in *Smith v. Animal Urgent Care Inc.*, supra. Instead, the available record evidence indicates only that the diseases of which the claimants complain developed and were diagnosed long after the Westfield Policies at issue had expired. Moreover, the decision in *Wheeling Pittsburgh* was clearly designed to maximize the amount of insurance coverage available regardless of the actual terms of the subject insurance policies. Therefore, the reasoning employed by the Circuit Court in the *Wheeling Pittsburgh* decision does not support the application of the continuous trigger approach in this case.

Unlike the *Wheeling Pittsburgh* decision, the decision in *U.S. Silica v. Ace Fire Underwriters Ins. Co.*, 2012 W.Va. Cir. LEXIS 4449 (JA426-436), did involve claims of physical injury due to exposure to silica dust. However, the Circuit Court of Morgan County was addressing what it described as a claim for "progressively deteriorating bodily injury" (JA435) and, in doing

so, relied upon cases in which scientific evidence had been submitted to establish that an injury had occurred immediately upon exposure to asbestos fibers and had then worsened with continuing exposure. For example, in the case of *J.H. France Refractories v. Allstate Ins. Co.*, 534 Pa. 29, 626 A.2d 502 (1993), which the *U.S. Silica* Court quoted in support of its reasoning, the Pennsylvania Court noted:

> The medical evidence in this case unequivocally establishes that injuries occur during the development of asbestosis immediately upon exposure, and that the injuries continue to occur even after exposure ends during the progression of the disease right up until the time that increasing incapacitation results in manifestation as a recognizable disease. If any of these phases of the pathogenesis occurs during the policy period, the insurer is obligated to indemnify J.H. France under the terms of the policy.

Id., at 37–38, 507. As noted above, the claimants in this case did not provide any such medical evidence of immediate physical harm upon exposure and instead ask the Court to simply assume the existence of such an injury while the Westfield Policies were in effect. For the reasons discussed above, the only basis for doing so would be to "judicially legislate" the maximum amount of coverage possible regardless of the clear limitations of coverage set forth in the Westfield policies at issue.

IV. West Virginia's recognition of a cause of action for medical monitoring does not impact the trigger of coverage issue.

In their *Brief*, the Respondents suggest that West Virginia's recognition of a cause of action for medical monitoring implies that West Virginia would reject the manifestation trigger approach. However, the Respondents fail to recognize that the Court's decision in *Bower v. Westinghouse Elec. Corp.*, 206 W. Va. 133, 522 S.E.2d 424 (1999), was premised upon the claimants suffering an economic harm as opposed to some immediate physical injury. The Court stated:

> We now reject the contention that a claim for future medical expenses must rest upon the existence of present physical harm. The "injury" that underlies a claim for

> medical monitoring—just as with any other cause of action sounding in tort—is "the invasion of any legally protected interest."

Id., at 139, 430. Instead, the Court explained:

> What these decisions uniformly acknowledge is that significant economic harm may be inflicted on those exposed to toxic substances, notwithstanding the fact that the physical harm resulting from such exposure is often latent.

Id., at 138, 429. Therefore, medical monitoring claims involve economic, not physical, damage and do not represent a "bodily injury" necessary to trigger insurance coverage.

V. Westfield's coverage position in other claims arising under the laws of other states is irrelevant to this certified question proceeding.

At pg. 19 of their *Brief*, the Respondents direct the Court to the case of *Westfield Ins. Co. v. Milwaukee Ins. Co.*, 2005-Ohio-4746, 2005 WL 2179312, wherein Westfield took a different position with respect to the applicable trigger of coverage with respect to a water damage claim arising under Ohio law. There, the Court noted:

> In support of its contrary position that the continuous trigger approach is better suited to determining liability under occurrence-based policies, Westfield cites to a number of cases from other jurisdictions. In factually analogous cases, these courts have concluded that where a structure suffers damage of a continuing nature, coverage must be apportioned between the insurance carriers that insured the property during the course of the damage.

Id., at 3 (¶ 16.) While the Respondents suggest that Westfield is now taking an inconsistent position, their argument ignores a number of important facts. First, the fact that Westfield allegedly took a different position in a different state where different law applies is simply irrelevant to this Court's analysis of determination of the law applicable in West Virginia. As the Court in *Milwaukee Ins. Co.* noted, "[i]n the only factually similar Ohio case, the Sixth District Court of Appeals applied a continuous trigger approach." *Id.*, at 3 (¶ 18.) Because this case involves West Virginia law, Westfield's arguments here are necessarily different. In addition, the *Milwaukee Ins. Co.* case involved a property damage claim where water had begun to physically damage the

property years before. In rejecting Milwaukee's argument that the damage had not manifested during the applicable policy term, the Court stated:

> Milwaukee also relies on another factually dissimilar case, *Reynolds v. Celina Mut. Ins.* (Feb. 16, 2000), Lorain App. No. 98CA007268, discretionary appeal not allowed (2000), 89 Ohio St.3d 1430, 729 N.E.2d 1199, for the proposition that "[t]he date for determining whether property damage falls within the coverage period of an occurrence policy is when the first visible or discoverable manifestations of damage occur." In *Reynolds,* the homeowner discovered damage to the home in 1987, and sought to recover under a policy with an effective date of January 1, 1988. The *Reynolds* court concluded that the insurer was not obligated under the policy as it was undisputed that the damage occurred and was discovered prior to the policy's effective date. Again, the *Reynolds* court was not faced with a situation involving continuing exposure resulting in damage over the course of time. Instead, the court addressed damage that occurred, and was discovered, while covered by one policy.

Id., at 2 (¶ 15.) Thus, the claim at issue in *Milwaukee Ins. Co.* involved actual physical damage that took place while the Milwaukee Insurance Company policy was in effect. In contrast, this case involves the issue of coverage for a bodily injury claim where an exposure purportedly occurred during the policy period, but the disease which allegedly arose from that exposure did not manifest until many years later. Because *Milwaukee Ins. Co.* involved the application of a different state's law to materially different facts, it is simply inapplicable here.

CONCLUSION

In this case, the Court should answer the certified question by finding that bodily injury is deemed to take place when the injuries first physically manifest themselves and can be detected in claims for latent illness due to alleged chemical exposure. Such an approach will provide needed certainty to both insurers and insureds as latent injury claims become more common and will avoid converting long-expired insurance policies into effectively unlimited payment guarantees for claimants.

WESTFIELD INSURANCE COMPANY

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IN THE SUPREME COURT OF APPEALS
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SISTERSVILLE TANK WORKS, INC., ROBERT N. EDWARDS, E. JANE PRICE, individually and as Executor of the ESTATE OF ROBERT G. PRICE, DOUGLAS STEELE, CAROL STEELE, GARY THOMAS SANDY, PEGGY SANDY, REAGLE & PADDEN, INC. and DAVID C. PADDEN,
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PETITIONER'S REPLY BRIEF
(from the United States Court of Appeals For The Fourth Circuit, Case No. 20-2052)

I, Brent K. Kesner/Ernest G. Hentschel, II, counsel for Westfield Insurance Company, do hereby certify that on the 18th day of July, 2023, the foregoing Petitioner's Reply Brief was filed electronically with the Court via West Virginia File and ServeXpress which will provide an electronic copy upon counsel of record.

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