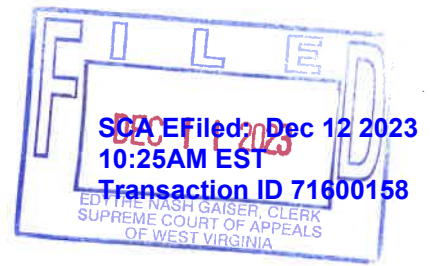


UNPUBLISHED
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT



No. 22-1129

ERIE INSURANCE PROPERTY & CASUALTY COMPANY,

Plaintiff – Appellant,

v.

JAMES SKYLAR COOPER,

Defendant – Appellee.

WEST VIRGINIA INSURANCE FEDERATION,

Amicus Supporting Appellant.

Appeal from the United States District Court for the Southern District of West Virginia, at Charleston. Irene C. Berger, District Judge. (2:20-cv-00321)

Argued: September 19, 2023

Decided: December 5, 2023

Before HARRIS and QUATTLEBAUM, Circuit Judges, and KEENAN, Senior Circuit Judge.

Question certified to the Supreme Court of Appeals of West Virginia by unpublished order. Senior Judge Keenan directed entry of the order with the concurrence of Judge Harris and Judge Quattlebaum.

ARGUED: Matthew James Perry, BURNS WHITE LLC, Huntington, West Virginia, for Appellant. Jill Rice, DINSMORE & SHOHL LLP, Morgantown, West Virginia, for Amicus Curiae. R. Chad Duffield, FARMER, CLINE & CAMPBELL, PLLC, Charleston, West Virginia, for Appellee. **ON BRIEF:** J. Jarrod Jordan, Jill E. Lansden, LAMP BARTRAM LEVY TRAUTWEIN PERRY & POWELL, PLLC, Huntington, West Virginia, for Appellant. Jennifer D. Roush, FARMER, CLINE & CAMPBELL, PLLC, Charleston, West Virginia, for Appellee. David R. Stone, DINSMORE & SHOHL LLP, Morgantown, West Virginia, for Amicus Curiae.

ORDER

BARBARA MILANO KEENAN, Senior Circuit Judge:

The United States Court of Appeals for the Fourth Circuit, exercising the privilege afforded by the State of West Virginia through the Uniform Certification of Questions of Law Act, West Virginia Code §§ 51-1A-1 through 51-1A-13, requests that the Supreme Court of Appeals of West Virginia exercise its discretion to answer the following question:

Does West Virginia Code § 33-6-31 require an insurer, who issues a commercial automobile insurance policy to a named insured providing liability coverage for particular owned vehicles and a class of non-owned vehicles, to offer underinsured motorist coverage for the class of non-owned vehicles?

This Court acknowledges that the Supreme Court of Appeals may restate this question. *See* W. Va. Code §§ 51-1A-4, 51-1A-6(a)(3). In our view, there is no controlling appellate decision, constitutional provision, or statute of West Virginia that answers this question. *See id.* § 51-1A-3. Accordingly, we conclude that the question is appropriate for certification.

I.

A.

In this case involving an insurance coverage dispute, the facts are not contested. In August 2019, James Cooper was injured in a car accident while riding as a passenger in a car owned by Rick Huffman. When the accident occurred, Cooper and Huffman, both

employees of Pison Management, LLC (Pison), were driving to a jobsite during the course of their employment with Pison. Because Cooper's injuries and resulting damages exceeded the third-party driver's insurance limits, Cooper sought underinsured motorist (UIM) coverage under Pison's commercial automobile policy (the policy) issued by Erie Insurance Property & Casualty Company (Erie).

The policy provided \$1 million in liability coverage for bodily injury and property damage for two particular vehicles owned by Pison (owned vehicles), as well as a class of "non-owned" vehicles associated with 1-to-25 employees.¹ The policy also provided \$1 million in UIM coverage for the owned vehicles. Erie did not provide Pison with an option to purchase UIM coverage for the class of non-owned vehicles.²

¹ The policy also provided liability coverage for a class of "hired auto[s]," "if any."

² In order to render the certified question dispositive of the appeal before us, we resolve in advance the question of coverage under *the policy*. See W. Va. Code § 51-1A-3. We agree with the district court that the policy did not include UIM coverage for Cooper while riding in Huffman's car. The "uninsured/underinsured" (UM/UIM) endorsement in the policy stated that "[w]e will pay damages" that "involve . . . bodily injury to 'you or others we protect.'" "You" was defined as the named insured, which under the policy was Pison. "Others we protect" included in relevant part: "anyone . . . while occupying any *owned auto* we insure" and "if you are an *individual*, anyone else while occupying a *non-owned auto* we insure." Because Pison was not an "individual" under the policy terms, we agree with the district court's holding that the plain language of the UM/UIM endorsement established that the policy did not provide UIM coverage to Cooper while riding in Huffman's car. Our conclusion is not altered by Cooper's argument seeking an alternative basis for affirming the district court's judgment, namely, that the policy was ambiguous regarding whether UIM coverage applied. Cooper contends that the declarations page states that the UM/UIM endorsement applied to "all autos," including non-owned vehicles. But the declarations page plainly showed that no premium was paid for UIM coverage for non-owned vehicles, which payment was required for UIM coverage to apply. We therefore conclude that the policy unambiguously did not extend UIM coverage to Cooper while riding in Huffman's car.

The policy described “non-owned” vehicles as “Employer’s Non-Ownership Liability,” and included vehicles owned by Pison’s employees while being used in Pison’s business. The parties agree that Huffman’s car qualified under the policy as falling within the class of non-owned vehicles.

Based on the policy’s terms, Erie denied Cooper’s claim for UIM coverage and filed suit in federal district court seeking a declaration that the policy did not provide the UIM coverage sought by Cooper. Cooper filed an answer and counterclaims seeking, in relevant part, a declaratory judgment that Erie violated West Virginia Code § 33-6-31. According to Cooper, that statute required Erie to provide Pison with the opportunity to elect UIM coverage for the class of non-owned vehicles. Cooper asserted that because Erie failed to make such an offer, UIM coverage existed by operation of law to cover Cooper as a passenger in Huffman’s car.³ W. Va. Code § 33-6-31(b); *see also Thomas v. McDermitt*, 751 S.E.2d 264, 265 (W. Va. 2013) (explaining that when an insurer is “required by statute to offer optional coverage, it is included in the policy by operation of law when the insurer fails to prove an effective offer and a knowing and intelligent rejection by the insured”).

The parties filed cross-motions for summary judgment, and the district court awarded judgment in favor of Cooper. The court held that the statute requires that an insurer make a commercially reasonable offer of UIM coverage “to *all* vehicles covered by [a liability] policy,” including the class of non-owned vehicles. Accordingly, the court

³ *See supra* note 2 (addressing Cooper’s alternative argument that the policy language was ambiguous regarding whether UIM coverage extended to non-owned autos).

issued a declaratory judgment that Cooper was entitled to receive UIM coverage equivalent to the liability coverage limit, \$1 million. Erie filed a timely appeal in this Court.⁴

B.

Before addressing the parties' arguments, we set forth the relevant statutory provisions. Subsection (a) of West Virginia Code § 33-6-31 addresses required liability coverage and states, in relevant part, that automobile insurance policies "covering liability arising from the . . . use of any motor vehicle . . . issued . . . in this state to the owner" of the motor vehicle, or issued "upon any motor vehicle" titled in West Virginia, must "contain[] a provision insuring the named insured and any other person . . . using the motor vehicle with the consent . . . of the named insured."⁵ W. Va. Code § 33-6-31(a).

Regarding UIM coverage, subsection (b) of Section 33-6-31 states that any insurer offering a liability policy as defined in subsection (a):

shall provide an option to the insured with appropriately adjusted premiums to pay the insured all sums which he or she is legally entitled to recover as damages from the owner or operator of an uninsured or underinsured motor vehicle up to an amount not less than [the liability coverage provided in the policy.]

⁴ The district court entered final judgment after the parties entered into an agreement resolving their remaining claims.

⁵ Subsection (a) also states that "if coverage resulting from the use of a nonowned automobile is conditioned upon the consent of the owner of such motor vehicle, the word 'owner' shall be construed to include the custodian of such nonowned motor vehicles." W. Va. Code § 33-6-31(a).

Id. § 33-6-31(b). In other words, when an insurer issues a liability policy as defined in subsection (a), subsection (b) requires that an insurer make an offer of UIM coverage “to the insured” at least equivalent to the amount of liability coverage. *Id.*

Subsection (c) of the same statute defines “insured,” as used in the statute, as:

the named insured and, while resident of the same household, the spouse of any such named insured and relatives of either, while in a motor vehicle or otherwise, and any person . . . who uses, with the consent, expressed or implied, of the named insured, the motor vehicle to which the policy applies.

Id. § 33-6-31(c). The West Virginia Supreme Court of Appeals has explained that this definition of “insured” provides for two classes of insureds: (1) the named insured and her spouse and resident relatives, who enjoy broad UIM protection because their coverage is not limited to the use of a particular vehicle, and (2) any person authorized by the named insured to use “the motor vehicle to which the policy applies” (Class II insured). *See Progressive Max Ins. Co. v. Brehm*, 873 S.E.2d 859, 864 (W. Va. 2022) (citing *Starr v. State Farm Fire & Cas. Co.*, 423 S.E.2d 922, 927 (W. Va. 1992)).

Finally, a separate statute, West Virginia Code § 33-6-31d sets forth the manner in which an offer of UIM coverage must be made. Section 33-6-31d states that the insurer must use a “form” prepared by the West Virginia Insurance Commissioner that “shall specifically inform the named insured of the coverage offered and the rate calculation for the coverage, including, but not limited to, levels and amounts of the coverage available and the number of vehicles which will be subject to the coverage.” W. Va. Code § 33-6-31d(a). With these provisions in mind, we turn to the parties’ arguments.

C.

Erie argues that the plain meaning of Section 33-6-31 establishes that a class of non-owned vehicles to which liability coverage applies does not fall within the scope of the statute's requirement to offer UIM coverage. According to Erie, Section 33-6-31(a) applies only to policies issued to the "owner" of a vehicle, which limits application of subsection (b) of that statute to owned vehicles.⁶ Erie further submits that Section 33-6-31(b) requires that an insurer offer UIM coverage "to the *insured*," which, despite subsection (c)'s broader definition of an "insured," necessarily means the policy purchaser or "named insured." Erie contends that Cooper does not qualify as a Class II insured under subsection (c) because Pison did not provide Cooper permission to use "'*the*' motor vehicle to which the policy applies," namely, either of the two owned vehicles. *See Stone v. Liberty Mut. Ins. Co.*, 478 S.E.2d 883, 886 (Va. 1996) (emphasis added) (interpreting a similar UIM coverage statute under Virginia law and holding that a permissive user was not using "the" owned vehicles to which the policy applied, and that a named insured "generally cannot give permission to use a vehicle that the named insured does not own").

Erie contends that its interpretation of Section 33-6-31 is supported by decisions issued by the Supreme Court of Appeals of West Virginia. The Court has explained that "[o]ptional UIM coverage is intended to 'enable *the insured* to protect himself'" against losses arising from underinsured third parties. *See Brehm*, 873 S.E.2d at 865 (quoting *Deel*

⁶ Erie further contends that the reference in subsection (a) to "the use of a nonowned automobile," merely ensures that a custodian of the vehicle, even though she is not the owner, can provide permission to another to use the owner's vehicle. *See Metro. Prop. & Liab. Ins. Co. v. Acord*, 465 S.E.2d 901, 907-08 (W. Va. 1995).

v. Sweeney, 383 S.E.2d 92, 95 (W. Va. 1989)); *see also Alexander v. State Auto Mut. Ins. Co.*, 415 S.E.2d 618, 625 (W. Va. 1992) (explaining that UIM coverage “is intended to benefit the person who bought the policy”).⁷

Finally, Erie points out that Section 33-6-31d requires that an insurer offering optional UIM coverage identify the “number” of vehicles and corresponding premium. Because the policy does not identify the number of non-owned vehicles, Erie contends that it would be unable to make a commercially reasonable offer of UIM coverage. Thus, Erie submits that Section 33-6-31d contemplates that offers of UIM coverage required by Section 33-6-31 are limited to owned vehicles under the policy.

Cooper maintains, however, that Erie’s policy argument regarding the “number” of vehicles circumvents the statute’s plain language, which, in Cooper’s view, requires that UIM coverage be offered for non-owned vehicles when liability coverage applies to those vehicles. Cooper also maintains that he is a Class II insured under Section 33-6-31(c), as a permissive user of “the motor vehicle to which the policy applies.” Because the policy “applies” liability coverage to a class of non-owned vehicles, including Huffman’s vehicle,

⁷ Erie also argues that excluding non-owned vehicles from an offer of UIM coverage to a named insured is permitted under W. Va. Code § 33-6-31(k). Thus, Erie submits that if UIM coverage for non-owned vehicles can be excluded, then Section 33-6-31(b) cannot require an insurer to offer such coverage. In response, Cooper contends that subsection (k) does not address an insurer’s initial obligation to offer UIM coverage.

In addition, the West Virginia Insurance Federation filed an amicus curiae brief in this Court supporting Erie’s position. The Federation submits that because Section 33-6-31 requires that an insurer offer UIM coverage to a named insured for a vehicle the insured owns, requiring an offer of UIM coverage to a named insured for a class of non-owned vehicles would duplicate the process of offering coverage to the owners of the vehicles in that class.

Cooper contends UIM coverage should extend not only to the named insured, but also to any permissive user of any vehicle insured under the policy.

We have not found any West Virginia authority that definitively answers the question presented. Contrary to Erie's contention, we conclude that the state court's recent decision in *Brehm*, which issued after the district court entered judgment in the present case, is not controlling due to the distinct factual circumstances present in that case. 873 S.E.2d 859.

In *Brehm*, the Court addressed in relevant part whether guest passengers in a rental vehicle qualified as Class II insureds under Section 33-6-31(c). *Id.* The passengers sought UIM coverage under the personal liability policy issued to the driver of the rental vehicle. *Id.* at 861-63. The driver's policy did not extend liability coverage to the rental vehicle, but such coverage was extended by operation of law under a separate statute. *Id.* at 865. On these facts, the Court held in relevant part that the guest passengers in the rental vehicle did not qualify under Section 33-6-31(c) for Class II coverage as permissive users of "the motor vehicle to which the policy applies." *Id.* at 866.

In contrast here, we must consider whether an employee who was a passenger in a non-owned vehicle that was included in the liability coverage under the plain language of the policy qualifies as a Class II insured under the statute. Thus, although portions of the analysis in *Brehm* may aid in the state court's decision here, we conclude that the factual distinctions between this case and *Brehm* require additional analysis beyond the holding in *Brehm*. We therefore determine that certification to the Supreme Court of Appeals of West Virginia is warranted to decide whether West Virginia Code § 33-6-31 requires that an

insurer, who issues a commercial automobile insurance policy to the named insured providing liability coverage for particular owned vehicles and a class of non-owned vehicles, offer underinsured motorist coverage for the class of non-owned vehicles.

II.

Under the privilege made available by the West Virginia Uniform Certification of Questions of Law Act, it is hereby ORDERED: (1) That the question stated above be, and the same hereby is, certified to the Supreme Court of Appeals of West Virginia; (2) that the Clerk of this Court forward to the Supreme Court of Appeals of West Virginia, under the official seal of this Court, a copy of this order and, to the extent requested by the Supreme Court of Appeals of West Virginia, the original or a copy of the record in this Court; and (3) that any request for all or part of the record be fulfilled by the Clerk of this Court simply upon notification from the Clerk of the Supreme Court of Appeals.

The names and addresses of counsel of record for the parties are:

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Jennifer D. Roush

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This Order is entered by Senior Circuit Judge Keenan, with the concurrence of Judge Harris and Judge Quattlebaum.

QUESTION CERTIFIED

FOR THE COURT:

Barbara M. Keenan

Barbara Milano Keenan
United States Circuit Judge

A True Copy, Teste
Nwamaka Anowi, Clerk
BY 
Deputy Clerk

General Docket
United States Court of Appeals for the Fourth Circuit

Court of Appeals Docket #: 22-1129

Docketed:

Nature of Suit: 4110 Insurance

02/10/2022

Erie Insurance Property & Casualty Company v. James Cooper

Appeal From: United States District Court for the Southern District of West Virginia at Charleston

Fee Status: fee paid

Case Type Information:

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

Originating Court Information:

District: 0425-2 : 2:20-cv-00321

Presiding Judge: Irene C. Berger, U. S. District Court Judge

Date Filed: 05/07/2020

Date Order/Judgment:

Date Order/Judgment EOD:

Date NOA Filed:

Date Rec'd COA:

01/13/2022

01/13/2022

02/07/2022

02/07/2022

01/28/2021

01/28/2021

Prior Cases:

None

Current Cases:

None

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[COR NTC Retained]

BURNS WHITE LLC

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v.

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ERIE INSURANCE PROPERTY & CASUALTY COMPANY

Plaintiff - Appellant



v.

JAMES SKYLAR COOPER

Defendant - Appellee

WEST VIRGINIA INSURANCE FEDERATION

Amicus Supporting Appellant

02/10/2022	<u>1</u>	Case docketed. Originating case number: 2:20-cv-00321. Case manager: MBeall. [1001107766] [22-1129] MEB [Entered: 02/10/2022 08:53 AM]
02/10/2022	<u>2</u>	DOCKETING NOTICE issued Re: [1] case. Originating case number: 2:20-cv-00321. Mailed to: R. Chad Duffield and Robert Allen Campbell at FARMER, CLINE & CAMPBELL, PLLC, P. O. Box 3842, Charleston, WV 25338; Randall Lee Trautwein at LAMP BARTRAM LEVY TRAUTWEIN PERRY & POWELL, PLLC, P. O. Box 2488, Huntington, WV 25725-2488. [1001107771] [22-1129] MEB [Entered: 02/10/2022 08:59 AM]
02/10/2022	<u>3</u>	BRIEFING ORDER filed. Mailed to: R. Chad Duffield and Robert Allen Campbell at FARMER, CLINE & CAMPBELL, PLLC, P. O. Box 3842, Charleston, WV 25338; Randall Lee Trautwein at LAMP BARTRAM LEVY TRAUTWEIN PERRY & POWELL, PLLC, P. O. Box 2488, Huntington, WV 25725-2488. 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. [1001107774] Opening Brief and Appendix due 03/22/2022. Response Brief due 04/21/2022. [22-1129] MEB [Entered: 02/10/2022 09:02 AM]
02/11/2022	<u>4</u>	APPEARANCE OF COUNSEL by Matthew J. Perry for Erie Insurance Property & Casualty Company. [1001108617] [22-1129] Matthew Perry [Entered: 02/11/2022 09:37 AM]
02/11/2022	<u>5</u>	DISCLOSURE STATEMENT by Erie Insurance Property & Casualty Company. Was any question on Disclosure Form answered yes? Yes [1001108643] [22-1129] Matthew Perry [Entered: 02/11/2022 09:53 AM]
02/16/2022	<u>6</u>	APPEARANCE OF COUNSEL by Richard C. Duffield for James Skylar Cooper. [1001111528] [22-1129] R. Duffield [Entered: 02/16/2022 11:40 AM]
02/16/2022	<u>7</u>	APPEARANCE OF COUNSEL by Jennifer Roush for James Skylar Cooper. [1001111534] [22-1129] R. Duffield [Entered: 02/16/2022 11:42 AM]
02/16/2022	<u>8</u>	DISCLOSURE STATEMENT by James Skylar Cooper. Was any question on Disclosure Form answered yes? No [1001111541] [22-1129] R. Duffield [Entered: 02/16/2022 11:44 AM]
02/18/2022	<u>9</u>	APPEARANCE OF COUNSEL by J. Jarrod Jordan for Erie Insurance Property & Casualty Company. [1001112952] [22-1129] James Jordan [Entered: 02/18/2022 09:20 AM]
02/18/2022	<u>10</u>	DOCKETING STATEMENT by Erie Insurance Property & Casualty Company.. [1001113282] [22-1129] Matthew Perry [Entered: 02/18/2022 12:33 PM]
03/04/2022	<u>11</u>	APPEARANCE OF COUNSEL by Jill Elizabeth Lansden for Erie Insurance Property & Casualty Company. [1001121507] [22-1129] Jill Lansden [Entered: 03/04/2022 09:50 AM]
03/22/2022	<u>12</u> 	(ENTRY RESTRICTED) BRIEF by Erie Insurance Property & Casualty Company. Type of Brief: OPENING. [1001132273] [22-1129]--[Edited 03/28/2022 by MEB - See ECF 15] Matthew Perry [Entered: 03/22/2022 02:09 PM]
03/22/2022	<u>13</u> 	(ENTRY RESTRICTED) JOINT APPENDIX by James Skylar Cooper and Erie Insurance Property & Casualty Company. Digital media exhibit volume? No.

[1001132277] [22-1129] --[Edited 03/28/2022 by MEB - See ECF 16] Matthew Perry
[Entered: 03/22/2022 02:14 PM]

- 03/23/2022 14 Docket correction requested from Erie Insurance Property & Casualty Company RE: appendix. Correction due 03/28/2022. [1001133059] [22-1129] MEB [Entered: 03/23/2022 03:28 PM]
- 03/28/2022 15 Corrected BRIEF by Erie Insurance Property & Casualty Company. Type of Brief: OPENING. [1001134943] [22-1129] Matthew Perry [Entered: 03/28/2022 09:21 AM]
- 03/28/2022 16 Corrected JOINT APPENDIX by James Skylar Cooper and Erie Insurance Property & Casualty Company. Digital media exhibit volume? No. [1001134946] [22-1129] Matthew Perry [Entered: 03/28/2022 09:23 AM]
- 03/28/2022 35 Receipt of paper copy of OPENING BRIEF filed at [15] by Erie Insurance Property & Casualty Company. Number of pages: [57]. Sufficient: Yes. Number of copies: [4]. Received by clerk date: 10/07/2022. [1001246017] [22-1129] TB [Entered: 10/12/2022 11:20 AM]
- 03/28/2022 36 Receipt of paper copy of JOINT APPENDIX filed at [16] by Erie Insurance Property & Casualty Company. Total number of volumes (including any sealed): [1]. Total number of pages in all volumes: [586]. Total number of sealed volumes: 0. Sufficient? Yes. CD/DVD/Other exhibit? No. Number of copies: [4]. Received by clerk date: 10/07/2022. [1001246022] [22-1129] TB [Entered: 10/12/2022 11:21 AM]
- 03/28/2022 47 Receipt of paper copy of CORRECTED APPENDIX filed at [16] by Erie Insurance Property & Casualty Company. Total number of volumes (including any sealed): [1]. Total number of pages in all volumes: [587]. Total number of sealed volumes: 0. Sufficient? Yes. CD/DVD/Other exhibit? No. Number of copies: [4]. Received by clerk date: 11/16/2022. [1001266943] [22-1129] TW [Entered: 11/16/2022 12:06 PM]
- 03/28/2022 48 Receipt of paper copy of CORRECTED OPENING BRIEF filed at [15] by Erie Insurance Property & Casualty Company. Number of pages: [58]. Sufficient: Yes. Number of copies: [4]. Received by clerk date: 11/16/2022. [1001266946] [22-1129] TW [Entered: 11/16/2022 12:07 PM]
- 03/29/2022 17 MOTION by West Virginia Insurance Federation as Amicus Curiae to file amicus curiae brief without consent of all parties on appeal within time allowed by FRAP 29(e).. Date and method of service: 03/29/2022 ecf. [1001136511] [22-1129] David Stone [Entered: 03/29/2022 02:44 PM]
- 03/29/2022 18 AMICUS CURIAE BRIEF by West Virginia Insurance Federation as Amicus Curiae. [1001136516] [22-1129] David Stone [Entered: 03/29/2022 02:49 PM]
- 03/29/2022 19 NOTICE ISSUED to James Skylar Cooper requesting response to motion to file amicus curiae brief [17]. Response due 04/08/2022. [1001136729] [22-1129] MEB [Entered: 03/29/2022 04:36 PM]
- 03/29/2022 39 Receipt of paper copy of AMICUS BRIEF filed at [18] by West Virginia Insurance Federation. Number of pages: [18]. Sufficient: Yes. Number of copies: [4]. Received by clerk date: 10/13/2022. [1001247315] [22-1129] MEB [Entered: 10/13/2022 02:12 PM]
- 04/07/2022 20 RESPONSE/ANSWER by James Skylar Cooper to Motion to file amicus curiae brief [17]. [1001142276] [22-1129] R. Duffield [Entered: 04/07/2022 03:37 PM]
- 04/07/2022 21 ORDER filed granting motion to file amicus curiae brief [17]. Disclosure Statement filed (if corporate amicus)? Y. Appearance Form filed? Y. Copies to all parties. [1001142363] [22-1129] MEB [Entered: 04/07/2022 04:52 PM]

04/07/2022	<u>22</u>	APPEARANCE OF COUNSEL by Jill Cranston Rice for West Virginia Insurance Federation. [1001142368] [22-1129] MEB [Entered: 04/07/2022 04:58 PM]
04/07/2022	<u>23</u>	DISCLOSURE STATEMENT by West Virginia Insurance Federation. Was any question on Disclosure Form answered yes? No. [1001142369] [22-1129] MEB [Entered: 04/07/2022 04:59 PM]
04/21/2022	<u>24</u>	BRIEF by James Skylar Cooper. Type of Brief: RESPONSE. [1001149998] [22-1129] R. Duffield [Entered: 04/21/2022 02:54 PM]
04/21/2022	31	Receipt of paper copy of RESPONSE BRIEF filed at [24] by James Skylar Cooper. Number of pages: [58]. Sufficient: YES. Number of Copies: [4]. Received by clerk date: 10/04/2022. [1001242344] [22-1129] TB [Entered: 10/05/2022 11:09 AM]
05/09/2022	<u>25</u>	NOTICE re: Notice of Change of Name and Contact Information by Erie Insurance Property & Casualty Company. [1001159183] [22-1129] Matthew Perry [Entered: 05/09/2022 02:10 PM]
05/09/2022	<u>26</u>	NOTICE re: Notice of Change of Name and Contact Information by Erie Insurance Property & Casualty Company by Erie Insurance Property & Casualty Company. [1001159235] [22-1129] Jill Lansden [Entered: 05/09/2022 02:43 PM]
05/11/2022	<u>27</u>	BRIEF by Erie Insurance Property & Casualty Company. Type of Brief: REPLY. [1001160913] [22-1129] Matthew Perry [Entered: 05/11/2022 03:17 PM]
05/11/2022	37	Receipt of paper copy of REPLY BRIEF filed at [27] by Erie Insurance Property & Casualty Company. Number of pages: [27]. Sufficient: Yes. Number of Copies: [4]. Received by clerk date: 10/07/2022. [1001246024] [22-1129] TB [Entered: 10/12/2022 11:23 AM]
05/20/2022	<u>28</u>	NOTICE re: Notice of Change of Name and Contact Information Form for J. Jarrod Jordan by Erie Insurance Property & Casualty Company. [1001165369] [22-1129] James Jordan [Entered: 05/20/2022 08:06 AM]
10/03/2022	<u>30</u>	CASE TENTATIVELY CALENDARED for oral argument during the December 6-9, 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: 10/11/2022. [1001240975] [22-1129] JLC [Entered: 10/03/2022 04:13 PM]
10/11/2022	<u>32</u>	MOTION by West Virginia Insurance Federation to participate in oral argument. Date and method of service: 10/11/2022 ecf. [1001245465] [22-1129] David Stone [Entered: 10/11/2022 03:32 PM]
10/11/2022	<u>33</u>	NOTICE REGARDING CONFLICT WITH PROPOSED ARGUMENT DATES by Amicus Supporting Appellant West Virginia Insurance Federation. Argument Session: December 6-9, 2022. Days you are available: December 6 and 7, 2022. Identify any other cases you are tentatively scheduled to argue this session: None. Other scheduling information: West Virginia Insurance Federation's motion to participate in oral argument as amicus curiae is currently pending before the Court.. [1001245488] [22-1129] David Stone [Entered: 10/11/2022 03:45 PM]
10/11/2022	<u>34</u>	NOTICE REGARDING CONFLICT WITH PROPOSED ARGUMENT DATES by Appellee James Skylar Cooper. Argument Session: 12/6-9/2022. Days you are available: 12/6/22, 12/8/22, 12/9/22. Identify any other cases you are tentatively scheduled to argue this session: None. . [1001245547] [22-1129] R. Duffield [Entered: 10/11/2022 04:17 PM]
10/12/2022	<u>38</u>	ORDER filed deferring action on motion to participate in oral argument filed by Amicus Supporting Appellant West Virginia Insurance Federation [32]. Copies to all parties.

[1001246493] [22-1129] MEB [Entered: 10/12/2022 03:43 PM]

10/13/2022	<u>40</u>	NOTICE ISSUED to James Skylar Cooper requesting response to motion to participate in oral argument. [32] Response due: 10/20/2022. [1001247431] [22-1129] MEB [Entered: 10/13/2022 03:22 PM]
10/20/2022	<u>41</u>	RESPONSE/ANSWER by James Skylar Cooper to [40], [32]. [1001251542] [22-1129] R. Duffield [Entered: 10/20/2022 11:02 AM]
10/21/2022	<u>42</u>	CASE CALENDARED for oral argument. Date: 12/06/2022. Session Starting Time: 9:30 am. Entrance: 1000 East Main Street. Check-in Time: 8:45 - 9:00 am. Forms due within 7 calendar days. [1001252755] [22-1129] JLC [Entered: 10/21/2022 05:21 PM]
10/25/2022	<u>43</u>	ORAL ARGUMENT ACKNOWLEDGMENT by James Skylar Cooper. Counsel arguing: R. Chad Duffield. Answering argument time: 20 minutes. .. [1001253901] [22-1129] R. Duffield [Entered: 10/25/2022 10:09 AM]
10/26/2022	<u>44</u>	COURT ORDER filed granting motion to participate in oral argument [32] Copies to all parties. [1001255631] [22-1129] MEB [Entered: 10/26/2022 05:01 PM]
10/28/2022	<u>45</u>	ORAL ARGUMENT ACKNOWLEDGMENT by West Virginia Insurance Federation. Counsel arguing: Jill Cranston Rice. .. [1001256845] [22-1129] David Stone [Entered: 10/28/2022 02:00 PM]
10/28/2022	<u>46</u>	ORAL ARGUMENT ACKNOWLEDGMENT by Erie Insurance Property & Casualty Company. Counsel arguing: Matthew James Perry. Opening argument time: 11 minutes. Rebuttal argument time: 4 minutes. .. [1001256929] [22-1129] Matthew Perry [Entered: 10/28/2022 02:42 PM]
11/30/2022	<u>49</u>	MOTION by Erie Insurance Property & Casualty Company to continue/reschedule oral argument. Date and method of service: 11/30/2022 ecf. [1001274383] [22-1129] Jill Lansden [Entered: 11/30/2022 11:00 AM]
11/30/2022	<u>50</u>	COURT ORDER filed granting motion to continue oral argument [49]. Copies to all parties. [1001274660] [22-1129] MEB [Entered: 11/30/2022 01:45 PM]
01/06/2023	<u>51</u>	CASE TENTATIVELY CALENDARED for oral argument during the March 7-10, 2023 argument session. No additional paper copies of briefs and appendices are required from counsel. Notify Clerk's Office of any scheduling conflict by: 01/13/2023. [1001295069] [22-1129] JLC [Entered: 01/06/2023 05:45 PM]
02/02/2023	<u>52</u>	CASE CONTINUED FROM TENTATIVE CALENDAR. [1001309159] [22-1129] JLC [Entered: 02/02/2023 10:22 AM]
02/10/2023	<u>53</u>	CASE TENTATIVELY CALENDARED for oral argument during the May 3-5, 2023, argument session. No additional paper copies of briefs and appendices are required from counsel. Notify Clerk's Office of any scheduling conflict by: 02/17/2023. [1001314297] [22-1129] JLC [Entered: 02/10/2023 12:48 PM]
02/14/2023	<u>54</u>	NOTICE REGARDING CONFLICT WITH PROPOSED ARGUMENT DATES by Appellant Erie Insurance Property & Casualty Company. Argument Session: 05/23. Days you are available: No days available. Identify any other cases you are tentatively scheduled to argue this session: None. . [1001315632] [22-1129] Matthew Perry [Entered: 02/14/2023 09:10 AM]
02/27/2023	<u>55</u>	CASE CONTINUED FROM TENTATIVE CALENDAR. [1001323404] [22-1129] JLC [Entered: 02/27/2023 04:44 PM]
06/16/2023	<u>56</u>	CASE TENTATIVELY CALENDARED for oral argument during the 9/19/23 - 9/22/23, argument session. No additional paper copies of briefs and appendices are required from

counsel. Notify Clerk's Office of any scheduling conflict by: 06/26/2023. [1001386327] [22-1129] JLC [Entered: 06/16/2023 12:23 PM]

- 06/26/2023 57 NOTICE REGARDING CONFLICT WITH PROPOSED ARGUMENT DATES by Appellant Erie Insurance Property & Casualty Company. Argument Session: 9/19/2023 - 9/22/2023. Days you are available: 9/19/2023. Identify any other cases you are tentatively scheduled to argue this session: None. Other scheduling information: Counsel is currently scheduled for a jury trial in Lawrence County, Ohio starting on 9/21/2023. That case is scheduled for mediation on July 5, 2023.. [1001390868] [22-1129] Matthew Perry [Entered: 06/26/2023 09:57 AM]
- 07/11/2023 58 Amended NOTICE REGARDING CONFLICT WITH PROPOSED ARGUMENT DATES by Appellant Erie Insurance Property & Casualty Company. Argument Session: 9/19/2023 - 9/22/2023. Days you are available: 9/19/2023 - 9/22/2023. Identify any other cases you are tentatively scheduled to argue this session: None. Other scheduling information: This Amended Notice is being filed to advise that undersigned counsel's previously identified conflict has resolved and has no conflicts with the proposed argument dates. [1001399955] [22-1129] Matthew Perry [Entered: 07/11/2023 01:35 PM]
- 07/17/2023 59 CASE CALENDARED for oral argument. Date: 09/19/2023. Session Starting Time: 9:30 a.m.. Check-in Time: 8:45-9:00 a.m.. Forms due within 7 calendar days. [1001402797] [22-1129] JLC [Entered: 07/17/2023 09:46 AM]
- 07/20/2023 60 ORAL ARGUMENT ACKNOWLEDGMENT by Erie Insurance Property & Casualty Company. Counsel arguing: Matthew J. Perry. Opening argument time: 11 minutes. Rebuttal argument time: 4 minutes. .. [1001405954] [22-1129] Matthew Perry [Entered: 07/20/2023 03:18 PM]
- 07/20/2023 61 ORAL ARGUMENT ACKNOWLEDGMENT by West Virginia Insurance Federation. Counsel arguing: Jill Cranston Rice. Opening argument time: 5 minutes. .. [1001406057] [22-1129] David Stone [Entered: 07/20/2023 04:18 PM]
- 07/21/2023 62 ORAL ARGUMENT ACKNOWLEDGMENT by James Skylar Cooper. Counsel arguing: R. Chad Duffield. Answering argument time: 20 minutes. .. [1001406440] [22-1129] R. Duffield [Entered: 07/21/2023 10:28 AM]
- 09/19/2023 63 ORAL ARGUMENT heard before the Honorable Pamela A. Harris, A. Marvin Quattlebaum, Jr. and Barbara Milano Keenan. Attorneys arguing case: Ms. Jill Rice for Amicus Supporting Appellant West Virginia Insurance Federation, Mr. Matthew James Perry for Appellant Erie Insurance Property & Casualty Company and R. Chad Duffield for Appellee James Skylar Cooper. Courtroom Deputy: Emily Borneisen. [1001441483] [22-1129] EB [Entered: 09/19/2023 09:51 AM]