IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

DOCKET NO: 24-ICA-320

TAMMY S. WRATCHFORD and MICHAEL W. WRATCHFORD,

Petitioners
Plaintiffs below,

v.

ERIE INSURANCE PROPERTY & CASUALTY COMPANY,
Respondents
Defendants below,

APPEAL FROM THE CIRCUIT COURT OF HARDY COUNTY, WEST VIRGINIA
THE HONORABLE H. CHARLES CARL, III
(CIVIL ACTION NO. 18-C-3)

PETITIONERS' BRIEF

J. David Judy, III, Esquire (WVSB # 1939)
JUDY & JUDY ATTORNEYS AT LAW
P.O. Box 636
Moorefield, WV 26836
Phone: (304) 538-7777
Fax: (304) 538-7404
judy_atty@hardyent.com
Counsel for Petitioners/ Plaintiffs Below

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

I. ASSIGNMENTS OF ERROR

A. The Circuit Court erred in denying Plaintiffs' post-trial motions requesting the Court to find, as a matter of law, that the Plaintiffs "substantially prevailed" against Erie Insurance Property & Casualty Company, "Erie", in their property damage suit against their insurer following the fire at their home of February 20, 2017.

B. The Circuit Court erred in denying Motions of the Plaintiffs, Wratchford, to grant a new or second trial against Erie for damages under *Hayseeds, Inc. v. State Farm Fire & Casualty*, 177 W.Va. 323, 352 S.E. 2d 73 (1986), based on errors by the Circuit Court in the Verdict Form denying provisions to the jury to find damages upon the Plaintiffs having "substantially prevailed", or alternatively having failed to bifurcate the underlying fire damage claims, and upon the Court having failed to comply with legal authority under Hayseeds, supra, and its progeny, *Ramaco Resources, LLC v. Federal Insurance Company*, 74 F. 4th 255 (2023).

C. The Circuit Court erred in denying attorney fees and litigation expenses to the Plaintiffs under *Hayseeds*, supra; *Miller v. Fluharty*, 201 W.Va. 685, 500 S.E. 2d 310 (1997); and *Hadorn v. Shea*, 193 W.Va. 350, 456 S.E. 2d 194 (1995), Syl. Pt. 1 and 2. The Erie Insurance Company not only denied the property damage claims of the insureds following their house fire on February 20, 2017, but was instrumental in and procured criminal charges against its own insured for arson and insurance fraud as found by the jury.

D. The Circuit Court erred in denying prejudgment interest to the Plaintiffs, following trial under W.Va. Code § 56-6-31, *Grove By and Through Grove v. Myers*, 181 W.Va. 342, 382 S.E. 2d 536 (1989); *State Farm Mut. Auto. Ins. Co. v. Rutherford*, 229 W. Va. 73, 726 S.E. 2d 41 (2011); and *Bond v. City of Huntington*, 166 W.Va. 581, 276 S.E. 2d 539 (1981). Plaintiffs are entitled to prejudgment interest based on the verdict of the jury at trial finding liability against Erie and granting liquidated property damages resulting from the fire at Plaintiffs' home on February 20, 2017, thereby enforcing Plaintiffs' rights under the Erie homeowner's insurance policy covering their home at the time of the fire, and alternatively, a new trial thereon.

E. The Circuit Court erred in denying Plaintiffs' post-trial Motions for Judgment Notwithstanding Verdict or alternatively, a new trial, on property damages reduced and/or denied by the jury as manifestly inadequate, proven by uncontroverted and undisputed evidence, for personal property, Plaintiffs' Exhibit 72, with supporting proof; damages to trees, shrubs, plants and lawn, Plaintiffs' Exhibit 79; and for Plaintiffs' out of pocket interest paid to Summit Bank on their mortgage from the date of the fire, February 20, 2017, until Erie finally paid off the insureds' mortgage in August, 2017, demonstrated in Plaintiffs' Exhibit 78.

F. The Circuit Court erred in denying Plaintiffs' post-trial motions for judgment as a matter of law demanding the Circuit Court to grant further relief and a second or new trial upon the jury denying Plaintiffs' claims of violations of the West Virginia Unfair Trade Practices Act, ("UTPA") W.Va. Code § 33-11-4 (3), (5), and (9).

II. STATEMENT OF THE CASE

A. Statement of Relevant Facts and Procedural History

A fire occurred at the home of Tammy and Michael Wratchford, located at 1257 South Fork Estates III, Moorefield, West Virginia, during the afternoon of February 20, 2017. The Moorefield Volunteer Fire Department extinguished the fire and ruled it "unintentional". Plaintiffs' Exhibit (hereinafter "PE") 4, Wratchford Joint Appendix (hereinafter "JA") JA 399.

The home of the Wratchfords/Plaintiffs below was insured at the time of the fire by an "Ultra HomeProtector Insurance Policy" through Erie Insurance Property & Casualty Company, hereinafter "Erie". PE 5/JA 407-452. The insurance policy provided guaranteed replacement cost of the dwelling estimated at $221,500.00, JA 408, 435, 437; full replacement value of personal property, without deduction or depreciation, JA 408, 422, 436, estimated at $166,125.00; and included coverages for payment of the mortgage, JA 408, 409, 423; trees, shrubs and landscaping, JA 410, 421; and rental expenses, JA 417; among other damages, JA 408-409.

Upon notice of the fire on February 20, 2017, Erie immediately contacted investigators with Fire & Safety Investigation Consulting Services, LLC, (hereinafter "FSI"), through its employee, Ronald C. Ayersman, (hereinafter "Ayersman"), who was also employed by the West Virginia State Fire Marshal's Office, (hereinafter "WVSFMO"), PE 113C, JA 2400-2401, and PE 11, JA 575, 579. As early as February 23, 2017, Erie and its investigators opined that the origin of the fire at the Wratchford home was incendiary/arson, PE 12, JA 684, but with no objective evidence to support an intentional cause. Ayersman was assigned to work the case for WVSFMO after FSI reported the fire to the WVSFMO Arson Hotline. PE 11, JA 579. Objective tests through the West Virginia State Police, PE 14, JA 686, and through Great Lakes Laboratory, PE 15, JA 690, showed no supporting evidence of incendiary cause.

The Wratchfords cooperated with the Erie investigation, following the referral to the WVSFMO. Wratchfords retained counsel who contacted Erie on March 21, 2017. PE 38, JA 3095. On April 26, 2017, in response to the demands of Erie under their insurance policy, PE 28A, JA 813, the Wratchfords underwent "Examinations Under Oath", by an attorney for Erie. PE 29, JA 846. Wratchfords provided

property damage proof of loss for their dwelling at $181,038.67, PE 29, JA 957; PE 74, JA 2099, and for personal property at $160,148.42, PE 29, JA 949; PE 72, JA 1177-1996, together with other documents demanded by Erie within letters from their attorney dated April 6, and April 12, 2017, respectively. PE 28, JA 810, and PE 28A, JA 813. On April 12, 2017, Tammy Wratchford was forced to resign from her employment with the WVDMV by concerted actions of Erie and Ayersman. PE 112, JA 2392; PE 101, 102,103, 104, 105, and 106; JA 2293, 2319-2321, 2327, 2338, 2339, 2344, and 2348.

On June 19, 2017, Tammy Wratchford was arrested upon Criminal Complaints filed in the Magistrate Court of Hardy County, West Virginia, by Ayersman. PE 30, JA 965. On June 27, 2017, counsel for Wratchfords served a letter on Erie re-stating the demands for settlement of property damages of $181,038.67 for the dwelling and $160,148.42 for personal property resulting from the fire as initially filed with Erie on April 26, 2017. PE 128, JA 3097-3099. By letter dated July 11, 2017, Erie denied coverage for all property damage losses based on claims of arson and misrepresentation by the Wratchfords during Erie's investigation amounting to insurance fraud. PE 41, JA 991. At Page 14 of the Erie Homeowners Policy, Wratchfords were required to file suit within one (1) year of the date of the fire. PE 5, JA 424.

Wratchfords and their counsel retained experts to aid in their defense of criminal charges of arson and to assist in prosecuting claims against Erie. PE 66, JA 1094. Reports were filed by Michael Phillips of Creative Construction and Home Inspections, PE 74, JA 2099, PE 75, JA 2101, and PE 75A, JA 2107, and by MSES Consultants, Inc., PE 66, JA 1094, PE 137, JA 2627 and PE 138, JA 2664 with PE 138A, JA 2672. MSES involved R. J. Lee Group, Inc., of Monroeville, PA, to perform electron microscope studies of the electrical circuits from the Wratchford home as part of the MSES evaluation. PE 137, JA 2627, 2639-2640, 2661; PE 135, JA 2572-2615. The Court denied admission of the RJ Lee Report at trial although MSES relied on it in part, for opinions. All objective evidence proved the origin of the Wratchford fire was electrical in nature. On February 6, 2018, the Hardy County Grand Jury returned "No True Bill", PE 67, JA 1167, on all criminal charges, procured by Erie and filed by Ayersman against

Tammy Wratchford, and by Order dated February 12, 2018, all criminal charges were dismissed. PE 68, JA 1171.

On February 13, 2018, Wratchfords, through their undersigned attorney, filed suit against Erie and its agents and employees upon Erie having refused to provide insurance coverage for property damages from the February 20, 2017, fire. JA 126. On July 5, 2018, Plaintiffs filed an Amended Complaint to include Ayersman and the WVSFMO as defendants. JA 211. Motions, discovery, and other litigation proceedings continued until trial by jury on May 4, 2023, continuing through May 25, 2023. The verdict of the jury found Erie responsible to the Wratchfords under the homeowners insurance policy, JA 3060, and solely, 100%, at fault for all damages suffered by the Plaintiffs, Wratchford, as a result of the fire investigations. JA 3073.

On Page 4 of the Verdict Form under CLAIM: BREACH OF CONTRACT, at Question 5 the jury found: (A) That Tammy and Michael Wratchford had a valid policy of insurance with Erie Insurance Property & Casualty Company ("Erie"); (B) that Wratchfords were entitled to benefits under any such policy but that Erie breached the policy and did not provide those benefits; and (C) that Erie's breach resulted in damages to Tammy S. and/or Michael W. Wratchford. JA 3060.

On Page 15 of the Verdict Form under PART II – DAMAGES, at Question 15, the jury assigned damages from the insurance benefits that Tammy and Michael Wratchford had proven under their home insurance policy but were not provided by Erie: (1) For Dwelling Coverage: $590,542.57; (2) for Personal Property Coverage: $90,000.00; (3) for 12 Months Rental Expenses: $7,200.00; and (4) Denied damages for Tress, Shrubs, Plants and Lawn stating: $0.00. JA 3071.

On Page 16 of the Verdict Form, under, PART II- DAMAGES, Question 16, the jury found: (1) Damages against Erie, solely, in the amount of $40,800.00, for additional rental expense losses; (2) Damages against Erie, solely, in the amount of $58,991.50, for attorney's fees and costs related to the defense of Tammy Wratchford in the criminal prosecution for arson and insurance fraud. JA 3072.

On Page 17, Question 17, of the Verdict Form, under PART II- DAMAGES, the jury found Erie 100% at fault for any and all damages suffered by the Wratchfords, in addition to damages by Erie for failure to comply with the fire insurance policy. JA 3073.

To this date, Erie has paid no property damages to the Plaintiffs resulting from the fire at their home of February 20, 2017, from their homeowner's insurance policy or from the jury verdict.

At trial, Plaintiffs demanded additional provisions in the Verdict Form for damages resulting from breach of the insurance policy by Erie under Question 15. The Circuit Court denied Plaintiffs' requests over objection. Transcript of May 24, 2023, p. 16-17, 24, 26, 31-32, JA 4127-4128, 4135, 4137, 4142-4143. There was no entry in the Verdict Form submitted to the jury to allow damages under Hayseeds or for the jury to find that the Plaintiffs "substantially prevailed" as instructed within Instruction No. 8 from the charge over objection of Plaintiffs. JA 2996; Transcript of May 24, 2023, p. 16-17, JA 4127, 4128.

B. Post-Trial Procedural History

Post-Trial Motions included the following: (1) *Motion for Pre-Judgment and Post-Judgment Interest* filed on June 13, 2023, JA 3078; (2) *Motion to Find that Plaintiffs "Substantially Prevailed" in the Property Damage Suit Against Erie* with exhibits filed June 15, 2023, JA 3087; (3) (Second) *Motion to Find Plaintiffs Substantially Prevailed Filed October 12, 2023, JA 3111; (4) Motion for Judgment Notwithstanding Verdict; Motion for New Trial on Damages; Motion for New Trial on Failure to Provide Non-Economic Damages Under Hayseeds, Including Aggravation and Inconvenience; and Motion for New Trial on Prejudgment Interest* filed October 12, 2023, JA 3120; (5) *Supplemental Motion for Judgment Notwithstanding Verdict; Motion to Notwithstanding Verdict on Damages; Motion for New Trial/Second Trial on Failure to Provide Non-Economic Damages Including Aggravation and Inconvenience, Under Hayseeds; Motion for New Trial on Pre-Judgment Interest and Economic Losses Resulting From Delay in Payment; Motion to Hold Prejudgment Interest as Non-Final Adjudication (Interlocutory) of Damages and to Delay Appeal Time Pending Second Trial and Motion for Post-Judgment Interest From Date of Jury Verdict, May 25, 2023, at 8%* filed March 27, 2024, JA 3258; (6)

Supplemental Motion to Find That Plaintiffs "Substantially Prevailed" in the Property Damage Suit Against Erie and For Second Hayseeds Trial filed on March 27, 2024, JA 3289; (7) *Rule 60(b) Motion for Reconsideration and Supplement to Motion and reply to Find that Plaintiffs "Substantially Prevailed" in the Property Damage Suit Against Erie* with exhibits filed June 13, 2024, JA 4189.

The Court denied all Post-Trial Motions filed by the Plaintiffs, and specifically denied Plaintiffs' rights to damages under *Hayseeds*; attorney fees and litigation expenses; pre-judgment interest; proven and uncontroverted property damages; Motion for new trial for damages only; and Motion to find as a matter of law that Erie violated the Unfair Trade practices Act 33-11-4 (3), (5), and (9).

Post-trial Orders entered by the Court included: (1) *Order From July 19, 2023 Status Conference* filed July 31, 2023, JA 3109; (2) *Order Denying in Part and Granting in Part Motion for Prejudgment Interest and Post-Judgment Interest, and Denying Motion for New Trial on Prejudgment Interest* filed February 2, 2024, JA 3224; (3) *Judgment Order* entered March 18, 2024, JA 3252; (4) *Order Denying Erie Insurance Property & Casualty Company's Motion to Alter or Amend the Judgment to Reduce the Award of Contractual Damages and to Vacate the Award of Non-Contractual Damages* filed on July 22, 2024, JA 4217; (5) *Order Denying Plaintiffs' Motion and Supplemental Motion to Find That Plaintiffs "Substantially Prevailed" in the Property Damage Suit Against Erie and for Second Hayseeds Trial* filed July 22, 2024, JA 4235; and (6) *Order Denying Plaintiffs' Supplemental Motion for Judgment Notwithstanding Verdict; Motion for Notwithstanding Verdict on Damages; Motion for New trial/Second Trial on Failure to Provide Non-Economic Damages including Aggravation and Inconvenience Under Hayseeds; Motion for New trial on Pre-Judgment Interest and Economic Losses Resulting From Delay in Payment; Motion to Hold Prejudgment Interest as Non-Final Adjudication (Interlocutory) of Damages and to Delay Appeal Time Pending Second Trial and Motion for Post-Judgment Interest From Date of Jury Verdict May 25, 2023 at 8% on March 27, 2024* filed July 22, 2024, JA 4246.

The Orders entered by the Court denying Post-Trial Motions of the Plaintiffs are contradictory in their content, findings, and conclusions. The Plaintiffs are entitled to relief as a matter of law and for a new trial on damages only. The Circuit Court erred as a matter of law.

III. SUMMARY OF ARGUMENT

A. Plaintiffs below, Wratchford, have "substantially prevailed" in obtaining a jury verdict and judgment against Erie for amounts equal to or approximating amounts claimed by the insureds for property damages due under their homeowner's insurance policy prior to the commencement of a lawsuit against the insurer, Erie. *Hayseeds, Inc. v. State Farm Fire & Casualty*; Syl. Pt. 2, *Miller v. Fluharty*; Syl. Pt. 2, *Thomas v. State Farm Mut. Auto. Ins. Co*. 181 W.Va. 604, 383 S.E. ed 786 (1989); Syl. Pt 1, *Jordan v. National Grange Mut. Ins. Co*. 183 W.Va. 9, 393 S.E. 2d 647 (1990); Syl. Pt 4, *Richardson v. Kentucky National Insurance Co*., 216 W.Va. 464, 607 S.E. 2d 793 (2004); Syl. Pt. 4*, Jones v. Sanger*, 217 W.Va. 564, 618 S.E. 2d 573 (2005); Syl. Pt. 2, *Hadorn v. Shea*, 193 W. Va. 350, 456 S.E. 2d 194 (1995).

The Claims Management System file of Erie, PE 11, JA 536, is referenced within PE 9A, JA 477, the investigation file of Ayersman. On April 26, 2017, during an Examination Under Oath demanded by Erie as a requirement of their insurance contract/policy, Wratchfords, together with their attorney, submitted property damage proof of loss, reports, and supporting documents proving property damage to their dwelling in the amount of $181,038.67, PE 29, JA 957; PE 74, JA 2099, and for their personal property destroyed by the fire in the amount of $160,148.42, PE 29, JA 949, revised in PE 72, JA 1177.

On June 27, 2017, counsel for Wratchfords emailed a letter to Erie reiterating the demands of the insureds for damages to their dwelling in the amount of $181,038.67 and for damages to their personal property in the amount of $160,148.42 specifically referring to the proof of loss filed with Erie dated April 16, 2017, Exhibit 128, JA 3097-3098, attached to Plaintiffs' original *Motion to Find That Plaintiffs "Substantially Prevailed" in the Property Damage Suit Against Erie* filed with the Circuit Court on June 15, 2023, JA 3087. The Order entered by the Court on July 22, 2024, *Denying Plaintiffs' Motion and Supplemental Motion to Find That Plaintiffs "Substantially Prevailed" in the Property Damage Suit Against Erie and For Second Hayseeds Trial*, JA 4235, ignores the demands of the Wratchfords for property damage loss to their home and personal property prior to filing suit and ignores black letter law requiring the Court to address property damages claims made prior to filing suit in consideration of the issue of "substantially prevail". Id. The Order denying Plaintiffs' Motions to find that they "substantially

prevailed" relies solely on a Court ordered mediation which took place on January 24, 2020, three (3) years after the fire and two (2) years after suit was filed by the Wratchford insureds to enforce their homeowner's insurance policy to pay fire damage losses of February 20, 2017. JA 4237. Negotiations broke down when Erie denied insurance coverage for property damages before suit was filed. PE 41, JA 991.

B. Plaintiffs are entitled to a new or second trial against Erie solely on the issue of damages, *Ramaco Resources, LLC v. Federal Insurance Company,* 74 F. 4th 255 (2023)*, Thomas v. State Farm, Mut. Auto. Ins. Co.,* 181 W. Va. 604, 383 S.E. 2d 786 (1989), upon the failure of the Court to allow a proper Verdict Form upon the refusal of the Court to direct property damage claims and law defining "substantially prevail" as stated in Syl. Pts 2, 3, and 4 of *Miller v. Fluharty,* supra.

C. Plaintiffs are entitled to attorney fees and litigation expenses against Erie upon the Wratchford insureds having "substantially prevailed" pursuant to Syl. Pts. 1, 3, 4, 5, and 6 of *Richardson v. Kentucky Nat. Ins. Co.*, supra. The Court was clearly wrong and erred in finding that the Plaintiffs did not "substantially prevail" in their property damage claims against Erie; in finding that the insureds are not entitled to a second *Hayseeds* trial; and in denying Wratchfords, their attorney fees, litigation expenses and costs as allowed in *Richardson*, supra.

D. The Plaintiffs are entitled to prejudgment interest on the verdict of the jury against Erie for property damages under their homeowners insurance policy under W.Va. Code § 56-6-31; *Grove By and Through Grove v. Myers*, 181 W.Va. 342, 382 S.E. 2d 536 (1989*); State Farm Mut. Auto. Ins. Co. v. Rutherford,* 229 W.Va. 73, 726 S.E. 2d 41 (2011); and *Bond v. City of Huntington*, 166 W.Va. 581, 276 S.E. 2d 539 (1981). Plaintiffs' recovery of liquidated property damages resulting from the February 20, 2017, fire is not "founded upon contract" under W.Va. Code § 56-6-27 and *Miller v. WesBanco Bank, Inc.*, 245 W.Va. 363, 859 S.E. 2d 306 (2021). It is for the Court, not the jury to assess prejudgment interest on verdicts and judgments for liquidated property damage recoveries under insurance policies as an element of compensatory damages on losses that are certain and readily capable of calculation under W.Va. Code § 56-6-31. *Grove By and Through Grove v. Myers* in Syl. Pts. 1, 2 and 3; *Bond v. City of Huntington*, Syl.

Pt. 5; *State Farm Mut. Auto. Ins. Co. v. Rutherford*, Syl Pt. 3. Insurance contracts are "substantially different from other commercial contracts", with awards of prejudgment interest for liquidated property damages governed by W.Va. Code § 56-6-31. *Miller v. Fluharty*, 201 W.Va. 685 at 700, 500 S.E. 2d 310 at 325 (1997); *Bond v. City of Huntington*, supra.

E. The jury failed to award adequate verdicts on uncontroverted amounts for property damages to personal property, PE 72, JA 1177; mortgage interest paid by Plaintiffs after the fire and until August, 2017, PE 78, JA 2110; and on landscaping, trees and shrubs, PE 79, JA 2111. Damages were specifically proved in uncontroverted amounts for each of these damage claims at trial. Plaintiffs have proven liability of Erie. The jury found Erie responsible to Plaintiffs under the insurance policy. Erie has not contested liability under the homeowner's policy by any post-trial motion and Erie filed no Motion for new trial on any issue from trial. Upon the failure of the jury to return a verdict in the full amounts of undisputed and uncontroverted property damages; upon failure of the jury to grant any amounts proven at trial for post fire mortgage interest paid by Plaintiffs; and upon the failure of the jury to grant damages for undisputed landscaping losses; the verdict is "manifestly inadequate" and Plaintiffs are entitled to a new trial solely on the issue of these proven damages. *McKenzie v. Sevier*, 244 W.Va. 416, 854 S.E. 2d 236 (2020), Syl. Pts. 2, 3, 4, and 5; *Hall v. Groves*, 151 W.Va. 449, 153 S.E. 2d 165 (1967), Syl. Pts. 1 and 2; *King v. Bittinger*, 160 W.Va. 129, 231 S.E. 2d 239 (1976), Syl. Pt. 4; *Gebhardt v. Smith*, 187 W.Va. 515, 420 S.E. 2d 275 (1992), Syl. Pts. 2, 3, and 4; *Marsch v. American Electric Power Co*., 207 W.Va. 174, 530 S.E. 2d 173 (1999), Syl Pts. 1, 2, and 3.

F. Erie clearly violated multiple provisions of the West Virginia Unfair Trade Practices Act, W.Va. Code § 33-11-4 (3), (5), and (9) during their claim investigation processes following the fire at Plaintiffs' home on February 20, 2017. Erie confronted the insureds with erroneous credit reports which included defamatory financial information from other individuals. PE 28A-1, JA 835. Erie falsely accused its insureds of arson and of making misleading statements, PE 41, JA 991, proven wrong by clear evidence and by the verdict of the jury. Erie and its representatives ignored exonerating evidence and denied insurance coverage by refusing settlement and by failing to investigate in good faith. PE 14, 15,

24, 66, 135, 137, 138; JA 686, 690, 790, 1094, 2572, 2627, 2664. Erie forced its insureds to defend themselves from false criminal allegations and forced its insureds to prosecute a civil action to enforce their rights under their homeowner's insurance policy. PE 30, JA 965, 968; JA 124-185. Erie refused to pay off the mortgage long past the deadlines required under the policy. PE 5, 62, 62-1; JA 407, 1064-1065, 1088-1089. Erie refused to reimburse mortgage interest paid by its insured from the date of the fire until August, 2017. PE 78, JA 2110. Erie forced its insureds to hire an attorney, and to retain engineers and experts to overcome the false allegations against its insureds. PE 41, JA 991. Erie intentionally procured Criminal Complaints against Tammy Wratchford, caused her to be arrested upon Criminal Complaints brought by an employee of Erie, PE 30, JA 965, and was instrumental in the termination of the employment of Tammy Wratchford with the WVDMV, PE 112, 101, 104; JA 2392, 2293, 2339. The Wratchfords are entitled to a new trial on W.Va. Code § 33-11-4 (3), (5), and (9), the UTPA. *Dodrill v. Nationwide Mut. Ins. Co*., 201 W.Va. 1, 491 S.E. 2d 1 (1996), Syl. Pts. 1, 2, 3, and 4; *Barefield v. DPIC Companies, Inc*., 215 W.Va. 544, 600 S.E. 2d 256 (2004), Syl Pt. 5; *Stonewall Jackson Memorial Hosp. Co. v. American United Life Ins. Co*., 206 W.Va. 458, 525 S. E. 2d 649 (1999) Syl. Pts. 2, 3, and 4.

IV. STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Oral Argument is necessary under Rule 19. The issues on appeal involve challenges to findings of fact and conclusions of law and ultimate disposition in matters generally related to settled law, abuse of discretion and under a clearly erroneous standard, and questions of law involving interpretation of statute and application of existing law. The appellate court will benefit from insights of counsel and explanation of issues during oral argument.

V. STANDARD OF REVIEW

Challenges to findings of fact and conclusions of law of the Circuit Court are reviewed using a two-prong standard. The Final Order and ultimate disposition is under an abuse of discretion standard, and the Circuit Court's underlying findings of fact are reviewed under a clearly erroneous standard. *Phillips v. Fox*, 193 W.Va. 657, 661, 458 S.E. 2d 327, 331 (1995). See Syl. Pt. 1; *Burnside v. Burnside*,

194 W.Va. 263, 460 S.E. 2d 264 (1995); *McCormick v. Allstate Ins. Co*., 197 W.Va. 415, 475 S.E. 2d 507 (1996), Syl. Pt. 1.

Where an issue on appeal from Circuit Court is clearly a question of law, a *de novo* standard of review is applied. Syl. Pt. 2, *State ex rel. Orlofske v. City of Wheeling*, 212 W.Va. 538, 575 S.E. 2d 148 (2002); *Fauble v. Nationwide Mut. Fire Ins. Co*., 222 W.Va. 365, 664 S.E. 2d 706 (2008). The *de novo* standard of review includes interpretation or application of law to findings of fact. Syl. Pt. 1, *State ex rel. Cooper v. Caperton*, 196 W.Va. 208, 470 S.E. 2d 102 (1996). Questions of law involving an interpretation of a statute are reviewed applying a de novo standard. Syl Pt. 2, *Richardson v. Kentucky Nat. Ins. Co*., 216 W.Va. 464, 607 S.E. 2d 793 (2004).

VI. ARGUMENT

A. The Circuit Court erred in denying Plaintiffs' post-trial motions requesting the Court to find, as a matter of law, that the Plaintiffs "substantially prevailed" against Erie Insurance Property & Casualty Company, "Erie", in their property damage suit against their insurer following the fire at their home of February 20, 2017.

The Circuit Court failed to legally define how an insured "substantially prevails" in a property damage lawsuit against an insurance company in its *Order Denying Plaintiffs' Motion And Supplemental Motion To Find That Plaintiffs "Substantially Prevailed" In The Property Damage Suit Against Erie And For A Second Hayseeds Trial*. Rather, the Order of the Court primarily relies upon determinations of "substantially prevails" from *Miller v. Fluharty*, supra, 1997, and *Hadorn v. Shea*, supra, 1995, two cases in which there was never a proof of loss filed or a demand for damages made to the insurance carrier before suit was filed. This is clear error.

Syl. Pt. 1 of *Hayseeds*, supra, is the seminal statement of law in allowing economic and non-economic damages against an insurance carrier upon a finding that the insured "substantially prevails in a property damage suit". Specifically, Syl. Pt. 1 of *Hayseeds* states as follows:

> 1. Whenever a policyholder "substantially prevails in a property damage suit" against its insurer, the insurer is liable for: (1) the insured's reasonable attorney's fees in vindicating its claim; (2) the insured's damages for net economic loss caused by the delay in settlement, and damages for aggravation and inconvenience.

Hayseeds was a fire damage claim, and as in the Wratchford case *sub judice,* State Farm denied coverage of a fire claim based on claims of arson. The Court in *Hayseeds* noted that in considering an award of consequential damages, including litigation expenses:

> … initially, it is important to observe that insurance contracts are qualitatively different from other contracts. Not only do policyholders rely upon insurance policies, but a host of third-party creditors rely upon those policies as well. Furthermore, the bargaining power of an insurance carrier *vis-à-vis* the bargaining power of the policyholder is disparate in the extreme. When a policyholder's property has been destroyed—whether it be a private house or a business structure – there is an urgent need to rebuild immediately.

Erie was fully aware of its disparity in bargaining power and its ability to financially overwhelm the Wratchfords in hiring professional insurance and fire investigators, Mr. Tuttoilmondo, an experienced and professional insurance adjuster; Mr. Jones, a former police officer, now an experienced fire investigator; Mr. Harris, a professional fire investigator with a full staff, including Mr. Ayersman, an employee of FSI, who is also employed with the WVSFMO; and Mr. Davis, an electrical engineer, all of whom have performed numerous separate and joint fire investigations for the Erie Insurance Company over the course of more than ten (10) years. 404 (b) Motion, JA317, 328-350. Based upon the joint efforts of Erie and of each its employees and representatives, the Wratchfords were forced to file suit against Erie. *Hayseeds* contemplated this process in stating:

> Accordingly, we hold today that whenever a policyholder must sue his own insurance company over any property damage claim, and the policyholder substantially prevails in the action, the company is liable for the payment of the policyholder's reasonable attorneys' fees. Presumptively, reasonable attorneys' fees in this type of case is one-third (1/3) of the face amount of the policy… *Hayseeds*, supra, 177 W.Va. 323 at 329, 352 S.E. 2d 73 at 80.

Hayseeds further held "when an insurer wrongfully withholds or unreasonably delays payment of an insured's claim, the insurer is liable for "all foreseeable, consequential damages naturally flowing from the delay". Id, supra. The language of Syl. Pt. 1 in *Hayseeds* is very important in the determination of when and how the Court should consider "substantially prevail". The language "whenever a policyholder substantially prevails in a property damages suit against its insurer" demonstrates a two-step process for damages. First a verdict for property damages, and second, *Hayseeds* damages.

The issue of *Hayseeds* damages and "substantially prevails" was again considered in *Thomas v. State Farm Mutual Auto Insurance Company*, supra in 1989 at Syl. Pt. 2 which states:

> The question of whether an insured has substantially prevailed against his insurance company on a property damage claim is determined by the status of the negotiations between the insured and the insurer prior to the institution of the lawsuit. Where the insurance company has offered an amount materially below the damage estimates submitted by the insured, and the jury awards the insured an amount approximating the insured's damage estimates, the insured has substantially prevailed.

The *Thomas* Court explained the term "substantially prevailed" at 181 W.Va. 604, 608, 383 S.E. 2d 786 at 790 as follows:

> The term "substantially prevail" necessarily refers to a verdict in favor of the insured on the underlying property damage claim. If the jury finds that the insured has a good defense to the claim and returns a verdict for the insurer, the insured does not prevail and the word "substantial" is meaningless. It is only when the insured prevails, i.e., obtains a verdict, that the word "substantial" becomes meaningful to determine whether the insured is entitled to the damages authorized in *Hayseeds* for the insurer's failure to honor the contract. These are "(1) the insured's reasonable attorneys' fees in vindicating its claim; (2) the insured's damages for net economic loss caused by the delay in settlement; and (3) damages for aggravation and inconvenience." Syl. Pt. 1., in part.

The Court in *Thomas* related the phrase "substantially prevails" to the status of the property damage claim "at the time that the negotiations broke down". Id. Clearly, the Court in *Thomas* recognized that negotiations were broken down in a property damage claim when the insurance company refused payment and the insured was required to hire an attorney to institute a lawsuit. This is black letter law of Syl. Pt. 2 in *Thomas*, supra. For whatever reason, the Circuit Court completely ignored Syl. Pt. 2 of *Thomas* and the numerous cases which followed *Thomas* including Syl. Pt. 2. of *Miller v. Fluharty*, supra; Syl. Pt. 4 of *Richardson v. Kentucky National Insurance Company*, supra; Syl. Pt. 4 of *Jones v. Sanger*, supra; and Syl. Pts. 1 and 2 of *Hadorn v. Shea*, supra, even though many of these cases were cited by the Circuit Court below, and substantially misrepresented within the Order denying a finding that Plaintiffs "substantially prevailed" entered July 22, 2024.

The *Order Denying Plaintiffs' Motion and Supplemental Motion to Find that Plaintiffs "Substantially Prevailed" in the Property Damage Suit Against Erie and For Second Hayseeds Trial,* JA 4235-4241*,* stated correct findings of fact in Paragraphs 1-8, including at Paragraph 1, the fire loss on

February 20, 2017; Paragraph 2, the Erie Insurance policy covering the fire loss, dwelling and personal property; Paragraph 3, that Plaintiffs noticed the claim with Erie on the same day as the fire, on February 20, 2017; at Paragraph 4, that the Plaintiffs retained counsel based upon the Erie Investigation; at Paragraph 5, that Erie denied coverage under the Homeowner's policy by letter dated July 11, 2017; at Paragraph 7, that the Plaintiffs filed suit against Erie on February 13, 2018; and at Paragraph 8, that Plaintiffs filed an Amended Complaint to include the WVSFMO and Ayersman as an Assistant State Fire Marshal, which was actually filed on July 5, 2018.

Paragraph 9 of the findings of fact of the Court Order is misleading and substantially inaccurate by the failure of the Court to acknowledge proofs of loss filed by the Wratchfords at the Examination Under Oath on April 26, 2017, PE 29, JA 949, 957; JA 4237, paragraph 10, and the reiteration of the property damage demands by counsel for the Wratchfords made by letter dated June 27, 2017, PE 128, JA 3097, included with Plaintiffs' *Motion to Find That Plaintiffs "Substantially Prevailed" in the Property damage Suit Against Erie*, filed June 15, 2023, as an exhibit therewith. Paragraph 12 of the findings of fact of the Court is patently wrong in finding that negotiations between the Wratchfords and Erie "broke down" at the mediation referred to in Paragraph 11 on January 24, 2020, three years after the fire event and two years after suit was filed.

Paragraph 15 of the findings of fact of the Court Order is correct in noting the finding of the jury against Erie and the award to the Plaintiffs by the jury for property damages in a total amount of $687,742.57. Paragraph 16 of the Order is also accurate that the jury awarded damages in favor of the Plaintiffs, Wratchford, against Erie in the total amount of $99,791.50 for additional rental expenses and for the attorney fees and costs incurred in defense of the criminal prosecution of Tammy Wratchford for arson and attempted arson.

The jury clearly agreed that the criminal prosecution was procured by Erie, its employees and its representatives in the fire investigation, as the Court found in its Order denying Erie's Post-Trial Motions also entered and filed July 22, 2024, JA 4217, and specifically at Paragraphs 29-31, JA 4227. The evidence at trial proved that Ayersman occupied a dual role as an employee of FSI and Erie prior to and

during the arson investigation performed by Ayersman purportedly on behalf of the WVSFMO, upon the jury finding that Erie was responsible for the attorney fees and costs of the Plaintiffs defending the criminal charges dismissed. JA 3072-3073.

The conclusions of law cited by the Court in its *Order Denying Plaintiffs' Motion and Supplemental Motion to Find that Plaintiffs "Substantially Prevailed" in the Property Damage Suit Against Erie and for Second Hayseeds Trial* entered July 22, 2024, misstate and misrepresent black letter law as to when an insured "substantially prevails" in a property damage action against his or her insurer. Specifically, at Syl. Pt. 4 of *Richardson v. Kentucky National Insurance Company*, 216 W.Va. 464, 607 S.E. 2d 793 (2004) the Court held as follows:

> 4. "An insured 'substantially prevails' in a property damage action against his or her insurer when the action is settled for an amount equal to or approximating the amount claimed by the insured immediately prior to the commencement of the action, as well as when the action is concluded by a jury verdict for such an amount. In either of these situations the insured is entitled to recover reasonable attorney's fees from his or her insurer, as long as the attorney's services were necessary to obtain payment of the insurance proceeds." Syllabus Point 1, **796 *467 *Jordan v. National Grange Mut. Ins. Co*., 183 W.Va. 9, 393 S.E. 2d 647 (1990). See also Syl. Pt. 4 *Hadorn v. Shea*, supra; Syl. Pt. 2, *Miller v. Fluharty*, supra; and Syl. Pt. 4, *Jones v. Sanger*, supra.

Hayseeds was a fire damage claim. *Richardson* was a fire damage claim. *Miller* and *Hadorn*, cited by the Court in its conclusions of law in the July 22, 2024, Order Denying Plaintiffs' Motion to Find that They "Substantially Prevailed" are underinsured motorists coverage claims in which neither of the insureds made any proof of loss claim prior to the commencement of a lawsuit against the insurance company. Plaintiffs, Petitioners herein, agree with Paragraph 2 of the conclusions of law in the Order of July 22, 2024, JA 4238-4239, that the determination of whether the Plaintiffs "substantially prevailed" in their property damage claims against Erie "is a question of law for the Court" as cited in *Miller v. Fluharty*, supra. The conclusions of law stated by the Court in Paragraphs 3, 4, 5, and 6, JA 4239, misrepresent the issues of law before the Court in finding as the Plaintiffs, Wratchford, did not "substantially prevail" in their property damage claims against Erie. Syl. Pts. 1 and 2 cited by the Court from *Hadorn v. Shea*, supra, remain black letter law which must be followed by the Court in determining that the Wratchfords did "substantially prevail" in their property damage claims against Erie. Clearly,

negotiations broke down between the insureds and Erie before the lawsuit was filed on February 13, 2018. The insureds, Wratchford, had filed proof of loss forms with supporting documentation with Erie on April 26, 2017, PE 29, JA 949, 957; PE 74, JA 2099; and PE 72, JA 1177, followed by a reiteration of the property damage claim amounts by letter from counsel on June 27, 2024. JA 2597.

Erie completely denied coverage for all property damage claims of its insureds by letter dated July 11, 2017. PE 41, JA 991. Erie, its employees and representatives, procured criminal charges for arson and insurance fraud against Tammy Wratchford, the Erie insured, PE 30, JA 965, 968, which required the Plaintiffs to retain counsel to overcome false claims filed in a Criminal Complaint by Ayersman who occupied a dual role during the investigation of the fire at the Wratchford residence. Substantial evidence was presented to the jury during the trial regarding the dual role and conflicts of interest of Ayersman. PE 113C, JA 2400; PE 35, JA 980; PE 35A, JA 983; PE 35B, JA 986; PE 36, JA 989; PE 37, JA 990; PE 114, JA 2404; PE 115, JA 2405-2408; PE 116, JA 2409-2421; PE 117, JA 2422; PE 122, 123, 124, 125, JA 2423-2471. At Paragraph 16 of the Verdict Form, the jury returned a verdict against Erie in the amount of $58,991.50 representing the exact amount claimed by the Plaintiffs for attorney fees/costs generated by the criminal defense of criminal prosecution of Tammy S. Wratchford. PE 68A, JA 1172. At Question 17 of the Verdict Form, the jury found Erie 100% at fault for the consequential damages suffered by the Plaintiffs as a result of the fire investigations. At Question 5 of the Verdict Form, Paragraph (a), the jury found that the Wratchfords had a valid policy of insurance at the time of the fire with Erie; at Paragraph (b) that the Wratchfords were entitled to benefits under the homeowner's policy but that Erie breached the policy and did not provide those benefits; and at Paragraph (c) that Erie's breach of the homeowner's policy resulted in damages to Tammy S. Wratchford and/or Michael W. Wratchford. The jury clearly held Erie responsible for the criminal prosecution of Tammy Wratchford as a part of the investigation and claim processes by Erie.

The Court made conclusions of law in Paragraphs 29, 30, and 31 of the *Order Denying Erie Insurance Property & Casualty Company's Motion to Alter Amend the Judgment to Reduce the Award of*

Contractual Damages and to Vacate the Award of Non-Contractual Damages entered July 22, 2024, as follows:

> 29. Evidence of the attorney fees/costs incurred by the Plaintiffs in defense of the criminal prosecution of Tammy S. Wratchford were as a direct result of the conduct of Erie and supported by the evidence at trial upon which the jury found Erie 100% responsible for all actions and damages incurred by the Plaintiffs as a result of the actions of the Erie Insurance Company in its investigation processes and upon failure to timely pay proven and uncontroverted damages resulting from the fire. The attorney fees/costs found by the jury is the exact amount presented to the jury in Plaintiffs' Exhibit 68A, $58,991.50.
>
> 30. The Court finds that strategy of Erie to claim arson proximately resulted in damages to the Plaintiffs as found by the jury under Question 16. Erie cannot now complain that its strategy did not prevail and Erie cannot now avoid the damages to Plaintiffs that the strategy of claiming arson proximately caused to the Plaintiffs.
>
> 31. The evidence presented at trial clearly demonstrates that the Erie Insurance Company procured the investigation processes of all parties upon which defenses were made by Erie to deny the claims for damages of the Plaintiffs under the Erie policy of insurance which has been found by the jury to cover Plaintiffs' losses from the fire and based on the evidence presented at trial in support of the damages found by the jury, specifically noted by Erie in Plaintiffs' Exhibit 11 admitted into evidence at trial.

These conclusions of law by the Court, support Petitioners' claims that they are entitled to *Hayseeds* damages upon the verdict of the jury entered May 25, 2023, including (1) the insureds reasonable attorney fees in vindicating its claim; and (2) the insureds damages for net economic loss caused by the delay in settlement, and (3) damages for aggravation and inconvenience. *Hayseeds* at Syl. Pt. 1; *Thomas* at Syl. Pt. 1; Syl. Pt. 1 of *Jordan v. National Grange Mutual Insurance Company*, 183 W.Va. 9, 393 S.E. 2d 647 (1990); Syl. Pt. 1 of *Miller v. Fluharty*, supra; Syl. Pt. 1 of *Richardson v. Kentucky National Insurance Company*, supra; and Syl. Pt. 2 of *Jones v. Sanger*, supra; Syl. Pt 2 of *McCormick v. Allstate Insurance Company*, 197 W.Va. 415, 475 S.E. 2d 507 (1996). The Court in *Hayseeds* noted that it is "… we consider it of little importance whether an insurer contests and insureds claim in good or bad faith…, and "when an insurer wrongfully withholds or unreasonably delays payment of an insureds claim, the insurer is liable for all foreseeable, consequential damages naturally flowing from the delay". *Hayseeds*, supra, 177 W.Va. 323, 329-330, 352 S.E. 2d 73 at 79-80. *Hayseeds* held that if the insurer "guessed wrong as to its duty" to

its insureds, the insurance company "should be compelled to bear the consequences thereof". *Hayseeds*, supra, 177 W.Va. 323 at 329, 352 S.E. 2d 73 at 79.

The Plaintiffs, Wratchford, have "substantially prevailed" in their property damage suit against Erie. The insureds filed pre-suit proof of loss and demands for property damages within policy limits stated in the Erie homeowner's policy, PE 29, JA 949, 957; PE 128, JA 3097-3099. The negotiations between the insureds and the insurer "broke down" prior to the institution of the law suit upon Erie denying coverage by letter dated July 11, 2017. PE 41, JA 991. The Wratchfords obtained a jury verdict finding liability against Erie under the insurance policy and property damages in excess of proof of loss and property damage claims made by the insureds prior to instituting suit against Erie. JA 3060, 3071. The Court was clearly wrong in finding as a matter of law that the Plaintiffs did not "substantially prevail" against Erie within the meaning of *Hayseeds* and its progeny.

B. The Circuit Court erred in denying Motions of the Plaintiffs, Wratchford, to grant a second trial against Erie for damages under *Hayseeds, Inc. v. State Farm Fire & Casualty*, 177 W.Va. 323, 352 S.E. 2d 73 (1986), based on errors by the Circuit Court in the Verdict Form denying provision to the jury to find damages upon the Plaintiffs having "substantially prevailed", or alternatively having failed to bifurcate the underlying fire damage claims, and upon the Court having failed to comply with legal authority under Hayseeds, supra, and its progeny, *Ramaco Resources, LLC v. Federal Insurance Company*, 74 F. 4th 255 (2023).

Syl. Pt. 1 of *Hayseeds* definitively states:

> 1. Whenever a policyholder "substantially prevails in a property damage suit" against its insurer, the insurer is liable for: (1) the insured's reasonable attorneys' fees in vindicating its claim; (2) the insured's damages for net economic loss caused by the delay in settlement, and damages for aggravation and inconvenience. Also cited at Syl. Pt. 1, *Thomas*, supra; Syl. Pt. 2, *McCormick*, supra; Syl. Pt. 1, *Miller v. Fluharty*, supra; Syl. Pt. 1, *Richardson*, supra; and Syl. Pt. 2, *Jones v. Sanger*, supra.

This legal citation was included in Jury Instruction No. 8 "Substantially Prevail" citing *Miller v. Fluharty*, supra, given to the jury by the Court with the other instructions at the end of the trial. JA 2996. Jury Instruction No. 8 provided the direction of law for the jury to find *Hayseeds* damages upon finding that the Plaintiffs "substantially prevailed", however, the Court refused to include provisions in the Verdict Form as a part of Paragraph 15 to allow the jury to assess *Hayseeds* damages to the Plaintiffs for net economic loss caused by the delay in settlement and for aggravation and inconvenience resulting from

failure of Erie to timely pay the losses claimed by the Plaintiffs, over the objection of Plaintiffs. Transcript from May 24, 2023, p. 16-17, JA 4127-4128.

Extensive discussions and arguments were made between counsel for Plaintiffs and the Court of the necessity of providing provisions within the Verdict Form to allow additional consequential damages as a part of Paragraph 15. The arguments by counsel for Plaintiff for inclusion of additional provisions for *Hayseeds* damages resulting from violations of the insurance policy contract begin at Page 6 of the Transcript of May 24, 2023, JA 4117, Lines 8-17 and continue at Page 7, JA 4118, Lines 23 and 24, on to Page 8, JA 4119, Lines 1-11, and continuing from Lines 18-24; Page 16, JA 4127, Lines 9-18 including Plaintiffs' objection to the Verdict Form; Page 17, JA 4128, Lines 5-21, with statements by the Court on page 19, JA 4130, questioning the contractual damages in Question 15, Lines 18-20; Page 21, JA 4132, Lines 20-22, continuing at Page 22, JA 4133, Lines 6-9, with the Court responding in opposition to Plaintiffs' arguments on Page 22, Line 17-24; and on page 24, JA 4135, with arguments continuing by counsel for the Plaintiffs, again noting the objection of Plaintiffs to the failure of the Court to instruct the jury properly for *Hayseeds* damages between Lines 4 and 18. Arguments continued by counsel for Plaintiffs on Page 29, JA 4140, continuing on Page 30, JA 4141. The Court made its partial ruling at the bottom of Page 39, JA 4150, of the Transcript, Lines 22-24, continuing on Page 40, JA 4151. There was no provision made in the Verdict Form for the Court to allow the jury to consider *Hayseeds* damages once the jury may find that Plaintiffs "substantially prevailed" in accordance with Jury Instruction No. 8. Plaintiffs were substantially prejudiced by the failure of the Court to allow provisions for *Hayseeds* damages and directions for a determination that Plaintiffs "substantially prevailed" by the jury.

The question remains as to whether or not the determination that Plaintiffs "substantially prevailed" was to be determined by the Court as matter of law as stated by the Court at JA 4239, Paragraph 2 of conclusions of law, in the Order denying Plaintiffs' Motions to find Plaintiffs substantially prevailed, or if the issue is a question of fact for the jury. Syl. Pt. 1 of *Hayseeds* cited herein appears to make the definitive statement that the determination of whether the policyholder "substantially prevails in the property damage suit" is a matter of law for the Court rather than a question of fact for the jury. The

Court in *Hayseeds* stated that "when an insurer wrongfully withholds or unreasonably delays payment of insured's claim, the insurer is liable for all foreseeable, consequential damages naturally flowing from the delay". The Court in *Hayseeds* stated:

> …We believe the interests of both the parties and the judicial system would be better served by the enunciation of a clear, bright line standard governing the availability of consequential damages in property damages insurance cases. Accordingly, we hold today that when a policyholder substantially prevails in a property damage suit against an insurer, the policyholder is entitled to damages for net economic loss caused by the delay in settlement as well as an award for aggravation and inconvenience. *Hayseeds*, 177 W.Va. 323 at 330, 352 S.E. 2d 73 at 80.

The "entitlement" of the insured to damages once the policyholder "substantially prevails" is clearly a matter of law for the Court, not a question of fact to the jury.

In any event, whether this Court determines that entitlement of *Hayseeds* damages to the insured is a question of fact for the jury or a question of law for the Court, the Verdict Form provided to the jury in the Wratchford case *sub judice* is clearly deficient and failed to provide direction to the jury to make a finding that Plaintiffs "substantially prevailed". The Verdict Form failed to make any provisions for the jury to assess net economic loss caused by the delay in settlement under the insurance policy contract or for damages to the Plaintiffs for aggravation and inconvenience resulting from the claims process by Erie upon the finding by the jury that Erie is solely 100% at fault for all damages suffered by the Plaintiffs following the fire.

The liquidated property damages allowed by the jury for dwelling coverage and personal property coverage were clearly equal to or approximating, or exceeding the values demanded in the proof of loss and claims made to Erie prior to commencement of the lawsuit. Erie not only denied coverage based on false claims of arson and misrepresentation, but also procured criminal charges for arson and insurance fraud through its various employees, including Ayersman, as found by the jury, all of which caused the Plaintiffs to require the assistance of counsel to prevent the Plaintiff, Tammy Wratchford, from being prosecuted for criminal charges and incarcerated based on the false claims of Erie as found by the jury. By the jury finding in favor of the Plaintiffs, Wratchford, against Erie for coverage by the insurance policy

under Paragraph 5 of the Verdict Form, the claims by Erie of arson and misrepresentation were disproven absolutely. This correlates to the findings of the Court in *Thomas*, supra, where the Court held:

> … The term "substantially prevail" necessarily refers to a verdict in favor of the insured on the underlying property damage claim. If the jury finds that the insurer has a good defense to the claim and returns a verdict for the insurer, the insured does not prevail and the word "substantial" is meaningless. It is only when the insured prevails, i.e., obtains a verdict, that the word "substantial" becomes meaningful to determine whether the insured is entitled to the damages authorized in Hayseeds for the insurers failure to honor the contract. These are (1) the insured's reasonable attorney's fees in vindicating its claim; (2) the insured's damages for net economic loss caused by the delay in settlement; and (3) damages for aggravation and inconvenience." Citing Syl. Pt. 1 of *Hayseeds. Thomas*, 181 W.Va. 604 at 608, 383 S.E. 2d 786 at 790.

In remanding this matter for a second trial for Plaintiffs against Erie for *Hayseeds* damages, this Court must give direction to the Circuit Court to allow consequential damages against Erie under all facets of the actions of Erie for which the jury has found Erie responsible and liable to Plaintiffs. The Court is given direction by Syl. Pts. 3 and 4 of *Miller v. Fluharty* which state as follows:

> 3. An insurance carrier has a duty, once a first-party policyholder has submitted proof of a loss, to promptly conduct a reasonable investigation of the policyholder's loss based upon all available information. On the basis of that investigation, if liability to the policyholder has become reasonably clear, the insurance carrier must make a prompt, fair and equitable settlement offer. If the circuit court finds evidence that the insurance carrier has failed to properly or promptly investigate the policyholder's claim, then the circuit court may consider that evidence in determining whether the policyholder has substantially prevailed in an action to enforce the insurance contract.
>
> 4. When examining whether a policyholder has substantially prevailed against an insurance carrier, a court should look at the negotiations as a whole from the time of the insured event to the final payment of the insurance proceeds. If the policyholder makes a reasonable demand during the course of the negotiations, within policy limits, the insurance carrier must either meet that demand, or promptly respond to the policyholder with a statement why such a demand is not supported by the available information. The insurance carrier's failure to promptly respond is a factor for courts to **314 *689 consider in deciding whether the policyholder has substantially prevailed in enforcing the insurance contract, and therefore, whether the insurance carrier is liable for the policyholder's consequential damages under *Hayseeds, Inc. v. State Farm Fire & Cas.*, 177 W.Va. 323, 352 S.E. 2d 73 (1989) and its progeny.

The consequential damages to the Plaintiffs for aggravation and inconvenience resulting from the criminal charges procured by Erie through its employees as a part of its investigation process were extreme. During a second trial for Hayseeds damages, Plaintiffs must be allowed to present evidence to the jury of the actions of Ayersman in his dual role as an employee of Erie in prosecuting charges against

Tammy Wratchford in support of the denial of coverage by Erie. The individuals representing Erie during the claims process have historically worked together in performing joint investigations and joint examinations as demonstrated by the reports of Harris considered in Plaintiffs' 404 (b) motion, JA 317, 328-350, which were denied admission by the trial Court.

Ayersman took the original call for FSI from Erie. PE 113C, JA 2400. Ayersman's timesheets demonstrate that Ayersman was working for Erie and FSI at the same time as he was working for the WVSFMO. PE 122, 123, 124, 125, 125A; JA 2423, 2426, 2430, 2437, 2546. The Joint Examination Reports by FSI demonstrate a history and knowledge of Erie that Ayersman had dual employment with Erie and the West Virginia State Fire Marshal's Office which created an extreme conflict of interest. 404 (b) Motion, JA 328-350. Ayersman was clearly working privately and publicly for Erie through Harris and FSI and the WVSFMO. PE 122, 123, 124, 125, 125A; JA 2423-2547. At a second trial, the jury must be allowed to consider damages for all facets of the investigation for which the jury has found Erie liable, including the finding by the jury that Erie is responsible for the criminal investigation consequences based on the verdict of the jury for the attorney's fees and litigation expenses from the defense of the criminal prosecution of Tammy Wratchford under Paragraph 16 of the Verdict Form. The jury has clearly found Erie responsible and liable to the Plaintiffs for the damages and injuries caused by Ayersman in his dual employment with Erie. A second trial must include all damages suffered by the Wratchfords resulting from actions of all of the Erie operatives.

C. The Circuit Court erred in denying attorney fees and litigation expenses to the Plaintiffs under *Hayseeds*, supra; *Miller v. Fluharty*, 201 W.Va. 685, 500 S.E. 2d 310 (1997); and *Hadorn v. Shea*, 193 W.Va. 350, 456 S.E. 2d 194 (1995), Syl. Pt. 1 and 2. The Erie Insurance Company not only denied the property damage claims of the insureds following their house fire on February 20, 2017, but was instrumental in and procured criminal charges against its own insured for arson and insurance fraud.

Petitioners herein, are entitled to reasonable attorney's fees necessary in vindicating their claim for reimbursement of property damages under the Erie insurance policy under Syl. Pt. 1 of *Hayseeds.* Also cited at Syl. Pt. 1, *Thomas v. State Farm Mutual Auto Insurance Company*, supra; Syl. Pt. 2, *McCormick v. Allstate Insurance Company*, supra; Syl. Pt. 1, *Miller v. Fluharty*, supra; Syl. Pt.1,

Richardson v. Kentucky National Insurance Company, supra; and Syl. Pt. 2, *Jones v. Sanger*, supra. As a matter of first impression, in *Richardson v. Kentucky National Insurance Company*, supra, when a policyholder substantially prevails on a first-party insurance claim he/she becomes entitled to reasonable attorneys' fees. The amount of attorney fees is to be determined by the Circuit Judge, not the jury. *Richardson* was fire claim upon which the insurance carrier refused coverage thereby requiring the insured to retain counsel and to prosecute an action against the first-party insurance carrier for recovery of liquidated property damages resulting from fire damage found by the jury to be covered by the insurance policy. Each of the syllabus points of the Court in *Richardson*, numbered 1-7, are directly on point for the issues of this action and for the attorney fees demanded by the Plaintiffs in this action. Those syllabus points are as follows:

> 1. "Whenever a policyholder substantially prevails in a property damage suit against its insurer, the insurer is liable for: (1) the insured's reasonable attorneys' fees in vindicating its claim; (2) the insured's damages for net economic loss caused by the delay in settlement, and damages for aggravation and inconvenience." Syllabus Point 1, *Hayseeds, Inc. v. State Farm Fire & Cas*., 177 W.Va. 323, 352 S.E. 2d 73 (1986)
>
> 2. "Where the issue on an appeal from the circuit court is clearly a question of law involving an interpretation of a statute, we apply a *de novo* standard of review." Syllabus Point 1, *Chrystal R.M. v. Charlie A. L*., 194 W.Va. 138, 459 S.E. 2d 415 (1995).
>
> 3. When a policyholder substantially prevails on a first-party insurance claim against an insurer and becomes entitled to a reasonable attorney's fee under *Hayseeds, Inc. V. State Farm Fire & Cas*., 177 W.Va. 323, 352 S.E. 2d 73 (1986) and its progeny, the amount of the attorney's fee is to be determined by the circuit judge and not by a jury.
>
> 4. "An insured 'substantially prevails' in a property damage action against his or her insurer when the action is settled for an amount equal to or approximating the amount claimed by the insured immediately prior to the commencement of the action, as well as when the action is concluded by a jury verdict for such an amount. In either of these situations the insured is entitled to recover reasonable attorney's fees from his or her insurer, as long as the attorney's service were necessary to obtain payment of the insurance proceeds. "Syllabus Point 1, **796 *467 *Jordan v. National Grange Mut. Ins. Co*., 183 W.Va. 9, 393 S.E. 2d 647 (1990).
>
> 5. The means that a circuit judge uses to calculate a reasonable attorney's fee is a matter left to the judge's discretion. We reiterate our holding in *Hayseeds, Inc. v. State Farm Fire & Cas*., 177 W.Va. 323, 352 S.E. 2d 73 (1986) however, that a reasonable attorney's fee is presumptively one-third of the face amount of the policy, unless the amount disputed under the policy is either extremely small or enormously large. In these latter circumstances, the judge shall conduct an inquiry concerning a reasonable attorney's fee.

> 6. A circuit judge, in calculating a reasonable attorney's fee under *Hayseeds, Inc. v. State Farm Fire & Cas*., 177 W.Va. 3223, 352 S.E. 2d 73 (1986), should look at the negotiations between the policyholder and the insurance company as a whole from the time of the insured event to the final payment of the insurance proceeds.
>
> 7. "Where attorney's fees are sought against a third party, the test of what should be considered a reasonable fee is determined not solely by the fee arrangement between the attorney and his client. The reasonableness of attorney's fees is generally based on broader factors such as: (1) the time and labor required; (2) the novelty and difficulty of the questions; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained: (9) the experience, reputation, and ability of the attorneys: (10) the undesirability of the case; (1)) the nature and length of the professional relationship with the client; and (12) awards in similar cases." Syllabus Point 4, *Aetna Cas. & Sur. Co. v. Pitrolo*, 176 W.Va. 190, 342 S.E. 2d 156 (1986).

At Question 5 of the Verdict Form, entitled "Claim: Breach of Contract", the jury found that Plaintiffs, Wratchford, had a valid policy of insurance through Erie for their fire loss; that the Plaintiffs, Wratchford, were entitled to benefits under the policy; that Erie breached the policy and did not provided benefits; and that Erie's breach resulted in damages to the Plaintiffs, Wratchford.

Under Part II of the Verdict Form entitled " Damages", at Question 15, the jury found damages in favor of the Plaintiffs, Wratchford, for Dwelling Coverage in the amount of $590,542.57; for Personal Property Coverage in the amount of $90,000.00; and for Rental Expenses in the amount of $7,200.00, all of which have been denied entirely by Erie.

At Question 16 of the Verdict Form, under Economic Damages, the jury granted damages for additional rental expenses throughout the time following the fire in the amount of $40,000.00, and granted reimbursement of all attorney's fees and costs incurred by the Wratchfords in the defense of criminal prosecution of Tammy Wratchford for Arson and related charges in the amount of $58,991.50.

Plaintiffs' original fire damage claim for the dwelling was $181,038.67 produced as a proof of loss to Erie at the Examination Under Oath on April 26, 2017, PE 29, JA 957; PE 74, JA 2099, as reiterated in the demand for settlement by counsel for Plaintiffs below by letter dated June 27, 2017, JA 3097. The personal property fire damage claim by the insureds below was presented to Erie as a proof of loss in the amount of $160,148.42 at the Examination Under Oath conducted by Erie also reiterated in the

demand letter to Erie by counsel for the insureds on June 27, 2017. PE 29, JA 949; PE 128, as a motion exhibit at JA 3098. By letter dated July 11, 2017, PE 41, JA 991, Erie denied all fire damages coverage under the policy of insurance covering the home of the Wratchfords at the time of the fire on February 20, 2017. Erie has paid nothing to the Plaintiffs for the fire damages claims of the Wratchfords under their homeowners' policy.

Under Question 17, of the Verdict Form, the jury found Erie 100% solely at fault for all damages awarded under Question 16, which included additional rental expenses not covered by Question 15, and attorney fees/costs regarding defense of the criminal prosecution of Tammy S. Wratchford by Ayersman under his dual employment with Erie. The jury has lumped all of the fault of each of the other Defendants named within the Plaintiffs' Amended Complain upon Erie finding Erie solely responsible for all of the damages suffered by the Wratchfords resulting from the claims process following the fire of February 20, 2017. This is clearly evident by the jury's inclusion of the attorney fees and costs generated from the defense of the criminal prosecution of Tammy S. Wratchford following her arrest from the Criminal Complaint brought by Ayersman on June 16, 2017, and clearly procured by Erie. PE 30, JA 965, 968; PE 12, JA 684. Counsel for Plaintiffs kept a log of attorney fees generated throughout the claims process and litigation from the time counsel was retained by the Plaintiffs on March 21, 2017, through the present. The hourly services and fees of counsel should be considered by the Circuit Court on remand together with the expenses of counsel in prosecuting the claims against Erie through the time of trial and through appeal, in addition to the contingent fee agreement.

The Court clearly erred in denying Plaintiffs' Motion for attorney fees, costs and expenses generated in the enforcement of Plaintiffs' rights under their first-party insurance policy following the fire of February 20, 2017, through the present, and until final resolution of claims against Erie on behalf of the Wratchford insureds. The Order of the Circuit Court denying attorney fees to the Plaintiffs below, Petitioners herein, must be reversed and the matter remanded to the Circuit Court with directions to comply with the requirements of *Richardson v. Kentucky National Insurance Company*, supra.

D. The Circuit Court erred in denying prejudgment interest to the Plaintiffs, following trial under W.Va. Code § 56-6-31, *Grove By and Through Grove v. Myers*, 181 W.Va. 342, 382 S.E. 2d 536 (1989); *State Farm Mut. Auto. Ins. Co. v. Rutherford*, 229 W. Va. 73, 726 S.E. 2d 41 (2011); and *Bond v. City of Huntington*, 166 W.Va. 581, 276 S.E. 2d 539 (1981). Plaintiffs are entitled to prejudgment interest based on the verdict of the jury at trial finding liability against Erie and granting liquidated property damages resulting from the fire at Plaintiffs' home on February 20, 2017, thereby enforcing Plaintiffs' rights under the Erie homeowner's insurance policy covering their home at the time of the fire, either as a matter of law or at a new trial on prejudgment interest.

1. Procedural Issues Related to Plaintiffs' Motion for Pre-Judgment Interest

Plaintiffs first raised their Motion for Pre-Judgment and Post-Judgment Interest filed June 13, 2023. JA 3078. Erie filed its response to Plaintiffs' Motion for Pre-Judgment and Post-Judgment Interest on June 15, 2023, JA 3081, claiming that pre-judgment interest demanded by the Wratchfords in the case *sub judice* was governed by W. Va. Code §56-6-27 as being the "exclusive means by which to obtain pre-judgment interest in any action founded upon contract", supported by Syl. Pt. of *Miller v. WesBanco Bank, Inc*., 245 W.Va. 363, 859 S.E. 2d 306 (2021). *The Reply of Plaintiffs in Support of Motion for Pre-Judgment and Post-Judgment Interest* was filed June 15, 2023, JA 3103, citing W.Va. Code §56-6-31(b) as mandating that from any judgment or decree that contains special damages or liquidated damages, the Court, and not the jury may award pre-judgment interest, supported by Syl. Pt. 1 of *Grove by and Through Grove v. Myers*, supra.

The Court entered *its Order Denying in Part and Granting in Part Motion for Prejudgment Interest and Post-Judgment Interest, and Denying Motion for New Trial on Prejudgment Interest* e-filed February 2, 2024, JA 3224. Plaintiffs filed their *Supplemental Motion for New Trial on Pre-Judgment Interest and Economic Losses Resulting from Delay in Settlement* on March 27, 2024, JA 3275, noting the error created by the Order of the Court Denying Prejudgment Interest on property damage recoveries by Plaintiffs, alternatively, that Plaintiffs are entitled to a new trial on pre-judgment interest. The arguments made by Plaintiffs within that *Supplemental Motion for New Trial on Pre-Judgment and Economic Losses Resulting from Delay in Payment* are incorporated herein by reference. Plaintiffs' *Motion for New Trial on Prejudgment Interest and Economic Losses Resulting from Delay in Payment* was denied by the Court in its Order of July 22, 2024, JA 4242, 4261, and the Court therein affirmed its prior holdings made in the

Order Denying in Part and Granting in Part Motion for Prejudgment Interest and denying Motion for New Trial on Prejudgment Interest dated February 2, 2024, JA 3224. The Court noted that Erie did not oppose the relief requested by Plaintiffs to hold the prejudgment interest Motion as non-final until the matter could be reconsidered. JA 4262. Plaintiffs bring this appeal from the Orders of the Circuit Court denying prejudgment interest to the Plaintiffs or alternatively denying a new trial on pre-judgment interest from the Order of the Court of July 22, 2024.

2. Argument for Pre-Judgment Interest Under W.Va. Code § 56-6-31(b)

The findings of fact made by the Circuit Court in its Order denying Plaintiffs' Supplemental Motions entered by the Circuit Court on July 22, 2024, were without support, unnecessary and irrelevant to any rulings by the Circuit Court in post-trial motions insofar as the jury has already made a finding of liability in favor of the Plaintiffs, Wratchford, against the Defendant, Erie, in its Verdict Form of May 25, 2023. The jury found at Question 5 of the Verdict Form that the Plaintiffs, Wratchford, had a valid policy of insurance with the Erie Insurance Company; that the Plaintiffs, Wratchford, were entitled to benefits under the policy of insurance with Erie but that Erie breached that policy and did not provide those benefits; and the jury found that based on the breach by Erie of the insurance policy with the Wratchfords, the Wratchfords suffered damages. JA 3071. Based on those findings, the jury granted liquidated damages for the dwelling coverage under the homeowner's policy of Erie with the Wratchfords in the amount of $590,542.57 as well as liquidated damages for personal property destroyed in the fire in the amount of $90,000.00. Based on the verdict of the jury, the findings of fact cited by the Court in its Order denying Plaintiffs' Supplemental Motions dated July 22, 2024, are unsupported, unnecessary, irrelevant, and inconsequential insofar as the jury already considered all of those facts and resolved all of those claims by Erie in favor of the Plaintiffs, Wratchford. The citation of the findings of fact within the Order of the Circuit Court dated July 22, 2024, denying Plaintiffs' Supplemental Post-Trial Motions demonstrate error on the part of the Circuit Court and a misunderstanding of the effect of the verdict of jury in favor of the Plaintiffs, Wratchford, under the policy of insurance which covered their home and property at the time the fire on February 20, 2017.

The effective portion of W.Va. Code §56-6-31(b) states as follows:

> (b) *Prejudgment*—in any judgment or decree that contains special damages, as defined below, or for liquidated damages, the court may award prejudgment interest on all or some of the amount of special or liquidated damages, as calculated after the amount of any settlements.

Under Syl. Pt. 1 of *Grove by and Through Grove v. Myers*, the Court mandated that prejudgment interest must be calculated by the Court and added to damages by the trial court rather than by the jury. The Court in *Grove* defined "liquidated damages" as "ascertainable pecuniary losses, upon which prejudgment interest as an element of compensatory damages may be awarded, on losses that are certain or capable of being rendered certain by reasonable calculation." The Court in *Grove* stated that pre-judgment interest calculation by the trial court is mandatory and is not discretionary. Id, 181 W.Va. 342 at 345, 382 S.E. 2d 536 at 540.

The Court in *Grove* held:

> Based on all the above, this court holds that under W. Va. Code, 56-6-31, as amended, prejudgment interest on special or liquidated damages is recoverable as a matter law and must be calculated and added to those damages by the trial court rather than by the jury. 181 W.Va. 342 at 348, 382 S.E. 2d 536 at 542.

The Circuit Court was clearly wrong and committed reversible error in denying prejudgment interest to the Plaintiffs based upon the authority of W.Va. Code, 56-6-27 and based upon a finding that the claims of the Plaintiffs were "founded on contract". The claims of the Plaintiffs are based upon liquidated damages to their dwelling and to their personal property as result of a fire claim on a homeowner's insurance policy. Considering these same issues in *Hayseeds*, the Court stated:

> Initially, it is important to observe that insurance contracts are qualitatively different from other contracts. Not only do policyholders rely upon insurance policies, but a host of third-party creditors rely upon those policies as well. Furthermore, the bargaining power of an insurance carrier *vis-à-vis* the bargaining power of the policyholder is disparate in the extreme When a policyholder's property has been destroyed---whether it be a private house or business structure---there is an urgent need to rebuild immediately. *Hayseeds*, supra, 177 W.Va. 323 at 327, 352 S.E. 2d 73 at 77.

The Court in *Hayseeds* clearly enunciated that it is the "disparity of bargaining power between the company and policyholder (often exacerbated by the dynamics of the settlement bureaucracy) (that)

make insurance contracts substantially different from other commercial contracts…" Id. at pages 328 and 78. Also cited in *Miller v. Fluharty*, 201 W.Va. 685 at 693, 500 S.E. 2d 310 at 318.

The Court in *Miller v. Fluharty* mandated prejudgment interest on liquidated or special damages under W.Va. Code, 56-6-31, stating as follows:

> To determine whether an award of prejudgment interest is appropriate, "we must first determine whether West Virginia law expressly allows or expressly forbids the inclusion of interest." Id. The awarding of prejudgment interest is governed by W.Va. Code, 56-6-31[1981], defined below, or for liquidated damages, the amount of such special or liquidated damages shall bear interest from the date the right to bring same shall have accrued…." The term "special damages" is defined as including lost wages and income, medical expenses, damages to tangible personal property, and similar out-of-pocket expenses…." [20] Citing W.Va. Code, 56-6-31. Id. 201 W.Va. 685 at 700, 500 S.E. 2d 310 at 325.

The Court in *Miller v. Fluharty* further held:

> Prejudgment interest is a part of a Plaintiff's damages awarded for ascertainable pecuniary losses, and serves "to fully compensate the injured party for the loss of the use of funds that have been expended." *Bond v. City of Huntington*, 166 W.Va. 581, 598, 276 S.E. 2d 539, 548 (1981), *superseded by statute as stated in Rice v. Ryder,* 184 W.Va. 255, 400 S.E. 2d 263 (1990). Id.

Miller v. Fluharty, supra, involved an underinsured motorist's insurance policy contract upon which damages claims were made and prejudgment interest granted by the Court.

The Court again considered prejudgment interest on special or liquidated damages in 2011 in *State Farm Mutual Auto Insurance Company v. Rutherford*, 229 W.Va. 73, 726 S.E. 2d 41, at Syl. Pt. 3 which states:

> 3. "Under *W.Va. Code*, 56-6-31, as amended, prejudgment interest on special or liquidated damages is calculated from the date on which the cause of action accrued, which in a personal injury action is, ordinarily, when the injury is inflicted." Syllabus Point 2, *Grove by and through Grove v. Myers*, 181 W.Va. 342, 382 S.E. 2d 536 (1989).

The Court in *Rutherford* determined that the Court, not the jury, should have calculated prejudgment interest on special damages which were assessed against the insurance carrier under the underinsured motorist coverage of the policyholder insurance policy. *Rutherford*, 229 W.Va. 73 at 78, 726 S.E. 2d 41 at 46. The West Virginia Supreme Court of Appeals again considered prejudgment interest on an award to the insured under a homeowner's policy for liquidated damages in *Berry v. Nationwide Mutual Insurance*

Company, 181 W.Va. 168, 381 S.E. 2d 367 (1989), mandating that prejudgment interest on items of special or liquidated damages is to be calculated by the Circuit Court under W.Va. Code, 56-6-31. Id. 181 W.Va. 168 at 178, 381 S.E. 2d 367 at 377, FN 11. Clearly, the Wratchfords, as insureds under their homeowner's policy with Erie, are entitled to a calculation of prejudgment interest by the Circuit Court, and not by the jury. The judgment of the Circuit Court must be reversed and the matter remanded for calculation of prejudgment interest by the Court under W.Va. Code § 56-6-31(b). Plaintiffs also refer to Brief of Plaintiffs in Support of Prejudgment Interest e-filed October 17, 2023, which is incorporated herein by reference.

If in fact this Court would agree that prejudgment interest in the case *sub judice* falls under *W.Va. Code*, 56-6-27, and in the event that the Court grants Plaintiffs' Motion for New Trial for damages, the Plaintiffs must be allowed to submit the issue of prejudgment interest to the jury in that new trial under *Miller v. WesBanco Bank, Inc*., supra, F.N. 12 which holds:

> 12. Although we conclude that the Circuit Court did not err in denying Miller's Rule 59(e) due to their failure to submit the question of prejudgment interest to the jury during the trial underlying this appeal, insofar as we are remanding this matter for a new trial on damages, the Millers will have another opportunity to comply with West Virginia Code Section 56-6-27.

Your Petitioners are clearly entitled to a new trial for damages under *Hayseeds*. Based thereon, your Petitioners are entitled to have the issue of prejudgment interest remanded to the Circuit Court for consideration by the jury in that second trial in the event the Court finds that prejudgment interest on the liquidated damages found by the jury in favor of the Plaintiffs below falls under the authority of W. Va. Code §56-6-27.

E. The Circuit Court erred in denying Plaintiffs' post-trial Motions for Judgment Notwithstanding Verdict, as a matter of law or a new trial on property damages reduced and/or denied by the jury as manifestly inadequate, proven by uncontroverted and undisputed evidence, for personal property, Plaintiffs' Exhibit 72, with supporting proof; damages to trees, shrubs, plants and lawn, Plaintiffs' Exhibit 79; and for Plaintiffs' out of pocket interest paid to Summit Bank on their mortgage from the date of the fire, February 20, 2017, until Erie finally paid off the insureds' mortgage in August, 2017, demonstrated in Plaintiffs' Exhibit 78.

1. Background Evidence and Procedure

The findings of fact presented by the Court in the Order of July 22, 2024, denying Plaintiffs' Motion Notwithstanding Verdict and Motion for New Trial on Damages clearly demonstrate a slanted and biased view of the facts given the verdict of the jury, and were completely unnecessary for a ruling upon the motions presented by Plaintiffs for judgment notwithstanding verdict and motion for new trial on damages issues.

The verdict of the jury clearly established liability of Erie for breach of the insurance policy which covered the Plaintiffs' home at the time of the fire on February 20, 2017. There has been no motion for new trial filed on behalf of the Defendant, Erie, claiming that the evidence at trial did not support the verdict of the jury. There has been no Motion filed by the Defendant, Erie, disputing liability found by the jury for the damages rendered in the Verdict Form which was accepted by all parties and by the Court following a 16-day jury trial. Under Question 5 of the Verdict Form, the jury found that the insureds, Wratchford, had a valid policy of insurance with Erie at the time of the fire, that the Wratchford were entitled to benefits under the policy but that Erie did not provide those benefits, and that Erie's breach of the policy terms resulted in damages to its insureds, Wratchford. The liability stated by the jury is uncontested by Erie in any motion. Therefore, the recitation of facts in the Order from which Petitioners' appeal should be disregarded as incomplete, unnecessary, and without any merit in this appeal.

At Question 15 of the Verdict Form, JA 3071, the jury awarded liquidated damages for dwelling coverage under the Erie policy at $590,542.57. This is the exact amount of the estimate of damage rendered by Michael Phillips dated February 14, 2023, PE 75A, JA 2107, admitted without objection into evidence. This estimate of damage was revised almost six years after the fire. A preliminary estimate of damage to the Plaintiffs' home, $181,038.67, was admitted as PE 74, JA 2099, created on April 16, 2017. The original damage estimate to the dwelling was presented to Erie at the Examination Under Oath, Ex 29, JA 957, on April 26, 2017, $181,038.67. A second estimate was prepared and submitted to the jury as PE 75, JA 2101, also generated by Michael Phillips dated September 5, 2018. Building materials and construction costs increased significantly from the date of the fire on February 20, 2017, until the date of

the jury verdict, May 25, 2023. The final estimate was adopted by the jury. PE 75A, JA 2107, $590,542.57. Erie filed no Motion for New Trial.

The personal property damages rendered by the jury in Question 15 of the Verdict Form, $90,000.00, were over one half (1/2) of the proven personal property damages claimed in the proof of loss to Erie on April 26, 2017, PE, 29, JA 949, $160,148.42, which was admitted before the jury without objection. The original proof of loss of the insureds was presented to Erie at the Examination Under Oath on April 26, 2017, PE 29, JA 949, in the same form and with the same supporting documents but in the amount of $160,148.42, as noted in PE 128, JA 3097, filed as a motion exhibit following trial. Erie presented no conflicting evidence to the jury disputing the personal property damages suffered by the Plaintiffs as a result of the fire. Erie denied all coverage by its letter of July 11, 2017, PE 41, JA 991. There was no legal or evidentiary basis for the jury to reduce the amount of personal property damages by $70,000.00. The personal property loss of Wratchfords was placed into evidence as PE 72, uncontroverted and undisputed, and therefore, the personal property damages granted by the jury in the Verdict Form are manifestly inadequate and the Plaintiffs are entitled to a new trial on the issue of damages. Syl. Pt. 3, *McKenzie v. Sevier*, 244 W.Va. 416, 854 S.E. 2d 236 (2020). Alternatively, Petitioners are entitled to judgement as a matter of law.

The conclusions of law made by the Circuit Court in its Order of July 22, 2024, denying Plaintiffs' Motion for Judgment Notwithstanding Verdict and Motion for New Trial on Damages erroneously cite "conflicting testimony" in the evidence before the jury on damages. There was no "conflicting testimony" and there was no dispute presented to the jury by Erie in opposition to the property damages placed into evidence by the Plaintiffs at trial. The Order of the Court denying Judgment Notwithstanding Verdict and Motion for New Trial on Damages is further in error relying solely upon Rule 50 (a) of the West Virginia Rules of Civil Procedure ("WVRCP") in denying Plaintiffs' Motions and in claiming that Plaintiffs somehow waived their right to relief and/or to a new trial on the issue of damages. Plaintiffs filed their Supplemental Motion for Judgement Notwithstanding Verdict and Motion for New Trial on Damages on March 27, 2024, following the entry of the Judgment Order of the Court

filed on March 18, 2024, based upon the jury verdict filed May 25, 2023. Plaintiffs explicitly demanded a new trial on the issue of personal property damages, unpaid mortgage interest and unpaid landscaping costs at Paragraph 10, Page 30, of Plaintiffs' Supplemental Motion, JA 3287. On May 9, 2024, Plaintiffs filed their Reply to the Response of Erie opposing Plaintiffs' post-trial motions on damages. JA 3531-3554. Within that Reply, Plaintiffs repeatedly noted that they were entitled to a new trial on the issues of damages based upon uncontroverted and undisputed evidence, and therein cited supporting law all of which is incorporated herein by reference. The *Supplemental Motions for Judgment Notwithstanding Verdict and for a New Trial on the Issue of Damages* filed March 27, 2024, JA 3258, were in support of the Motion for Judgment Notwithstanding Verdict and Motion for New Trial on Damages filed by the Plaintiffs with the Court on October 12, 2023, JA 3120, wherein Plaintiffs explicitly demanded a new trial on damages relating to personal property, based on PE 72, JA 3122; damages related to shrubbery, plants, trees and lawn based upon PE 79, JA 3122, presented to the jury without objection, and which were uncontroverted; and for unpaid mortgage interest as presented to the jury in PE 78, JA 3123, without objection, and which was unconverted and undisputed at trial. There is no legal basis for the Order of the Court denying Plaintiffs' Motion for Judgment Notwithstanding Verdict and Motion for New Trial on Damages entered July 22, 2024. The Order is clearly wrong and must be reversed. Syl. Pts. 1-5 of *McKenzie v. Sevier* clearly support the Plaintiffs' post-trial motions and demonstrate that the Circuit Court erred in its denial of Plaintiffs' motions. Syl. Pts. 1-5 of *McKenzie* are as follows:

> 1. "Although the ruling of a trial court in granting or denying a motion for a new trial is entitled to great respect and weight, the trial court's ruling will be reversed on appeal when it is clear that the trial court has acted under some misapprehension of the law or the evidence." Syllabus Point 4*, Sanders v. Georgia-Pacific Corp*., 159 W.Va. 6221, 225 S.E. 2d 218 (1976).
>
> 2. " 'Rule 59(a), R.C.P., provides that a new trial may be granted to any of the parties on all or part of the issues, and in a case where the question of liability has been resolved in favor of the plaintiff leaving only the issue of damages, the verdict of the jury may be sit aside and a new trial granted on the single issue of damages.' Syl. Pt. 4, *Richmond v. Campbell*, 148 W.Va. 595, 136 S.E. 2d 877 (1964)." Syllabus Point 2, *Payne v. Gundy*, 196 W.Va. 82, 468 S.E. 2d 335 (1996).
>
> 3. "In a civil action for recovery of damages for personal injuries in which the jury returns a verdict for the plaintiff which is manifestly inadequate in amount and which, in

> that respect, is not supported by the evidence, a new trial may be granted to the plaintiff on the issue of damages on the ground of the inadequacy of the amount of the verdict." Syllabus Point 3, *Biddle v. Haddix*, 154 W.Va. 748, 179 S.E. 2d 215 (1971).
>
> 4. " 'Where a verdict does not include elements of damage which are specifically proved in uncontroverted amounts and a substantial amount as compensation for injuries and the consequent pain and suffering, the verdict is inadequate and will be set aside. *Hall v. Groves*, 151 W.Va. 449, 153 S.E. 2d 165 (1967)' *King v. Bittinger*, 160 W.Va. 129, 231 S.E. 2d 239, 243 (1976).' Syllabus Point 3, *Kaiser v. Hensley*, 173 W.Va. 548, 318 S.E. 2d 598 (1983).
>
> 5. "We will not find a jury verdict to be inadequate unless it is a sum so low that under the facts of the case reasonable [persons] cannot differ about its inadequacy." Syllabus Point 2, *Fullmer v. Swift Energy Co., Inc*., 185 W.Va. 45 404 S.E. 2d 534 (1991).

Clearly, the Court has acted under some misapprehension of law and of the evidence; the question of liability in favor of the Plaintiffs has been fully resolved by the jury, and there has been no dispute filed by Erie in any post-trial motions to liability; the verdict for personal property damages, landscaping damages and unpaid mortgage interest is "manifestly inadequate"; the amounts of damages for which the Plaintiffs claim a right to a new trial was specifically proved in uncontroverted and undisputed amounts which constitute substantial amounts of damages required for compensation; and the verdict of the jury in refusing to grant any damages for landscaping loss and unpaid mortgage interest, and cutting the personal property damages by $70,000.00 are such disparities that reasonable persons cannot differ about the inadequacy of the verdict on these damages. Syl. Pts. 1, 2, 3, 4, and 5, *McKenzie v. Sevier*, supra; Syl. Pts. 1 and 2, *Hall v. Groves*, supra; Syl. Pt. 4, *King v. Bittinger*, supra; Syl. Pts. 1, 2, and 3, *Marsch v. American Electric Power Company*, 207 W.Va. 174, 530 S.E. 2d 173 (1999); Syl. Pts. 1, 2, 3, and 4 *Gebhardt v. Smith*, 187 W.Va. 515, 420 S.E 2d 275 (1992). Plaintiffs are entitled to have the Court set aside the verdict of the jury and grant a new trial solely on the issue of damages for personal property lost as a result of the fire; trees, shrubs and landscaping damaged by the fire; and for the mortgage interest paid by the Plaintiffs caused by the delay of Erie in complying with the policy terms which required Erie to pay the mortgage on the property regardless of fault of any insured party. PE 5, JA 407, the Ultra HomeProtector Insurance Policy, Page 13, JA 423. The Order of the Court of July 22, 2024, denying

Plaintiffs' Motions for new trial on damages must be reversed and the matter remanded for new trial on damages alone.

F. The Circuit Court erred in denying Plaintiffs' post-trial motions for judgment as a matter of law demanding the Circuit Court to grant further relief and a second trial upon the jury denying Plaintiffs' claims of violations of the West Virginia Unfair Trade Practices Act, W.Va. Code § 33-11-4 (3), (5), and (9). JA 3258.

The West Virginia Unfair Trade Practices Act, hereinafter "UTPA" contains its declared purpose in W. V. Code § 33-11-1 "To regulate trade practices in the business of insurance… by defining … practices … which constitute unfair methods of competition or unfair deceptive acts or practices and by prohibiting the trade practices so defined or determined". W. Va. Code § 33-11-4 defines the practices which are determined to be unfair or deceptive acts and which violate the Unfair Trade Practices Act of West Virginia, the "UTPA". W.Va. Code § 33-11-4 (3) defines and prohibits "defamation" by an insurance company to publish, disseminate or circulate any oral or written statement which is false, or which is derogatory to the financial condition of its insureds. W.Va. Code § 33-11-4 (5) defines and prohibits any person within an insurance company to knowingly file with any supervisor or public official or to knowingly cause directly or indirectly any false material statement of fact as to the financial condition of a person to be circulated, published or delivered to any person, defined as an unfair or deceptive act or practice in the business of insurance.

W.Va. Code §33-11-4 (9) defines unfair claims settlement practices by an insurance company during a claims process from an insurable event under an insurance policy in the State of West Virginia. Erie violated the following Unfair Claim Settlement Practices under W.Va. Code § 33-11-4 (9) including (a) an insurance company misrepresenting pertinent facts during the fire investigation relating to the homeowner's fire insurance coverage from a fire; (c) failing to adopt and implement reasonable standards for the prompt investigation of the fire claim under the home owner's insurance policy covering the Plaintiffs' home at the time of the fire; (d) refusing to pay the claims made by the Wratchford for fire damage without conducting a reasonable investigation based on all available information and evidence following the fire; (e) failing to affirm or deny coverage of claims within a reasonable time after the proof

of loss was filed by the Wratchfords following the fire of February 20, 2017; (f) by Erie not attempting in good faith to effectuate prompt, fair and equitable settlements of the property damage claims made by the Wratchfords following the fire in which liable was reasonably clear; and (g) by compelling the Wratchford to institute litigation to recover property damages resulting from the fire under the homeowner's insurance policy by denying coverage under the homeowner's policy when the evidence from the fire scene clearly demonstrated liability on the part of Erie for payment and for which the jury has found Erie liable under the homeowner's policy.

The following demonstrate violations of W.Va. Code §33-11-4(3), (5), and (9) set forth above:

(1) The primary focus of the Erie Insurance Company during the claim investigation process was the "poor credit history" of the insureds. Initially, the Erie adjusters obtained a credit report for the wrong "Tammy Wratchford". PE 11, Page 67, JA 596; PE 28-A-1, JA 835; Transcript of Tammy Wratchford from May 15, 2023, Pages 13-19, JA 3695-3701. PE 11, Page 25, JA 638, cites the "poor credit history and multiple past due accounts" specifically stated within the claim file of Erie as the "motive" for intentionally setting the fire at the home of the Wratchfords. The mortgage on the Wratchford dwelling was actually brought current by the insureds on March 15, 2017, following the fire; there is no objective evidence to indicate the fire began at the Wratchford home by incendiary origin or "arson"; and the evidence following the fire clearly indicated an electrical origin and cause of the fire: PE 14, 15, 24, 66, 135A, 137, 138, 138A, 138B, JA 686, 690, 790-801, 1094, 2616-2626, 2627, 2664, 2672, 2673. The fire investigator for Erie, FSI, Brent Harris, falsely reported to Erie on February 23, 2017, that he "could not find any electrical activity" at the area of origin of the fire in the stairwell, PE 11, Page 88, JA 575; Phillip Jones, Erie employee, falsely reported burn patterns from the carpeted tread "downward" not from inside the walls or under the stairwell, PE 11, Page 57, JA 606; Phillip Jones, Brent Harris and Bert Davis, engineer, all falsely reported that the fire was not electrical in nature but was an intentionally set fire, together with Ayersman, a part-time employee of FSI and Erie, and a full-time employee with the WVSFMO, occupying a position of dual employment and conflict of interest. PE 30, JA 965, 968. Each reported that the fire at the Wratchford home was "not electrical in nature and an intentionally set fire",

contrary to objective evidence, PE 11, Page 51, JA 612; PE 30, JA 968; and the closing report of Jones in the claim file of Erie in PE 11, Page 25, JA 638, claimed that the fire was "not electrical in nature" and that the fire was "intentionally set", and therefore, Jones found that the investigation "does not support this claim as presented", contrary to the objective evidence cited hereinbefore. All of the claims by Erie and its investigators against the insureds, Wratchford, were false and were not accepted by the jury as true. Otherwise, the jury would not have found in favor of the Plaintiffs, Wratchford, at Question 5 of the Verdict Form which found that the Wratchfords had a valid policy of insurance through Erie; that the Wratchfords were entitled to benefits under the policy but that Erie breached the policy and did not provide those benefits; and that Erie's breach of the policy provisions resulted in damages to the Wratchfords. The facts of the case were found by the jury contrary to the facts set forth within the *Order of the Court of July 22, 2024, denying Plaintiffs' Supplemental Motion for a Judgment Notwithstanding Verdict, Motion for Notwithstanding Verdict on Damages, and Motions for New Trial on Damages*, and contrary to MSES Reports, PE 66, JA 1094; PE 137, JA 2627; and PE 138, JA 2664.

By letter dated July 11, 2017, Erie denied all coverage for the fire claims at the Wratchford home based upon claims of an incendiary cause of the fire and that the Wratchfords misrepresented material facts during the Erie fire investigation. PE 41, JA 991. The jury found Erie 100% and solely at fault for all damages resulting from the fire investigation, including awarding attorney fees and costs to reimburse the defense of the criminal prosecution of Tammy S. Wratchford by Ronald Ayersman procured by the Erie Insurance Company. Paragraphs 29, 30 and 31 of *the Order of the Circuit Court denying Erie Insurance Property & Casualty Company's Motion to Alter or Amend the Judgment to Reduce the Award of Contractual Damages and to Vacate the Award of Non-Contractual Damages* e-filed July 22, 2024, support the conclusion that the jury included the attorney fees and costs for the criminal prosecution of Tammy S. Wratchford as a part of the fire investigation by Erie in procuring the criminal charges and criminal prosecution against Tammy S. Wratchford. The evidence at trial and exhibits filed with Motions demonstrate the dual employment, collusion, and procurement of criminal charges by Erie together with Ayersman. See JA 328-350, the Joint Investigations of Erie with Ayersman; DE 157, JA___, the Ayersman

Request for Determination Regarding Secondary Employment demonstrating that Ayersman worked for Erie and FSI for many years prior to the February 20, 2017, fire at the Wratchford home; PE 36, JA 989, showing Ayersman as Private Investigator for FSI; PE 37, JA 990, the Facebook photo by Ayersman on December 25, 2015, showing the relationship of Ayersman with Harris; and PE 81, 82, 95, 96, 114, 115, 116, 122, 123, 124, and 125; JA 2172, 2184, 2258, 2261, 2404, 2405, 2409, 2423, 2426, 2430, and 2437, demonstrating the relationship of Ayersman with FSI and Erie prior to, at the time of, and following the fire at the Wratchford home on February 20, 2017, as a clear conflict of interest and the dual employment of Ayersman which interfered with any claim of independence by Ayersman and the WVSFMO. By the verdict of the jury in Question 17 and Question 16 of the jury Verdict Form, the jury clearly found Ayersman acting for and on behalf of Erie in pursuing criminal charges against Tammy Wratchford. Each of these issues clearly demonstrate multiple violations of Unfair Claim Settlement Practices by Erie under W.Va. Code §33-11-4(9).

Had Erie and its contractors and employees performed a reasonable investigation based on reasonable standards, in good faith, to determine facts and coverage under the homeowner's policy covering the Wratchford home at the time of the fire on February 20, 2017, Erie would have critically recognized the wiring in the stairs demonstrated by Ayersman's photographs PE 24, JA 790, 798-801; the photographs taken relied and relied upon by Harris and Davis in their reports, PE 175, JA 2777-2817; PE 23A, JA 725, 764-766; and the Davis/RDA file at PE 23B, JA 786, as being definitively for cause, contrary to the Davis Report of July 25, 2019, JA 779. Erie involved Ayersman as an employee of FSI on the very same day as the fire, February 20, 2017, proven by PE 113C, JA 2400-2402, and Ayersman was fully involved in the FSI/Erie investigation evidenced by the telephone log of Harris, PE 81, JA 2172-2183, up through and including Ayersman directing Harris/FSI to call the fire in to WVSFMO Arson Hotline, PE 12, JA 684, demonstrated in PE 82, JA 2184. These exhibits support the verdict of the jury finding Erie responsible for the attorney fees and costs generated in the defense of the criminal prosecution brought by Ayersman and procured by Erie. The evidence before the jury and before this Court clearly prove defamation by Erie, 33-11-4(3); false statements and entries in the insurance claims

report, PE 11, 33-11-4(5); and multiple violations under subsection 9 of 33-11-4, defining Unfair Claims Settlement Practices in misrepresenting pertinent facts relating to coverage; failing to adopt and implement reasonable standards for investigation on claims arising under the insurance policy; refusing to pay the claim of the Wratchfords without conducting a reasonable investigation; and in fact denying coverage based on false allegations, failing to affirm the coverage within a reasonable time after the proof of loss was filed with Erie, obviating all good faith in the investigation and claims process; and by compelling the insureds to not only to institute litigation to obtain a judgment under the insurance policy, but also requiring the Wratchfords to defend false criminal charges clearly procured by Erie as found by the jury in the assessment of damages against Erie for the attorney fees and costs generated from the defense of the criminal prosecution. The jury found Erie as the sole party at fault for all damages suffered by the Plaintiffs, and liability by Erie clearly falls under the UTPA sections cited herein. The jury was wrong in denying violations of the UTPA under Question 6 of the jury verdict; the Court was clearly wrong in denying Plaintiffs' Motion to find as a matter of law that Plaintiffs had prevailed under the UTPA, thereby denying a second trial to the Plaintiffs for damages under Chapter 33, Article 11, Section 4. JA 3258-3260. This Court must reverse the rulings of the Circuit Court in its Order of July 22, 2024, JA 4256-4258, and remand this matter for further proceedings, including a second jury trial on damages under the UTPA, Chapter 33, Article 11, Section 4, of the West Virginia Code.

VII. CONCLUSION

WHEREFORE, Petitioners respectfully requests the Court to grant relief as follows:

A. That this Honorable Court find as a matter of law that the Plaintiffs "substantially prevailed" against Erie Insurance Property & Casualty Company in their property damage suit against their insurer, and that the matter be remanded with directions consistent with findings of the Appellate Court.

B. That this Honorable Court grant a new or second trial against Erie for damages under *Hayseeds,* finding that the Plaintiffs have "substantially prevailed", and that this matter be remanded for further proceedings in the Circuit Court consistent with the ruling of the Appellate Court.

C. That this Honorable Court enter an order finding that the Plaintiffs are entitled to attorney fees and litigation expenses consistent with Hayseeds upon finding that the Plaintiffs "substantially prevailed" in their action in the Circuit Court, and that this matter be remanded with directions consistent with the rulings of this Court.

D. That this Honorable Court find as a matter of law that the Petitioners, Plaintiffs below, are entitled to prejudgment interest consistent with W.Va. Code § 56-6-31 upon the judgment of the Plaintiffs in the Circuit Court below, or alternatively, that a new trial be granted to the Plaintiffs below for a finding of prejudgment interest in the second trial granted to Plaintiffs for Hayseeds damages, and that the matter be remanded for further proceedings in the Circuit Court consistent with the rulings of the Appellate Court.

E. That this Honorable Court find as a matter of law that the Verdict of the jury below was "manifestly inadequate" for damages proven by the Plaintiffs below by uncontroverted and undisputed evidence for personal property; damages to trees, shrubs, plants, and law; and out of pocket expenses paid to Summit Bank on the mortgage of the Plaintiffs prior to payoff by Erie, and that the issue of inadequate damages be remanded to the Circuit Court below for either a new trial or judgment as a matter of law with direction consistent with the rulings of this Court.

F. That this Honorable Court find as matter of law that the Plaintiffs below proved violations of the West Virginia Unfair trade Practices Act, W.Va. Code § 33-11-4 (3), (5) and (9), and that the Petitioners, Plaintiffs below, are entitled to a new trial on issues of the UTPA or alternatively, judgment as a matter of law, and that this matter be remanded for further proceedings consistent with the rulings of this Court.

G. Such other and further general relief as the Court deems just.

Tammy S. Wratchford and Michael W. Wratchford
Petitioners/Plaintiffs Below

J. David Judy, III, Esquire (WVSB # 1939)
By: /s/J. David Judy, III
judy_atty@hardyent.com
Judy & Judy
Attorneys at Law
P.O. Box 636
Moorefield, WV 26836
Phone: (304) 538-7777
Fax: (304) 538-7404

CERTIFICATE OF SERVICE

The undersigned counsel for the Petitioners, Tammy S. Wratchford and Michael W. Wratchford, does hereby certify that on the 2nd day of December, 2024, the Plaintiffs' Brief was filed electronically with the Court via West Virginia Fire & ServeXpress, which provided an electronic copy upon counsel of record.

By: /s/J. David Judy, III
J. David Judy, Esquire WVSB 1939
judy_atty@hardyent.com
Judy & Judy
Attorneys at Law
P.O. Box 636
Moorefield, WV 26836
Phone: (304) 538-7777
Fax: (304) 538-7404