IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

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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' REPLY TO RESPONDENT'S BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

REPLY TO STATEMENT OF THE CASE BY ERIE

The Statement of Case included within the Respondent's Brief by Erie includes the same skewed and incomplete facts which were presented at trial and discounted by the jury as evidenced within the Verdict Form, which found damages in favor of the Plaintiffs solely against the Erie Insurance Company (hereinafter "Erie"). The jury found damages in favor of the Plaintiffs upon the insurance policy issued by Erie despite the counter arguments of Erie and the misleading "facts" presented to the jury by the witnesses for Erie, many of which are again stated within the Statement of the Case by Erie in Respondent's Brief.

At Question 17, Page 17, of the Verdict Form, J.A. Vol. 14, P. 3073, the jury found Erie solely liable and 100% at fault for any and all damages awarded under Question 16 of the Verdict Form, above and beyond the policy considerations stated at Question 15, Page 15. Erie did not appeal liability of Erie found by the jury. It is significant that the jury awarded attorney fees and costs reimbursing the defense of the criminal action brought against Tammy S. Wratchford from the Erie Insurance Company at Question 16, Page 16, J.A. Vol. 14, P. 3072. Erie did not appeal those additional damages found in Question 16. The jury clearly did not accept the explanations or the defenses of Erie at trial, and Erie was not able to overcome the evidence presented by the Plaintiffs at trial that Brent Harris, (hereinafter "Harris"), the owner of Fire and Safety Investigation Consulting Services, LLC, (hereinafter "FSI"), PE 20, J.A. Vol. 3, P. 722-723, was the private employer of the Defendant, Ronald C. "Mackey" Ayersman, (hereinafter "Ayersman"), who also was acting as an Assistant State Fire Marshal for the West Virginia State Fire Marshal's Office. (hereinafter "WVSFMO"), following the Arson Hotline Incident Report filed by Harris on February 23, 2017, at 4:46 p.m. Plaintiffs' Exhibit, (hereinafter "PE"), PE 12, J.A. Vol. 3, P. 684.

Erie originally contacted Ayersman as an employee of FSI to perform the arson investigation for Erie as noted in PE 113C, J.A. Vol. 10, P. 2400. Harris and Ayersman had numerous telephone conversations prior to the Arson Hotline Report as demonstrated by the Harris phone records, PE 81, J.A. Vol. 9, P. 2172-2182. The West Virginia Fire Code §10008 forbid Ayersman to undertake any investigation or respond to a fire incident on behalf of the WVSFMO before receipt of an Arson Hotline Report and before appointment by his immediate supervisor. PE 83, J.A. Vol. 9, P. 2194. Ayersman was a paid employee of Harris/FSI and WVSFMO from 2010 through 2017, including during the investigation of the Wratchford fire. PE 80, J.A. Vol. 9, P. 2155-2171; PE 122, 123, 124, and 125, J.A. Vol. 10, P. 2423-2425, P. 2426-2429, P. 2430-2436, and P. 2437- Vol. 11, P. 2545, and the Summary of Time Sheets of Ayersman, PE 125A, J.A. Vol. 11, P. 2546-2547, showing Ayersman working many days for both, FSI and the WVSFMO, some days totaling over 24 hours. Harris was in contact with Ayersman by phone and text actively working the Wratchford fire for Erie before Ayersman was appointed by his immediate supervisor of the WVSFMO to investigate the fire, by cell phone, PE 81, J.A. Vol. 9, P. 2174, 2176-2180; by text, PE 82, J.A. Vol. 9, P. 2184-2185; and by text, PE 115, J.A. Vol. 10, P. 2405-2408, during which Ayersman told Harris to call the Wratchford fire into the WVSFMO Arson Hotline, on the morning and during the afternoon of February 23, 2017. Ayersman telephoned Mike Wratchford on February 23, 2017, and stated the he, Ayersman, "told" his supervisor, George Harms, to give the Wratchford fire investigation to him, Ayersman. PE 10, J.A. Vol. 3, P. 527, lines 12-17. Harris was in direct contact with George Harms, the immediate supervisor of Ayersman, by telephone on February 23, 2017, at 5:09 p.m., PE 81, J.A. Vol. 9, P. 2181. George Harms was a former employee of FSI as noted in his official CV stated in PE 144, J.A. Vol. 12, P. 2769, also while Harms was employed with the WVSFMO. George Harms did not officially appoint Ayersman to investigate

the Wratchford fire until 5:34 p.m., February 23, 2017. PE 10A, J.A. Vol. 3, P. 535. Ayersman had already contacted Erie on February 23, 2017, at 12:33 p.m., and informed Philip Jones that Ayersman was scheduled to be onsite at the Wratchford dwelling representing the WVSFMO on February 24, 2017, PE 11, P. 84, J.A. Vol. 3, P. 579, over two (2) hours before Harris made the phone call to the Arson Hotline, and three (3) hours before Ayersman was officially appointed to perform the investigation. Ayersman contacted the Hardy County 911 Center to obtain the Fire Incident Report CAD at 16:02/4:02 p.m., February 23, 2017, PE 9-911, J.A. Vol. 3, P. 522-523, printed 44 minutes before Harris made the telephone call to the Arson Hotline. Erie simply could not dispel the conflicts of interest demonstrated by the evidence between Harris and Ayersman, all of which the jury found was orchestrated by Erie, finding Erie 100% at fault for all damages of the Wratchfords, at Page 17, Question 17, and damages stated at Page 16, of the Verdict Form.

Erie was also unable to overcome the evidence presented by the Plaintiffs as to the conduct of Philip Jones, hereinafter "Jones", the Investigator of Erie who performed a joint site inspection with Ayersman on February 24, 2017, four (4) days following the fire at the Plaintiffs' residence of February 20, 2017. PE 11, P. 66, J.A. Vol. 3, P. 597. The Wratchfords had provided their social security numbers and dates of birth to Chad Tuttoilmondo, (hereinafter "Tuttoilmondo"), Erie's initial investigator, when he was at the Plaintiffs' residence on February 21, 2017. The operatives of Erie obtained a credit report for individuals named "Tammy Wratchford" and "Michael Wratchford" using wrong social security numbers and wrong dates of birth which caused Erie to generate a wrong credit report as demonstrated by PE 28 A-1, J.A. Vol. 4, P. 835, which was placed into the insurance file by Erie and relied upon by Jones during his initial appearance at the Wratchford home on February 24, 2017. Mike Wratchford testified at trial on May 11, 2023, that information used by Phillip Jones on February 24, 2017, was wrong. When Mike disputed the

credit report information, Jones repeatedly called Mike Wratchford a "liar". Trial Transcript P. 73-75: J.A. Vol. 15, P. 4654-5656. Tammy Wratchford explained to the jury the discussion which she had with Jones regarding the false credit report during her testimony on May 15, 2023, day 8 of 16 of the jury trial, Transcript Pages 16-31, J.A. Vol. 14, P. 3695-3713; Transcript Pages 115-119, J.A. Vol. 14, P. 3797-3801. Tammy Wratchford informed the jury that when Jones was told that the information within the credit report was wrong, Jones told Tammy Wratchford that she was "lying". J.A. Vol. 14, P. 3798-3801. Also stated by Tammy Wratchford in J. A. Vol. 14, P. 3695. As with the other "facts" stated within the Statement of the Case of the Respondent in its Brief, the jury simply did not believe the evidence presented on behalf of Erie. Otherwise, the jury would never have rendered a verdict in favor of the Plaintiffs against Erie.

During the testimony of Tammy Wratchford on May 15, 2023, Page 124-125 of the Transcript, J. A. Vol. 14, P. 3806-3807, Tammy Wratchford testified that she understood from Jones and Tuttoilmondo that her "duty to cooperate with Erie" included the demand for a polygraph examination. Therefore, the claims that the polygraph examination was "voluntary" is no more accurate than the rest of the facts claimed by Erie in its Brief. Tammy and Michael Wratchford believed that Erie had directed the polygraph, and that they were required to participate with the polygraph under the terms of the Erie Homeowners Policy as explained to them by Chad Tuttoilmondo and Phillip Jones. J.A. Vol. 14, P. 3806-3807.

The Report of FSI/Harris dated March 15, 2017, claiming that the fire at the home of Wratchfords was "incendiary" was decided by Harris on February 23, 2017, before 11:00 a.m., as noted in the Erie Claims Management System File, PE 11, P. 88, J.A. Vol. 3, P. 575. Erie fails to mention in its Brief that Harris also took samples from the stairs in the Wratchford home and had them sent to Great Lakes Analytical Lab which found no evidence of any ignitable liquid, PE 15,

J.A. Vol. 3, P. 690, the same result that Ayersman received from the West Virginia State Police Lab, PE 14, J.A. Vol. 3, P. 686. The opinion of Ayersman that the fire at the Wratchford home was "incendiary" was nothing more than a parroting of the opinion of Harris through FSI, the private employer of Ayersman, PE 11, P. 66, J.A. Vol. 3, P. 597. The same is true for the joint site inspection by Bert Davis for Erie together with Harris, Jones, and Ayersman on March 3, 2017, PE 11, P. 51, J.A. Vol. 3, P. 612. Although each of the representatives of Erie claimed no evidence of electrical activity near the origin of the fire, they removed the offending wiring from the area of the burned stairs during their joint examination of March 3, 2017, PE 11, P. 51, J.A. Vol. 3, P. 612; PE 45, J.A. Vol. 4, P. 998. Erie has never demonstrated any objective evidence to prove that the fire at the Wratchford residence on February 20, 2017, originated from an incendiary cause or arson.

There is absolutely no objective evidence that Tammy Wratchford ever "admitted" trying to set her house on fire with a candle. Tammy Wratchford testified on May 15, 2023, at Page 109 of the Transcript, J.A. Vol. 14, P. 3791, that a candle was accidently left burning, and that she felt guilty for forgetting to blow the candle out when she left home. Transcript of May 15, 2023, P. 110, J.A. Vol. 14, P. 3792. Also see the Polygraph Worksheet of Trooper Pansch, PE 97, Paragraph 2, J.A. Vol. 9, P. 2276. Clearly, neither the Grand Jury nor the Petit Jury believed the claims made by Erie, Ayersman, and the Fire Marshal's Office of attempted arson.

Erie acknowledges that coverage under the Erie policy of the Wratchfords was denied by letter dated July 11, 2017. The Respondent's Brief fails to acknowledge that during the Examinations Under Oath conducted on April 26, 2017, claims for property damages were made to Erie by Michael and Tammy Wratchford, PE 29, J.A. Vol. 4, P. 943-949, 956-957, as shown in PE 72, J.A. Vol. 6, P. 1177-Vol. 17, P. 1996, and PE 74, dated April 16, 2017, J.A. Vol. 8, P. 2099-

2100, as Proof of Loss for the personal property and dwelling, respectively, damaged by the fire. The Respondent's Brief also fails to acknowledge the letter written by Counsel for the Wratchfords dated June 27, 2017, J.A. Vol. 14, P. 3097-3099, wherein the claims for property damages were again made to Erie for the personal property and dwelling coverage in those same amounts represented in PE 72 and 74. Erie made no offer of settlement or effort to negotiate before Wratchfords filed suit on February 13, 2018. Erie has continued to deny coverage through the present.

Erie's claims of having made an offer of contribution of $150,000.00 during mediation on January 24, 2020, three (3) years after the fire, and two (2) years after the lawsuit was filed, was never made known to the Plaintiffs until after the jury trial was concluded when post-trial motions were filed together with an Affidavit from an Erie employee. Respondent's Brief fails to acknowledge that the Homeowner's Policy of insurance from Erie required suit to be filed no later than one (1) year after the fire claim of the Wratchfords took place on February 20, 2017, J.A. Vol. 2, p. 424, hence the filing of the Wratchford lawsuit on February 13, 2018. The denial letter of Erie dated July 11, 2017, PE 41, J.A. Vol. 4, P. 991, included at Page 5, J.A. Vol. 4, P. 995, the requirement that suit against Erie "must be brought within one (1) year after the loss or damage occurs."

The verdict of the jury found Erie responsible for liquidated property damages to the insureds for dwelling coverage and personal property coverage under the policy and also found Erie solely liable and 100% at fault for any and all damages found by the jury in its Verdict Form, J.A. Vol. 14, P. 3073. The jury clearly found Erie liable and at fault for the actions of its operatives and all damages otherwise suffered by the Plaintiffs as a result of the fire and the ensuing investigation by Erie. Erie has not appealed any of those damages found. The Circuit Court below

failed and refused to allow a provision for the jury within the Verdict Form for *Hayseeds* damages. The "non-economic damages" listed under Question 16, Page 16, of the Verdict Form specifically limited the allowance and the bases of damages NOT to include *Hayseeds* damages or any specific provision to find that the Plaintiffs had "substantially prevailed" in their claims against Erie. Counsel for the Plaintiffs below requested the Court to provide for consequential damages of the Wratchford insureds within the Verdict Form to be presented to the jury under Question 15, Page 15 of the Verdict Form, however, denied by the Court over objection. See Pages 22-23 of Petitioner's Brief with references to the record. The Circuit Court denied the jury the opportunity to grant *Hayseeds* damages, refused to find that the insureds substantially prevailed in the verdict for property damages, and refused to grant a second *Hayseeds* trial. This was clear error.

Of equal importance, the Circuit Court below failed to consider prejudgment interest under W. Va. Code §56-6-31 for liquidated damages found by the jury in its Verdict Form against Erie. There is absolutely no basis in law or fact for the Circuit Court below to have found the property damages awarded by the jury to Plaintiffs in the action below to fall under W. Va. Code §56-6-27. Plaintiffs are clearly entitled to prejudgment interest on the verdict of the jury against Erie based on liquidated property damages under their homeowner's insurance policy under W. Va. Code §56-6-31; Syl. Pts. 1-3, *Grove By and Through Grove v. Myers,* 181 W. Va. 342, 382 S.E.2d 536 (1989); *Miller v. Fluharty,* 201 W. Va. 685, at 700, 500 S.E.2d 310 at 325 (1997); Syl. Pt. 3, *State Farm Mut. Auto. Ins. Co. v. Rutherford*, 229 W. Va. 73, 726 S.E.2d 41 at 46 (2011).

The issues before this Court relate to issues found by the jury in favor of the Plaintiffs against Erie and the ensuing actions of the Circuit Court made in error during post-trial motions, including failing to find that Plaintiffs "substantially prevailed"; failing to grant attorney's fees and expenses; failing to enforce Plaintiffs' right to prejudgment interest; failing to find the

manifestly inadequate damages found by the jury from the unconverted and uncontradicted evidence presented at trial; and by failing to find the jury failed to follow the law in failing to find Erie guilty of violations of the Unfair Trade Practices Act of the State of West Virginia.

ARGUMENT

1. THE CIRCUIT COURT ERRED IN DETERMINING THAT THE WRATCHFORDS DID NOT SUBSTANTIALLY PREVAIL AGAINST THEIR INSURANCE COMPANY ON A PROPERTY DAMAGE CLAIM

The Court misinterpreted the precedent of *Hayseeds, Inc. v. State Farm Fire & Casualty*, 177 W. Va. 323, 352 S.E.2d 73 (1986), and its progeny, as does Erie, in an apparent misunderstanding of the requirement of an insured to "substantially prevail against their fire insurance company *on a property damage claim (which) is determined by the status of negotiations between the insured and the insurer prior to the institution of the lawsuit.* Syl. Pt. 2, *Thomas v. State Farm Mut. Ins. Co.,* 181 W. Va. 604, 383 S.E.2d 786 (1989); Syl. Pt. 2, *Miller v. Fluharty,* 201 W. Va. 685, 500 S.E.2d 310 (1997); 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 Nat. Ins. 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); and more importantly, Syl. Pts. 1 and 2, *Hadorn v. Shea*, 193 W. Va. 350, at 355, 456 S.E.2d 194 at 199 (1995), in which there were no pre-suit negotiations and no pre-suit demands made, yet the West Virginia Supreme Court of Appeals continued to maintain the determination that "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 a civil action." Respondent's Brief seeks to misdirect the determination "when negotiations broke down" by directing attention to cases in which there

had been no negotiations before suit was filed. The "expanded analysis of substantially prevail" claimed by Erie in *Hadorn v. Shea, supra*, does not and cannot supplant the precedent which the West Virginia Supreme Court of Appeals has continued to honor relating to pre-suit negotiations as the determining factor in cases such as Wratchford where the insureds filed proof of loss forms and demands for settlement prior to instituting litigation against their insurance company and in which the insurance company completely denied coverage forcing the lawsuit to be filed to protect the interests of the insureds. The Wratchfords had absolutely no alternative but to file a lawsuit and prosecute their claims against Erie, a billion-dollar insurance company, which had undertaken every kind of underhanded and subversive action against its insureds to break them down and overcome their ability to protect and prosecute their claims, up to and including efforts to incarcerate it's insured, Tammy Wratchford, through its employee, Ayersman. J.A. Vol. 1, p. 3815-3816. Trial transcript May 15, 2023, p. 133-134. Erie denied coverage.

From the outset of the Erie investigation, Erie focused on the financial condition of its insureds rather than acknowledging the exculpatory evidence that was clearly evident to its investigators. Erie ignored the results of samples taken on February 24, 2017, and analyzed by independent laboratories, including the West Virginia State Police Forensic Laboratory Report, PE 14, J.A. Vol. 3, P. 686, which found "there were no ignitable liquids identified in the items submitted", from samples of the charred stairs from the Wratchford home obtained by Ayersman, and PE 15, J.A. Vol. 3, P. 690, the Report of Great Lakes Analytical, Inc., from samples collected by Harris on February 23, 2017, from the charred stairs in the Wratchford home, which also concluded "no ignitable liquids were identified ...". Worse, Erie denied the clear existence of defective wiring attached under the stairs which clearly caused the fire, as found by experts hired on behalf of the insureds, PE 66, J.A. Vol. 5, P. 1094, 1105-1115, then Erie removed the wiring

from the residence, thereby destroying exculpatory evidence otherwise unavailable to the insureds. J.A. Vol. 3, P. 612; J.A. Vol. 4, p. 998-1001.

Erie's investigators each claimed that there was no electrical cause for the fire. Brent Harris advised Erie on February 23, 2017, that although the initial report indicated an electrical fire, Brent Harris confirmed the origin of the fire in the stairwell, "but could not find any evidence of electrical activity". Erie Claims Management System File, Page 88, PE 11, J.A. Vol. 3, P. 575. This claim by Harris was patently false. Bert Davis, an electrical engineer hired by Erie, inspected the Wratchford home on March 3, 2017, jointly and collectively with Brent Harris, Philip Jones, and "Mackey" Ayersman, and determined that the fire was "not electrical in nature and an intentionally set fire," and removed the wiring from the dwelling with no notice or permission of the insureds. Erie Claims Management System File, Page 51, J.A. Vol. 3, P. 612. This finding by Davis was clearly wrong, unsupported by objective evidence, and simply an echoing of the false and unethical findings of Harris and Ayersman. Each of the operatives of Erie were complicit in fraud.

On February 27, 2017, Philip Jones, the special investigator of Erie, reported in the Erie Claims Management System File at Page 66, the following detail:

> On 2/24/2017, I was able to travel to 1257 S. Fork Estates III, Moorefield, WV 26836 and meet with W. V. State Fire Mashal, Ronald "Mackey" Ayersman. He walked me through the scene of this fire and advised he has ruled the fire intentionally set on the stairs leading from the laundry room level to the kitchen level. (sic) He additionally stated he was able to eliminate all potential accidental ignition sources. He advised that he collected two (2) samples which have been forwarded to the State Police Lab for hydro-carbon testing. PE 11, J.A. Vol. 3, P. 597.

The evidence at trial demonstrated that Ayersman was a long-tenured employee of Brent Harris and FSI who acted in a supervisory position with that private company, including cases in West Virginia, PE 95, J.A. Vol. 9, P. 2258; PE 96, J.A. Vol. 9, P. 2261; PE 115, J.A. Vol. 10, P. 2405-

2408; PE 116, J.A. Vol. 10, P. 2409-2421; PE 80, J.A. Vol. 9, P. 2164-2171, and in fact, Ayersman took the initial report of the Erie fire for FSI on February 20, 2017, demonstrated in PE 113 C, J.A. Vol. 10, P. 2400; PE 11, P. 111, J.A. Vol. 3, P. 552. Thereafter, on February 23, 2017, Ayersman's employer, Brent Harris, reported the Wratchford fire to the West Virginia State Fire Marshal Arson Hotline, PE 12, J.A. Vol. 3, P. 684, upon which Ayersman was appointed to represent the West Virginia State Fire Marshal's Office in conducting a criminal investigation. As noted within this Brief, and Petitioners' original Petition, Ayersman worked in lock step with the investigators of Erie, including his private employer, Harris, the Erie Investigator Jones, and Bert Davis, the electrical engineer hired by Erie, all of whom had previously worked together on many cases for Erie conducting "joint examinations" and joint investigations. J.A. Vol. 2, P. 328-350, with ample evidence of conflicts of interest noted in PE 35, J.A. Vol. 4, P. 980; PE 35A, J.A. Vol 4. P. 983; PE 35B, J.A. Vol. 4, P. 986; PE 36, J.A. Vol. 4, P. 989; PE 37, J.A. Vol. 4, P. 990; PE 114, J.A. Vol. 10, P. 2404; PE 115, J.A. Vol. 10, P. 2405-2408; PE 116, J.A. Vol. 10, P. 2409-2421; PE 117, J.A. Vol 10, P. 2422; PE 122, 123, 124, 125, J.A. Vol. 10, P.2423-2471. Erie was fully aware that Ayersman was an employee of both FSI and the WVSFMO. The jury had before them all of these conflicts of interest of Ayersman, and the exculpatory evidence ignored by Erie demonstrated within reports from engineers hired by the Wratchford insureds, MSES Consultants, Inc., as noted hereinafter.

Erie seeks to relitigate the facts which were considered by the jury and upon which the jury rendered its verdict in favor of the Plaintiffs against Erie not only for the liquidated property damages sought by the Wratchfords, but also upon the jury finding Erie solely liable and 100% at fault for the damages suffered by the Plaintiffs as noted in Paragraph 16, Page 16 of the Verdict Form. Liability of Erie found by the jury has not been appealed. Clearly, the insureds, Wratchford,

"substantially prevailed" in their claims for property damages against Erie. Syl. Pt. 1 of *Hayseeds* states:

> 1. Whenever a policy holder substantially prevails in a property damage suit against its insurer, the insurer is liable for: (1) the insured's reasonable attorneys' fees in vindicating it's claim; (2) the insured's damages for net economic loss caused by the delay in settlement, and damages for aggravation and inconvenience. Syl. Pt. 1, *Hayseeds*, *supra.*

Regardless of the spin that Erie seeks to place on the facts, it is indisputable that the Wratchfords, as the insureds of Erie, have "substantially prevailed" in their property damage suit against Erie following the fire at their home of February 20, 2017, upon Erie denying the claims of the Wratchford insureds on July 11, 2017, and upon the Wratchfords having been forced to hire an attorney, hire experts, and file suit to overcome the senseless and unsupported denial of the property damage claims of the Wratchfords filed with Erie prior to being forced to file suit on February 13, 2018, in order to protect their rights under the Erie policy. *Hadron v. Shea*, 193 W.Va. 350 at 355, 456 S.E. 2d 194 at 199(1995), PE 5, P. 14, J.A. Vol. 2, P. 424. Also see PE 66, J.A. Vol. 5, P. 1094; PE 135, J.A. Vol. 11, P. 2572-Vol. 12, P. 2626; PE 137, J.A. Vol. 12, P. 2627; and PE 138, J.A. Vol. 12, P. 2664. The Petitioners not only had to overcome the denial of their insurance policy coverage by Erie, but they also had to overcome the criminal charges and efforts of Erie to have the Petitioner, Tammy Wratchford, prosecuted criminally as noted in PE 30, J.A. Vol. 4, P. 965, based upon the joint investigations of Erie's employees and operatives, stated at J.A. Vol. 4, P. 968, and the false representations by Ayersman in the criminal complaint.

At Page 5 of the Respondent's Brief, Erie claims that Ayersman "discovered" that the Wratchfords had not paid personal property taxes. This is an important issue to the Plaintiffs because it was Jones, the employee of Erie, who contacted the Assessor's Office in Hardy County, West Virginia, on March 8, 2017, and conferred with "Ralph" who disclosed to Jones that the

Wratchfords had not paid their personal property taxes. PE 101, J.A. Vol. 10, P. 2293. The information obtained by Jones was then disclosed to Ayersman by email dated March 9, 2017, the same day that Ayersman scheduled Tammy Wratchford for a polygraph examination. PE 101, J.A. Vol. 10, P. 2293, 2295-2296. Ayersman then stated his intent to turn the failure of Tammy Wratchford to pay property taxes over to the West Virginia State Police for prosecution. PE 102, J.A. Vol. 10, P. 2326-2327, 2331-2334. Ayersman then communicated with his superiors at the West Virginia State Fire Marshal's Office his intent to prosecute Tammy Wratchford for purported fraudulent acts in an effort to force a plea in the arson case that he was building together with Erie. PE 103, J.A. Vol. 10, P. 2338. Ayersman was using the information which he obtained from Jones, through Erie, in an effort to have Tammy Wratchford prosecuted by the West Virginia State Police for fraud. PE 105, J.A. Vol. 10, P. 2344-2347; PE 106, J.A. Vol. 10, P. 2348-2350. Ayersman's contacts with Erie and his association with Erie through his private employment with Harris spawned the efforts of Ayersman to bring multiple criminal charges against Erie's insureds to further the efforts of Erie in denying fire insurance coverage on the Wratchford home, all of which was disclosed to the jury at trial. The jury found Erie responsible for Ayersman's actions helping Erie. Verdict Form, Page 16 and 17, Questions 16 and 17, J.A. Vol. 14, P. 3072-3073

The letter dated February 13, 2017, claimed by Erie to provide notice of foreclosure in this action was another red herring effort of Erie to present a motive for claims of arson on February 20, 2017. Erie used this letter through Ayersman to further criminal charges brought in the Magistrate Court of Hardy County, West Virginia. PE 101, J.A. Vol. 10, P. 2306, admitted at trial, and includes discussions of Ayersman and Jones about the financial records obtained by Erie following the fire of February 20, 2017, as well as the property tax records researched by Jones for Erie. Ayersman claims that the Wratchfords received a foreclosure letter dated February 13,

2017. J.A. Vol. 10, P. 2306, 2335. Ayersman falsely stated under oath in the Criminal Complaint charging Tammy Wratchford on February 16, 2017, PE 30, J.A. Vol. 4, P. 969, that the letter from Summit Bank noticed Tammy Wratchford of foreclosure "the week or two prior to the fire", referring to the February 13, 2017, letter to William H. Bean, Attorney, which Ayersman admitted was untrue during the Preliminary Hearing. At the Preliminary Hearing of Tammy Wratchford on June 26, 2017, following her arrest on June 19, 2017, Ayersman claimed that Tammy Wratchford had received a notice from Summit Bank during the beginning of February, 2017, that Summit Bank had already started foreclosure proceedings. PE 54, J.A. Vol. 5, P. 1006. During Cross-Examination, Ayersman testified that the letter dated February 13, 2017, seven (7) days before the fire occurred, was from William H. Bean, Summit Community Bank, addressed to Tammy Sue and Michael W. Wratchford. J.A. Vol. 5, P. 1016. Upon further Cross-Examination, Ayersman acknowledged that the February 13, 2017, letter admitted into evidence at trial as PE 55, Vol. 5, J.A. P. 1036, was in fact from the Summit Community Bank addressed to William H. Bean, an attorney for the Bank, and in no way provided notice to Tammy Wratchford of the initiation of foreclosure proceedings. Ayersman then acknowledged that the February 13, 2017, letter had not been sent to the Wratchfords, and provided no notice of foreclosure to the Wratchfords. J.A. Vol. 5, P. 1016. Based thereon, the reference by Erie in it's Brief at Page 6 to the February 13, 2017, letter is simply another effort of character assassination and false innuendo by Erie. As demonstrated by the evidence, Erie has weaponized the February 13, 2017, letter from Summit Community Bank to William H. Bean against its insureds while using Ayersman, through FSI and the WVSFMO to further Erie's false claims of motive for arson.

Considering all of the evidence presented at trial and to the Circuit Court below, there is absolutely no question that the Wratchford insureds have "substantially prevailed" in their property

damages claims against the Erie Insurance Company. All of the skewed facts argued by Erie in its Response Brief were considered by the jury, discounted by the jury, and a verdict entered in favor of the Plaintiffs' below, the Erie insureds, for not only their property damages claims, but also in finding Erie solely liable and 100% at fault for all damages suffered by the Wratchfords, including their attorney's fees required in defending the false criminal charges brought by Ayersman, and procured by Erie. J.A. Vol. 14, P. 3072-3073.

The Wratchfords agree that the jury was instructed as to *Hayseeds* damages; the Wratchfords agree that evidence was presented at trial proving aggravation, inconvenience and net economic loss; and the Wratchfords agree that closing arguments were made requesting *Hayseeds* damages at trial. The Wratchfords deny that the Verdict Form was in any way appropriate for an award of *Hayseeds* damages. There was absolutely no provision made in the Verdict Form to allow *Hayseeds* damages to be found by the jury. Plaintiffs below objected to the form of the verdict prior to being submitted to the jury, J.A. Vol. 14, P. 3169-3171, 3179-3180, 3187, to have a provision made for *Hayseeds* damages resulting from the actions of Erie in denying coverage. Objections of the Plaintiffs below were saved based upon arguments made to the Circuit Court as more fully stated within Petitioners' Brief and within this Reply. Plaintiffs are entitled to a new or second trial against Erie for damages under *Hayseeds* for aggravation, inconvenience, and net economic loss, and the Wratchfords are entitled to attorney's fees and litigation expenses under *Hayseeds*. The Circuit Court should have either granted the request of the Plaintiffs below to allow the jury to consider *Hayseeds* damages in the Verdict Form, or the *Hayseeds* damages should have been bifurcated by the Court for a second trial, which must now be ordered by this Honorable Court.

2. **THE CIRCUIT COURT ERRED IN DENYING PREJUDGMENT INTEREST TO THE PLAINTIFFS BELOW**

The verdict of the jury for property damage claims of the Wratchford insureds was not founded under W. Va. Code §56-6-27 or under any law related to contracted interest regardless of how the Verdict Form was titled. The Wratchfords are entitled to recover prejudgment interest based upon liquidated property damages found by the jury in favor of the Wratchfords as insureds of Erie. A finding of liquidated property damages by the jury falls squarely under W. Va. Code §56-6-31. Any other ruling by the Appellate Court would overrule existing precedent and create a false precedent going forward for the recovery of prejudgment interest on property damage claims. W. Va. Code §56-6-31; Syl. Pt. 1, 2 and 3, *Grove By and Through Grove v. Myers,* 181 W. Va. 342, 382 S.E.2d 536 (1989); *Miller v. Fluharty,* 201 W. Va. 685, at 700, 500 S.E.2d 310 at 325 (1997); Syl. Pt. 3, *State Farm Mut. Auto. Ins. Co. v. Rutherford*, 229 W. Va. 73 at 78, 726 S.E.2d 41 at 46 (2011); *Berry v. Nationwide Mut. Fire Ins. Co.*, 181 W. Va. 168 at 177, 381 S.E.2d 367 at 376 (1989).

W. Va. Code §56-6-31states:

> (a) Except where it is otherwise provided by law, every judgment or decree for the payment of money, whether in an action sounding in tort, contract, or otherwise, entered by any court of this state shall bear simple, not compounding, interest, whether it is stated in the judgment decree or not.
>
> (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. Any such amounts of special or liquidated damages shall bear, simple, not compounding, interest. Special damages include lost wages and income, medical expenses, damages to tangible personal property and similar out-of-pocket expenditures, as determined by the Court. If an obligation is based upon a written agreement, the obligation bears prejudgment interest at the rate and terms set forth in the written agreement until the date the judgment or decree is entered and, after that, the judgment interest is the same rate as provided for below in subsection (c) of this section.

W. Va. Code §56-6-27 states:

> The jury, in any action founded on contract, may allow interest *on the principal due,* or any part thereof, and in all cases they shall find *the aggregate of principal and interest due* at the time of the trial, after allowing all proper credits, payments and sets-off; and judgment shall be entered for such aggregate with interest from the date of the verdict. (emphasis provided)

Clearly, W. Va. Code §56-6-27 is intended to apply to bank loans or other contractual notes bearing interest on a contractual principal due under a loan or borrowing situation, not for liquidated property damages for which reimbursement is sought under a fire insurance policy. The difference is clearly evident by the legal authority cited by Erie, *Miller v. WesBanco Bank, Inc.,* 245 W. Va. 363, 859 S.E.2d 306 (2021), or contractual interest sought under *Ringer v. John,* 230 W. Va. 687, 742 S.E.2d 103 (2013), each of which involves claims of interest owed on *principal due* in a contract action involving a *loan*, or for money borrowed with interest owed under a contract. W. Va. Code §56-6-31 explicitly contemplates a finding of prejudgment interest *by the Court* on judgments involving special damages or liquidated damages found by a jury whether the action sounds in tort, contract, or otherwise.

The provision of prejudgment interest under W. Va. Code §56-6-31 clearly provides that the Court shall award prejudgment interest on amounts found by jury for special or liquidated damages based on the rate in effect for the calendar year in which the action accrued as determined by the Court. Prejudgment interest on special or liquidated damages has been found by West Virginia Courts as "additional compensatory damages necessary to make a person whole". *State Farm Mut. Auto. Ins. Co. v. Rutherford*, 229 W. Va. 73 at 78, 726 S.E.2d 41 at 46 (2011). Prejudgment interest in the case *sub judice*, is clearly intended as an element of compensatory damages for the net economic loss suffered by the insureds of Erie based upon the failure of Erie to timely pay reimbursement for the property damages suffered by the insureds in the fire at their

residence on February 20, 2017, *Grove By and Through Grove v. Myers,* 181 W. Va. 342 at 347, 382 S.E.2d 536 at 541 (1989), and to fully compensate the injured party for loss of use of the funds expended following the fire event for ascertainable pecuniary losses. *Id.*; *Miller v. Fluharty,* 201 W. Va. 685, at 700, 500 S.E.2d 310 at 325 (1997). Any other reading of the statutory law of the State of West Virginia, §56-6-31, is contrary to the intent demonstrated by the West Virginia Legislature therein. The award of prejudgment interest under W. Va. Code §56-6-31 has been found by the West Virginia Courts as *mandatory*. *Grove By and Through Grove v. Myers,* 181 W. Va. 342 at 346, 382 S.E.2d 536 at 540 (1989). West Virginia Courts have found that prejudgment interest on ascertainable pecuniary losses (special and liquidated damages) is considered an element of compensatory damages, which are losses that are certain and capable of being rendered by reasonable calculation. *Id* at Pages 347 and 541. West Virginia law clearly states that any ambiguities or rights of the insured under an insurance policy must be liberally construed in favor of the insured to allow full recovery of compensatory damages. *Stipcich v. Metropolitan Life Ins. Co.,* 277 U.S. 311, 48 S. Ct. 522 (1928)*;* Syl. Pt. 1, 3, and 4, *Westfield Ins. Co. v. Sistersville Tank Works, Inc.,* 249 W. Va. 287, 895 S.E.2d 142 (2023; *Community Antenna Services, Inc. v. Westfield Ins. Co.*, 173 F. Supp. 505 (2001). Prejudgment interest on property damages under an insurance policy awarded for ascertainable pecuniary loss specifically serves to fully compensate the injured party for the loss of use of funds that have been expended. *Miller v. Fluharty*, 201 W.Va. 685 at 700, 500 S.E 2d 310, at 325 (1997).

The Wratchford insureds are entitled to a mandatory calculation of prejudgment interest by the Court on property damages of the Plaintiffs below pursuant to W. Va. Code §56-6-31.

3. **THE VERDICT OF THE JURY IN REDUCING OR DENYING PROPERTY DAMAGES CLEARLY PROVEN BY THE EVIDENCE IS "MANIFESTLY INADEQUATE"**

There is absolutely no evidentiary basis upon which the jury reduced or denied property damages proven at trial by the Plaintiffs, Wratchford. The jury verdict was contrary to the evidence presented for any damages reduced or denied by the jury contrary to documented losses presented by the Plaintiffs during the trial below by the Plaintiffs. There was absolutely no evidence presented by Erie contrary to the evidence of damages proven at trial. Upon the jury reducing or denying damages, which were specifically proven at trial in uncontroverted amounts, the verdict is manifestly inadequate and must 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 (1976); Syl. Pt. 3, *Kaiser v. Hensley*, 173 W. Va. 548, 318 S.E.2d 598 (1983); as found in Syl. Pts. 1-5, *McKenzie v. Sevier*, 244 W. Va. 416, 854 S.E.2d 236 (2020).

4. **THE WRATCHFORDS ARE ENTITLED TO A NEW TRIAL ON UNFAIR TRADE PRACTICES ACT CLAIMS**

The evidence admitted at trial below clearly demonstrates multiple violations of the West Virginia Unfair Trade Practices Act, (hereinafter "UTPA").

It is undisputed, and in fact, admitted that Erie obtained a credit report for individuals other than the Wratchford insureds, and not only placed the erroneous credit report in the Erie file, but confronted the Erie insureds with the false credit report while calling its insureds "liars" for denying entries in the false credit reports. Tammy Wratchford, PE 11, P. 67, J.A. Vol. 3, P. 596; J.A. Vol. 14, P. 3798-3801, 3695; Mike Wratchford, J.A. Vol. 15, P. 4655-4656. These actions by Erie clearly violate W. Va. Code §33-11-4 (3) and (5), which prohibit "defamation" by an insurance company in circulating derogatory financial information of the insureds, and by including false

statements and false information as to the financial condition of the insureds in the practice of insurance, as well as unconscionable acts by Erie against its insureds. The evidence at trial clearly demonstrates multiple violations of W. Va. Code §33-11-4(9) for all of those reasons stated within Petitioners' Brief and as demonstrated by the evidence referred to herein. For whatever reason, the jury failed and refused to find Erie guilty of violations of the UTPA which are clearly proven by the evidence before the Circuit Court below and in the evidence presented to the jury at trial. Based thereon, Plaintiffs are entitled to a new trial for violations by Erie of the West Virginia Unfair Trade Practices Act under W. Va. Code §33-11-4(3), (5), and (9).

CONCLUSION

WHEREFORE, the Petitioners are entitled to the relief prayed for within the Petitioners' Brief, and specifically, it is necessary that this Court reverse the rulings of the Circuit Court below and grant Plaintiff's Motion and Supplemental Motion to find that Petitioners "substantially prevailed" in their property damage suit against Erie and for a second *Hayseeds* trial; that Petitioners are entitled to reimbursement of attorney's fees and litigation expenses; that Petitioners are entitled to mandatory prejudgment interest; and that this Honorable Court overrule the rulings of the Circuit Court denying Plaintiffs' Supplemental Motion for Judgement Not Withstanding Verdict; Motion for Judgement Not Withstanding Verdict on Damages; Motion for New Trial/Second Trial on Failure to Provide Non-Economic Damages Including Aggravation and Inconvenience Under *Hayseeds*; and Motion for New Trial on Prejudgment Interest and Economic Losses Resulting from Delay in Payment. Plaintiffs' Motions for New Trial clearly include all issues appealed by the Wratchfords.

Tammy S. Wratchford and Michael W. Wratchford
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CERTIFICATE OF SERVICE

The undersigned counsel for the Petitioners, Tammy S. Wratchford and Michael W. Wratchford, does hereby certify that on the 29th day of January, 2025, the Petitioners' Reply Brief to Statement of the Case by Erie was filed electronically with the Court via West Virginia's File & ServeXpress, which provided an electronic copy upon counsel of record.

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