NO. 25-ICA-418

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IN THE WEST VIRGINIA INTERMEDIATE COURT OF APPEALS

JOSEPHINE N. DUTTON,

Petitioner,

vs.

STATE FARM MUTUAL AUTOMOBILE INSURANC COMPANY,

Respondent.

REPLY BRIEF

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A. *Res judicata* Does Not Bar First-Party Bad Faith Claims When Different Evidence and Legal Theories Apply.

The circuit court's ruling misconstrues both the factual record and controlling West Virginia precedent. The Marshall County action was a straightforward uninsured motorist claim seeking bodily injury damages. The present action seeks bad faith damages for State Farm's unreasonable delay and improper claims handling. These claims require fundamentally different evidence and invoke different legal standards.

1. The "Same Evidence" Test Is Not Satisfied Because UM Claims and Bad Faith Claims Require Fundamentally Different Proof.

In *Slider v. State Farm Mut. Auto. Ins. Co.*, 210 W. Va. 476, 481, 557 S.E.2d 883, 888 (2001), this Court held that "[i]f the two cases require substantially different evidence to sustain them, the second cannot be said to be the same cause of action and barred by *res judicata*." UM and bad faith claims require substantially different evidence. Based upon *Slider,* the Court should recognized the indiscretion of the Circuit Court's opinion.

The Marshall County lawsuit concerned collision injuries, medical treatment, and damages recoverable against the at-fault driver. The present bad faith lawsuit concerns State Farm's claims handling practices, whether Plaintiff substantially prevailed, and whether State Farm engaged in a pattern of unfair claim settlement practices that rose to the level of a general business practice. To prevail on bad faith claims, Plaintiff must present evidence of State Farm's internal decision-making, claims file documentation, evaluation methodologies (including AI software), communications between adjusters and management, company policies, and evidence of general business practice. None of this evidence was at issue in the Marshall County UM claim.

2. The Marshall County Complaint Contained No Bad Faith Allegations.

The Marshall County Complaint's sole reference to State Farm was jurisdictional. The Complaint contained no allegations of bad faith, no claims for *Hayseeds* or *Marshall* damages, and no allegations of unfair claims settlement practices. State Farm defended pursuant to W. Va. Code § 33-6-31 as the UM carrier, not as an adversary facing bad faith allegations.

West Virginia law expressly permits plaintiffs to file bad faith claims contemporaneously with the underlying insurance claim or by separate derivative suit. See e.g., Syl. Pt. 1, *State ex rel. State Farm Fire & Cas. Co. v. Madden*, 192 W. Va. 155, 157, 451 S.E.2d 721, 723 (1994) ("Under Rule 18(b), WVRCP [1978], an insurer **may** be joined as a defendant with the insured by an injured plaintiff alleging various claims of bad faith and unfair insurance practices.")(emphasis added).

There is no precedent in West Virginia that suggests that common law or statutory bad faith cases **must** be filed in the underlying suit. The word "may" is permissive.[1] In fact, West Virginia law establishes unique statutes of limitations for such claims. Specifically, claims involving unfair settlement practices that arise under the Unfair Trade Practices Act, West Virginia Code § 33-11-1 to -10, are governed by the one-year statute of limitations set forth in West Virginia Code § 55-2-12(c).[2] Similarly, the one year statute of limitations contained in W.Va. Code § 55−2−12(c) applies to a common law bad faith claims.[3]

3. The Circuit Court's Ruling Would Create Perverse Incentives.

If sustained, the circuit court's ruling would force policyholders to assert bad faith claims

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[1] See e.g., *Butler v. Tucker*, 187 W. Va. 145, 149 n. 4, 416 S.E.2d 262, 266 n. 4 1992)("We have customarily held that the word 'may' is permissive and not mandatory. *See, e.g., Weimer–Godwin v. Board of Educ.,* 179 W.Va. 423, 369 S.E.2d 726 (1988); *Mellon–Stuart Co. v. Hall,* 178 W.Va. 291, 359 S.E.2d 124 (1987); *Gebr. Eickhoff Maschinenfabrik und Eisengieberei v. Starcher,* 174 W.Va. 618, 328 S.E.2d 492 (1985); *Hodge v. Ginsberg,* 172 W.Va. 17, 303 S.E.2d 245 (1983).").

[2] Syllabus Point 1, *Wilt v. State Auto. Mut. Ins. Co.*, 203 W. Va. 165, 165, 506 S.E.2d 608, 608 (1998).

[3] *Noland v. Virginia Ins. Reciprocal*, 224 W. Va. 372, 686 S.E.2d 23, 25 (2009).

prematurely, before the insurer's conduct can be fully evaluated. An insured cannot know whether she will "substantially prevail" until the underlying claim is resolved. This approach would discourage settlement and encourage insurers to engage in delay tactics to encourage underpayment because they are allowed to escape accountability by settling on the eve of trial. *Poling v. Motorists Mut. Ins. Co.*, 192 W. Va. 46, 48, 450 S.E.2d 635, 637 (1994).

B. The *Poling* Doctrine Permits Bad Faith Claims After Settlement.

Poling establishes: "A cause of action for insurance bad faith may arise even if there has been a settlement and release of the underlying case against the tortfeasor so long as the release does not cover the insurer and the insurer is, or should be, aware of the possibility of a bad faith action at the time it agrees to the settlement." 192 W. Va. at Syl. Pt. 2. Every element is satisfied here.

State Farm is permitted to appear in the Marshall County litigation pursuant to W. Va. Code § 33-6-31 in its own name or in the name of the tortfeasor. See e.g., *State ex rel. State Farm Mut. Auto. Ins. Co. v. Canady*, 197 W. Va. 107, 109, 475 S.E.2d 107, 109 (1996) (Pursuant to West Virginia Code § 33-6-31(d), an uninsured motorist carrier is entitled to appear and defend in its own name rather than that of the uninsured tortfeasor even when policy defenses raising issues of coverage are not asserted by the carrier).[4] State Farm's defensive posture in the Marshall County litigation did not waive Plaintiff's separate bad faith claims or create a *res judicata* bar.

The circuit court's basis for distinguishing *Poling,* that it involved "a lawsuit against the

[4] The court in *Canady* explained the legislative purpose behind these broad defense rights: "by allowing the uninsured motorist carrier to defend the tort action on behalf of the insured or in its own name, the legislature intended to prevent a situation in which the uninsured motorist carrier would be bound by a default judgment against an uninsured motorist who may have no interest in defending the case." *Id.* The court further noted that carriers have the right to change their mode of appearance during litigation, "Finding nothing in the language of West Virginia Code § 33-6-31 (d) that would prohibit a carrier from altering its mode of appearance." *Id.*

insured only and not the insurer," misapprehends the legal principle. The *Poling* Court articulated a general rule about when settlement bars subsequent bad faith claims.

Nothing in *Poling* limits its holding to third-party contexts. Our Supreme Court has never overruled *Poling* or limited its application. The principles in *Poling* are consistent with this Court's recognition that bad faith claims *may* be filed contemporaneously although they have traditionally been filed as separate derivative suit. *Madden*, 192 W. Va. at 157, 451 S.E.2d at 723. The suggestion that the abrogation of third-party bad faith somehow obviates this legal principle is a logical fallacy.[5]

1. No Release Was Executed and State Farm Had Actual Notice.

No release was signed by Plaintiff extinguishing her bad faith claims. The Marshall County dismissal order resolved only the claims asserted in that Complaint, the UM claim for bodily injury damages.

State Farm had actual notice of Plaintiff's intent to pursue bad faith claims. During the April 5, 2024 status conference, Plaintiff's counsel explicitly advised the court that his client may amend to include bad faith allegations against State Farm, a fact corroborated by State Farm's counsel's contemporaneous memorandum. State Farm cannot now claim ignorance when its own counsel documented Plaintiff's stated intention.

2. Policy Considerations Support Applying Poling.

Without the possibility of subsequent bad faith actions, insurers would have every incentive to delay payment, engage in unreasonable claims handling practices, and then escape

[5] In simple terms it is a non-sequitur. To be more precise, it is a fallacy of false dependency because the syllabus point announced in Poling was not dependent on the continued existence of third-party bad-faith claims.

accountability by settling on the eve of trial. State Farm delayed payment for years despite the claim's reasonable value being apparent, engaged in protracted discovery disputes, and only agreed to tender policy limits after protracted litigation. Under the circuit court's reasoning, State Farm's misconduct would be immunized simply because it eventually paid what it owed along.

C. The Complaint States Valid Claims for Breach of Contract and Breach of Implied Duty of Good Faith and Fair Dealing.

West Virginia Rule 8(a) requires only a short and plain statement of the claim showing that the pleader is entitled to relief. West Virginia employs a liberal notice pleading regime where a pleading need only outline the alleged occurrence which (if later proven to be a recognized legal or equitable claim), would justify some form of relief. *Mountaineer Fire & Rescue Equip., LLC v. City Nat'l Bank of W. Virginia*, 244 W. Va. 508, 521, 854 S.E.2d 870, 883 (2020).

The Complaint alleges that Plaintiff's mother paid premiums, State Farm issued a policy providing UM coverage, Plaintiff suffered a covered loss, Plaintiff complied with policy terms, and State Farm breached its obligations. These allegations are sufficient under Rule 8(a).

1. The Complaint Contains Detailed, Specific Factual Allegations.

The Complaint sets forth extensive factual allegations spanning over 160 paragraphs documenting State Farm's systematic failures. (A.R. 4-64) Paragraph 171 enumerates fifteen distinct breaches, including failure to conduct prompt investigation, attempting to coerce settlement, taking advantage of an insured with traumatic brain injury, unreasonably refusing to acknowledge liability, failing to negotiate in good faith, and refusing to pay without reasonable investigation. (A.R. 60-61) The Complaint further alleges State Farm used improper evaluation software (3PET), engaged in discovery abuses, and repeatedly made unreasonably low settlement offers designed to coerce acceptance.

2. Breach of the Implied Duty of Good Faith and Fair Dealing Is Actionable.

West Virginia law explicitly recognizes "a common law duty of good faith and fair dealing running from an insurer to its insured." *Elmore v. State Farm Mut. Auto. Ins. Co.*, 202 W. Va. 430, 433, 504 S.E.2d 893, 896 (1998). This duty "is implied in all insurance contracts" and gives rise to an actionable claim where the insured substantially prevails. *Hayseeds, Inc. v. State Farm Fire & Cas. Co.*, 177 W. Va. 323, 352 S.E.2d 73 (1986).

3. Payment of Policy Limits After Unreasonable Delay Does Not Extinguish Contract Claims.

State Farm's argument that payment of policy limits renders all breach of contract claims moot reflects fundamental misunderstanding. As this Court explained, the policyholder "buys an insurance contract for peace of mind and security, not financial gain, and certainly not to be embroiled in litigation." *Miller v. Fluharty*, 201 W.Va. 685, 696, 500 S.E.2d 310, 321 (1997). The insurer's duty is to "promptly conduct a reasonable investigation" and "make a prompt, fair and equitable settlement offer." Failure to do so constitutes breach, and damages flow from "the delay in settlement" itself. *Hayseeds*, 177 W. Va. 323, Syl. Pt. 1, 352 S.E.2d 73.

The Complaint alleges State Farm delayed payment for years despite early receipt of medical records, bills, and repeated policy-limits demands, State Farm low-balled the claim, refused to tender undisputed UM limits, and treated its own insured as an adversary rather than a beneficiary. (A.R. 4-64) State Farm ignored objective medical evidence and sworn testimony establishing a traumatic brain injury, relied on conjecture and speculation to diminish damages, and repeatedly demanded unnecessary records while failing to conduct its own independent investigation. *Id*. It improperly shifted the burden of investigation to the insured, resisted or interfered with reasonable Rule 35 examinations, and used valuation tools designed to suppress claim values. *Id*. State Farm compelled the insured to litigate to obtain benefits owed, maintained a take-it-or-leave-it posture inconsistent with first-party obligations, and ultimately tendered policy limits only after years of delay and aggressive litigation tactics, conduct alleged to reflect a broader general business practice in violation of West Virginia common law and the Unfair Claims Settlement Practices Act.. *Id*.

D. Payment of Policy Limits After Unreasonable Delay Does Not Extinguish UTPA and Common Law Bad Faith Claims.

The circuit court's conclusion that State Farm's eventual payment extinguishes Plaintiff's UTPA and common law bad faith claims would create perverse incentives encouraging insurers to delay, deny, and litigate with impunity, secure that a last-minute payment would immunize prior misconduct.[6] West Virginia law definitively rejects this approach. Both UTPA and common law bad faith claims focus on the insurer's conduct throughout the claim process, not merely on whether the insurer eventually pays.

Under West Virginia law, an insurer's obligations extend beyond simply paying the correct amount eventually. "An insurance carrier has a duty, once a first-party policyholder has submitted proof of a loss, to promptly conduct a reasonable investigation.... [I]f liability has become reasonably clear, the insurance carrier must make a prompt, fair and equitable settlement offer." *Miller*, 201 W.Va. at 696, 500 S.E.2d at 321 (emphasis added). The insurer's duty is one of prompt, reasonable action, not eventual compliance after years of delay. *Hayseeds, Inc. v. State Farm Fire & Cas*., 177 W. Va. 323, 329, 352 S.E.2d 73, 79 (1986)(when an insured purchases a contract of insurance, he buys insurance—not a lot of vexatious, time-consuming, expensive litigation with his insurer).

[6] *Poling*, "[t]he mere fact that after months of delay and hassle the insurance company deigns to speak to the injured party and settles the case for the policy limits... does not automatically preclude the plaintiff from later bringing a bad faith action that includes a request for punitive damages." 192 W. Va. at 48, 450 S.E.2d at 637.

The UTPA proscribes specific categories of misconduct, including failing to adopt reasonable investigation standards, refusing to pay without reasonable investigation, failing to act promptly on communications, not attempting in good faith to effectuate prompt settlements when liability is reasonably clear, and compelling insureds to institute litigation by offering substantially less than amounts ultimately recovered. W. Va. Code § 33-11-4(9). Each violation focuses on the insurer's conduct when the misconduct occurs, not on whether the insurer eventually pays.

1. West Virginia Law Establishes That Payment Does Not Cure Prior Bad Faith.

This Court's decisions in *Hayseeds*, *supra;* and *Wilt v. State Auto. Mut. Ins. Co., 203 W. Va. 165, 506 S.E.2d 608 (1998)*[7], establish that payment does not automatically extinguish bad faith liability where the insurer's conduct was unreasonable. In *Hayseeds*, this Court held that damages include attorney's fees, net economic loss caused by delay, and damages for aggravation and inconvenience—all flowing from "the delay in settlement" itself. The *Wilt* case was a separate and distinct lawsuit brought post-verdict by the prevailing plaintiff.

In *Wilt v. State Auto. Mut. Ins. Co*., the underlying action stems from a personal injury that resulted in a $1.5 million award to the Plaintiffs, Glenn and Sandra Wilt. 203 W. Va. 165, 166, 506 S.E.2d 608, 609 (1998). On appeal, the West Virginia Supreme Court reduced the award by $225,000-the amount assigned for hedonic damages. *Id*. The Wilts sought further review by the United States Supreme Court, but that court denied Plaintiffs' writ of certiorari on May 31, 1994. *Id*. On November 22, 1995, the Wilts filed suit in the United States District Court for the Northern District of West Virginia against State Automobile Mutual Insurance Company ("State Auto"), alleging unfair settlement practices. *Id*. No one, including the West Virginia Supreme Court

[7] *Wilt v. State Auto. Mut. Ins. Co.,* 203 W. Va. 165, 166, 506 S.E.2d 608, 609 (1998)(All benefits payable to the plaintiffs under their underinsured policy and under the tortfeasor's liability policy were paid and plaintiff's brought a bad faith lawsuit).

suggested that it was improper to file a separate lawsuit alleging bad faith because the underlying claim was paid. *Id*.

The circuit court's reasoning cannot be reconciled with *Jordache Enterprises, Inc. v. Nat'l Union Fire Ins. Co.*, 204 W. Va. 465, 485, 513 S.E.2d 692, 712 (1998), which held that a UTPA claim is not subject to *res judicata* or dismissal even where the insured did not prevail in the underlying dispute. *Jordache* establishes that UTPA claims are independent of the outcome and focus on the reasonableness of the insurer's conduct.[8]

2. **Permitting Escape Through Late Payment Would Eviscerate West Virginia' Unfair Trade Practices Act and Bad Faith Law.**

The circuit court's ruling would create a roadmap for insurer misconduct. Insurers could delay unreasonably, make lowball offers, force insureds into protracted litigation in the hope of coercing a settlement for less than what is owed, and escape all accountability by tendering policy limits before trial. This would eviscerate protections afforded by *Hayseeds*, the UTPA, and West Virginia's common law bad faith doctrine.

E. State Farm's Cut-and-Paste Arguments Were Rejected in *Vanover*.

Many of State Farm's arguments in this case are recycled contentions that have been rejected by federal courts applying West Virginia law. Most significantly, in *Vanover v. State Farm*, Civil Action No. 5:23-cv-00802 (S.D. W. Va. Jan. 24, 2025), Chief Judge Frank W. Volk confronted State Farm's identical arguments and denied State Farm's motion to dismiss in its entirety. (A.R. 124-147). The *Vanover* decision demonstrates that the circuit court's ruling is an outlier inconsistent with how federal courts applying West Virginia law are deciding these issues.

[8] Since *Jordache*, the Supreme Court of Appeals of West Virginia has decided at least one other UTPA case in which a claim brought under an insurance policy was not covered by that policy. See *Aluise v. Nationwide Mut. Fire Ins*., 625 S.E.2d 260, 271 (W. Va. 2005).

The factual and legal parallels between *Vanover* and the present case are striking. State Farm's memorandum in support of its *Vanover* motion advanced arguments nearly identical to those it raises here.[9] Judge Volk denied State Farm's motion to dismiss in its entirety, finding that the plaintiff had adequately pleaded her claims under Federal Rule of Civil Procedure 8(a)(2), which, like West Virginia Rule 8(a), requires only "a short and plain statement of the claim showing... entitle[ment] to relief." (A.R. 124-147).

Judge Volk's analysis in *Vanover* directly contradicts the circuit court's conclusions in this case on each of the three claims at issue.

First, Judge Volk rejected State Farm's argument that the breach of contract claim failed because the plaintiff did not attach the policy to her complaint or reference specific policy provisions. (A.R. 124-147). Judge Volk recognized that the complaint's factual allegations, describing State Farm's conduct in handling the claim, were adequate to state a claim for breach of contract. (A.R. 124-147). This ruling is directly on point: like Ms. Vanover, Ms. Dutton alleged detailed facts spanning over 160 paragraphs regarding State Farm's improper claims handling

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[9] Specifically, State Farm argued in *Vanover* that: *First*, regarding the breach of contract claim, "Plaintiff fails to (a) attach the Policy to her Amended Complaint, (b) reference any part of the Policy, its terms, or applicable language, and (c) argue State Farm breached the written terms or conditions of the Policy itself." (A.R. 130). State Farm contended that without attachment of the policy and specific citation to policy provisions, the breach of contract claim must be dismissed. (A.R. 130-131). This is precisely the argument State Farm advanced in the present case. *Second*, regarding breach of the implied covenant of good faith and fair dealing, State Farm argued in *Vanover* that such claims "are not cognizable under West Virginia law" and that "West Virginia does not recognize a standalone claim for breach of the implied covenant of good faith and fair dealing." (A.R. 132-133). State Farm further argued that the implied covenant claim was merely duplicative of the breach of contract claim. (A.R. 132-133). These are the identical arguments State Farm made here and that the circuit court accepted. *Third*, regarding common law bad faith, State Farm argued in *Vanover* that the bad faith claim failed because "State Farm complied with the terms of its Policy in paying Plaintiff for the total loss of her RV" and that payment of benefits extinguished any bad faith claim as a matter of law. (A.R. 128-129). State Farm asserted that "[a]t its core, this action is about an alleged delay in paying Plaintiff"—a delay State Farm claimed was not its fault—and that the amended complaint "fails to sufficiently plead" the claims against State Farm. (A.R. 128). This mirrors State Farm's argument in the present case that eventual payment of policy limits extinguishes all bad faith claims.

practices, and those allegations are sufficient under notice pleading standards even without attaching the policy or quoting specific provisions verbatim.

Second, Judge Volk's order implicitly rejected State Farm's contention that breach of the implied duty of good faith and fair dealing is not a cognizable standalone claim in the insurance context. (A.R. 124-147). By denying State Farm's motion to dismiss the bad faith claims, Judge Volk affirmed that such claims can proceed based on the factual allegations in the complaint. (A.R. 124-147). This directly contradicts the circuit court's holding in the present case that Counts I and III are "improperly duplicative" and that breach of the implied covenant is not actionable as a separate claim. Judge Volk's decision confirms what West Virginia Supreme Court precedent has long established: that breach of the implied covenant of good faith and fair dealing is a recognized cause of action in insurance cases. *Elmore v. State Farm Mut. Auto. Ins. Co.*, 202 W. Va. 430, 433, 504 S.E.2d 893, 896 (1998); *Hayseeds*, 177 W. Va. 323, 352 S.E.2d 73.

Third, Judge Volk rejected State Farm's central argument that payment of benefits automatically extinguishes bad faith claims as a matter of law. (A.R. 124-147). The *Vanover* complaint, like the present Complaint, acknowledged that State Farm eventually paid the claim. Yet Judge Volk nevertheless found that the plaintiff had stated viable claims for bad faith and breach of contract based on State Farm's handling of the claim throughout the claims process. (A.R. 124-147). This holding confirms the well known truth that West Virginia law focuses on the insurer's conduct and claims-handling practices, not merely on whether the insurer ultimately paid. As this Court has repeatedly held, damages flow from "the delay in settlement" itself, not from whether payment was eventually made. *Hayseeds*, 177 W. Va. 323, Syl. Pt. 1, 352 S.E.2d 73.

Judge Volk's ruling also confirms that State Farm's hypertechnical objections, that the policy must be attached, that specific provisions must be quoted, that the implied covenant claim is not actionable, that payment of benefits extinguishes all claims, are inconsistent with basic pleading principles and substantive West Virginia insurance law.[10] "As suggested in, 4A M.J., Contracts § 84 (Matthew Bender & Co. 2007), while a breach of contract may best be alleged in the express words of the contract, the use of such words is not necessary."[11]

F. The Circuit Court's Decision Is an Outlier That Conflicts with Judicial Consensus.

The circuit court's decision stands in stark contrast to the weight of authority from courts applying West Virginia law. No West Virginia Supreme Court decision has ever held that *res judicata* bars a first-party insurance bad faith claim where no bad faith allegations were made in the prior suit and no release was executed. No West Virginia decision has held that payment of policy limits after years of delay automatically extinguishes UTPA and common law bad faith claims as a matter of law. And no West Virginia decision has adopted State Farm's position that breach of contract claims must be dismissed if the policy is not attached to the complaint or specific policy provisions are not quoted.

This Court's precedents in *Slider*, *Madden*, *Poling*, *Hayseeds*, *Marshall, Jenkins*, *Jordache,* and *Wilt* all independently support the conclusion that Plaintiff's claims are viable and should proceed to discovery. Federal courts applying West Virginia law, as evidenced by *Vanover*, have consistently rejected State Farm's cut-and-paste arguments. The circuit court's decision, if permitted to stand, would effectively immunize insurers from accountability for misconduct

[10] Evidence that an insurance company "failed to promptly remit payment of the claim in violation of the policy language can constitute an express breach of the insurance policy." *Blevins v. Nationwide Gen. Ins. Co*., No. 2:17-CV-03692, 2017 WL 6626330, at *5 (S.D.W. Va. Dec. 28, 2017)(citing, *Nowlan v. JP Morgan Chase Bank*, N.A., No. 2:11-cv-00404, 2012 WL 1029315, at * 4 (S.D. W. Va. Mar. 26, 2012) (finding that although plaintiff did not assert a breach of contract claim, plaintiff's allegations that defendant failed to properly apply plaintiff's loan payments may constitute an express breach of the deed of trust); see also *Miller v. Fluharty*, 500 S.E.2d 310, 320 (W. Va. 1997) ("Other jurisdictions have ... also concluded that the failure by an insurance carrier to investigate a claim adequately, or to investigate a claim properly within a reasonable time, constitutes a breach of the insurance contract.")).

[11] *Highmark W. Va., Inc. v. Jamie*, 221 W. Va. 487, 492-93, 655 S.E.2d 509, 514-15 (2007)

occurring before eventual payment, a result fundamentally inconsistent with West Virginia's public policy of protecting insureds from unfair claims practices.

The *Vanover* decision demonstrates that Plaintiff's legal positions are not novel or unsupported, but rather are consistent with how courts are actually applying West Virginia law to insurance bad faith cases. This Court should reverse the circuit court's dismissal as an aberrant opinion unsupported by any legal precedent and remand for further proceedings consistent with the principles articulated in this Court's own precedents.

CONCLUSION

This Court should reverse the circuit court's order and hold that *res judicata* does not bar Petitioner's bad faith claims, which arise from different evidence and satisfy West Virginia's notice pleading standards. Petitioner respectfully requests that this Court reverse and remand for further proceedings.

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CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of February 2026, a true and correct copy of the foregoing Appellant's Reply Brief was served upon all counsel of record by electronic service through File & Serve Express, which provides electronic notice and access to the filed documents to registered participants. Service was made upon the following:

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I further certify that File & Serve Express is the court-approved electronic filing and service system and that service through this system constitutes valid service under the Rules of Appellate Procedure of West Virginia.

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