

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA
No. 24-235

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THOMAS A. CUMMINGS,
Individually and as Executor of the Estate of
Cynthia M. Cummings,

Plaintiff below, Petitioner,

vs.

Appeal from an order of the
Intermediate Court of Appeals (No.
22-ICA-220), and formerly pending
in the Circuit Court of Monongalia
County (Civil Action No. 20-C-86)

WARD J. PAINE, MD, and,
BENJAMIN KLENNERT, PA,

Defendants below, Respondents.

PETITIONER'S REPLY BRIEF

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I. STATEMENT OF THE CASE

Petitioner is compelled to correct an inaccuracy in Respondents' Statement of the Case. Response Brief at p. 1. While Respondents agree that the settled Nursing Home Defendants appeared on the verdict form for an allocation of fault, and the jury assigned no fault to them (*Id.*), they inaccurately represented that "the Circuit Court prevented Respondents from offering any evidence whatsoever regarding the fault of the Nursing Home Defendants." *Id.* Respondents then cited to a portion of the trial transcript (A.R. 706-715) concerning Petitioner's objection to Respondents' attempt to elicit opinions critical of the Nursing Home Defendants from one of *Petitioner's* expert witnesses.

By sustaining the instant objection to Respondents' counsel's examination of Petitioner's expert, the Circuit Court in no way prohibited Respondents "from offering any evidence whatsoever" critical of the then-settled Nursing Home Defendants. In fact, at no point prior to the above-cited examination in the middle of trial did Respondents ever indicate a desire to offer evidence critical of the Nursing Home Defendants. Respondents asserted no cross-claim against the Nursing Home Defendants in their Answer to Petitioner's Complaint (A.R. 27) and Respondents did not identify the Nursing Home Defendants as parties potentially at fault in response to written discovery requests served by Petitioner. Quite the contrary, during this action, (a) Respondents shared an expert witness (Stephen F. Conti, MD) with the Nursing Home Defendants; (b) Respondents did not cross-designate Petitioner's expert witnesses nor in any manner indicate pre-trial a desire to elicit opinions from Petitioner's experts critical of the Nursing Home Defendants; and (c) Respondents' counsel even advised the jury during his opening statement regarding Mrs. Cummings' unfortunate outcome that:

[a]ll of this happened to Mrs. Cummings *without negligence by anyone*, Dr. Klein, **the Madison**, Dr. Paine, Mr. Klennert. All this happened without negligence by anybody because of Mrs. Cummings's ill health and the risk that she was undertaking.

Emphasis added, A.R. 228.¹ Thus, the Respondents never took the position pretrial nor at trial that the Nursing Home Defendants caused and/or contributed to Mrs. Cummings' injuries, yet now boldly suggest to this Court that the reason the jury assigned no fault to the settled parties was because the Circuit Court precluded such evidence entirely.

Further, to the extent Respondents wished to change their tune, and attempt to place blame upon the Nursing Home Defendants after Petitioner reached a settlement with them, Respondents had plenty of time in which to do so, but did not. As set forth in Petitioner's Brief, Petitioner reached a settlement with the Nursing Home Defendants on August 12, 2021. Trial of this matter did not begin until February 22, 2022 – over six (6) months later. At no point during that intervening period did Respondents move to amend their pleadings or in any other way attempt to put Petitioner and the Court on notice of their newfound desire to point the finger at the Nursing Home Defendants – as required so as not to ambush the opposing party at trial. *See Graham v. Wallace*, 214 W.Va. 178, 184, 588 S.E.2d 167 (2003) (“trial by ambush is not contemplated by the Rules of Civil Procedure.”), quoting *McDougal v. McCammon*, 193 W.Va. 229, 237-37, 455 S.E.2d 788, 795-96 (1995).

As Respondents conceded in their Response Brief, they did not pursue this issue² on appeal, and did not assert any cross-assignments of error. Accordingly, it is a non-issue in the instant appeal and should not confuse this Court as to the Petitioner's properly-asserted assignments of error.

¹ Please recall that 161 Bakers Ridge Road Operations, LLC, d/b/a Madison Center was among the settled Nursing Home Defendants.

² Specifically, the Circuit Court's ruling sustaining Petitioner's objection to a question asked by Respondent's counsel to Petitioner's expert witness Daniel Haimowitz, MD, on cross examination.

II. STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Pursuant to the criteria set forth in West Virginia Rules of Appellate Procedure 18 and 20, Petitioner requests a Rule 20 argument. Such argument is warranted because this appeal involves issues of first impression, involves issues of fundamental public importance, and involves constitutional questions regarding the validity and interpretation of a statute.

III. ARGUMENT

A. THE ICA ERRED IN DENYING PETITIONER'S *MOTION TO PRECLUDE DEFENDANTS FROM RECEIVING A PRO TANTO VERDICT REDUCTION IN AMOUNT OF PLAINTIFF'S SETTLEMENT WITH NURSING HOME DEFENDANTS* AND IN PROVIDING RESPONDENTS WITH THE BENEFIT OF A DOLLAR-FOR-DOLLAR/*PRO TANTO* REDUCTION IN JUDGMENT FOR THE AMOUNT OF PETITIONER'S PRETRIAL SETTLEMENT WITH THE NURSING HOME DEFENDANTS.

1. Standard of Review.

Based upon the Respondent's brief, the parties are in agreement that a *de novo* standard of review is applicable. Response Brief at p. 3.

2. W.Va. Code § 55-7B-9 is internally inconsistent and ambiguous, and if enforced literally, produces an absurd and unjust result.

As reflected by their Response Brief, Respondents substantially, if not solely, rely upon the language of W.Va. Code § 55-7B-9, asserting its provisions to be 'crystal clear' in requiring both *pro tanto* and allocation of fault reductions of verdicts. However, Respondents have yet to explain how a statute (§ 55-7B-9) which so clearly prescribes that medical malpractice defendants are to be *severally* liable for injuries should be interpreted as if defendants are *jointly* liable when it comes to verdict offsets for pretrial settlements. Similarly, Respondent have yet to offer any response to the caselaw³ cited by Petitioner for the proposition that dollar-for-dollar/*pro tanto*

³ *Johnson by Johnson v. General Motors Corp.*, 190 W.Va. 236, 241, 438 S.E.2d 28, 33 (1993)(An automobile accident case involving the 'crashworthiness doctrine' wherein the W.Va. Supreme Court held: "... if the jury can apportion the damages, then the injury was divisible and a set-off is not appropriate.

verdict offsets were created to ensure plaintiffs did not receive a double recovery for a single injury from joint tortfeasors who are jointly and severally liable (not severally liable tortfeasors) - other than to say that § 55-7B-9 says what it says, end of story.

Respondents fail to appreciate that there are instances in which Courts of this state are permitted - in fact, obligated - to disregard the literal words of a statute when following the statutory language 'to a T' would result in injustice and absurdity. This Court recognized this well-established legal principle as recently as this past summer. *See e.g. Logan-Mingo Area Mental Health, Inc. v. Lester*, 902 S.E.2d 768, 773-74, 2024 W.Va. LEXIS 256 (**June 10, 2024**, opinion), citing Syl. Pt. 2, *Conseco Fin. Serv. Corp. v. Myers*, 211 W.Va. 631, 567 S.E.2d 641 (2002)(“It is the duty of a court to construe a statute to its true intent, and give to it such construction as will uphold the law and further justice. **It is as well the duty of a court to disregard a construction, though apparently warranted by the literal sense of the words in a statute, when such construction would lead to injustice and absurdity.**’ *Emphasis added*, Syl. Pt. 2, *Click v. Click*, 98 W.Va. 419, 127 S.E.2d 194 (1925).”). Over the last decade, this Court has regularly and consistently recognized its duty to prevent absurdity from the literal reading of a statute. *See e.g.*:

However, if the jury is unable to apportion the damages, then the injury is indivisible and since the tortfeasors will then be jointly and severally liable, a set-off is appropriate.”); Syl. Pt. 1, *Thornton v. Charleston Area Medical Center*, 158 W.Va. 504, 213 S.E.2d 102 (1975)(: “The reason for permitting the credit [for a plaintiff’s pre-verdict settlement with a joint tortfeasor] is that joint tortfeasors are jointly and severally liable to the plaintiff so that a payment by one operates as a *pro tanto* satisfaction for all.” *Emphasis added*, FN3, *Groves v. Compton*, 167 W.Va. 873, 877, 280 S.E.2d 708 (1981), citing *New River & Pocahontas Consolidated Coal Company v. Eary*, 115 W.Va. 46, 174 S.E. 573 (1934); *Krieser v. Hobbs*, 166 F.3d 736 (5th Cir. 1999)(“[s]et-offs for settlement and the ‘one-satisfaction’ rule exist to prevent the plaintiff from recovering twice from the same assessment of liability. But, where liability is not joint-and-several, and each defendant instead bears liability for damages *only proportionate* to his own fault, there is *no* assessment of liability for damages common to the settling and non-settling defendants. Accordingly, the settlement has an entirely separate basis from the apportioned damages, and the one-recovery rule does not apply.” *Emphasis added*.).

October **2023** (*State v. Finley*, 2023 W.Va. LEXIS 383, *15 (2023));

November **2023** (Syl. Pt. 4, *Trivett v. Summers Cnty. Comm’n*, 895 S.E.2d 86, 2023 W.Va. LEXIS 462 (2023));

November **2022** (Syl. Pt. 3, *Butner v. Highlawn Mem. Park Co.*, 247 W.Va. 479 (2022));

November **2020** (Syl. Pt. 10, *State ex rel. Morrissey v. Diocese of Wheeling-Charleston*, 244 W.Va. 92, 851 S.E.2d 755 (2020));

January **2019** (Syl. Pt. 8, *Vanderpool v. Hunt*, 241 W.Va. 254, 823 S.E.2d 526 (2019));

November **2018** (*Pennington v. W.Va. Office of the Ins. Comm’r*, 241 W.Va. 180, 188, 820 S.E.2d 626 (2018));

October **2018** (Syl. Pt. 3, *State ex rel. Blankenship v. Warner*, 241 W.Va. 362, 825 S.E.2d 309 (2018));

November **2016** (Syl. Pt. 3, *State v. Henning*, 238 W.Va. 193, 793 S.E.2d 843 (2016));

April **2016** (Syl. Pt. 4, *Benjamin v. Walker*, 237 W.Va. 181, 786 S.E.2d 200 (2016));

June **2015** (*State v. Blatt*, 235 W.Va. 489, 505, 74 S.E.2d 570 (2015));

May **2015** (*In re L.M.*, 235 W.Va. 436, 446, 774 S.E.2d 517 (2015));

June **2014** (*State v. George K.*, 233 W.Va. 698, 709, 760 S.E.2d 512 (2014)).

Thus, this is not a foreign or novel concept to this Court. Petitioner is not asking this Court to usurp the legislature’s lawmaking function, nor act as a “superlegislature” (FN6 to ICA opinion below, A.R. 1357), but rather to appropriately interpret and apply the legislative intent of W.Va. Code § 55-7B-9. See e.g. *Cart v. GE*, 203 W.Va. 59, 63, FN8, 506 S.E.2d 96 (1998)(“Judicial process is concerned with the interpretation and application of legislative intent, not with usurpation of the lawmaking function.” quoting *Rudley v. Tobias*, 84 Cal. App. 2d 454, 458, 190 P.2d 984 (Cal.App.1948)). As outlined in Petitioner’s initial Brief, it is clear from the MPLA’s §

55-7B-9 that the Legislature intended medical malpractice defendants to be severally liable (§ 55-7B-9 is titled “Several liability” after all). So why would the same Legislature that intended defendants to be severally liable simultaneously intend for defendants to be treated as if joint tortfeasors (i.e. *jointly* and severally liable) when it comes to post-verdict offsets for pretrial settlements? It does not make sense. It reflects ambiguity within § 55-7B-9 and creates injustice to plaintiffs when applied according to the literal sense of the words in the statute.

When interpreting an ambiguous statute, this Court “need not leave [its] common sense at the doorstep[.]” *State ex rel. State v. Burnside*, 233 W.Va. 273, 281, 757 S.E.2d 803 (2014), quoting *Price Waterhouse v. Hopkins*, 490 U.S. 228, 241, 109 S. Ct. 1775 (1989). In the case at bar, despite numerous briefs and several arguments on this issue over the course of two years’ time, the Respondents have failed to identify a single instance in which a W.Va. Court (circuit court or Supreme Court) has simultaneously permitted both *pro tanto* and allocation of fault reductions of a verdict. The commonsense explanation for that fact is because applying both reduction methods to a verdict would be patently unfair and absurd.

If the goal of a *pro tanto* verdict offset in the amount of a pretrial settlement is to ensure that a plaintiff does not receive a double recovery for one injury (e.g. Syl. Pt. 1, *Thornton v. CAMC*, 158 W.Va. 504, 213 S.E.2d 102 (1975), that goal/purpose is unnecessary and entirely inappropriate when a jury is permitted to allocate fault among all parties (including defendants who settled with plaintiff prior to trial, as in this case).⁴ As Respondents conceded, “the jury did not allocate any

⁴ *Gemstar Ltd. v. Ernst & Young*, 185 Ariz. 483, 917 P.2d 222, 237 (Ariz. 1996)(“Reducing plaintiffs’ award by the amount of the [previous] settlement would undermine the policy justifications underlying several only liability. Under several only liability, the defendant is liable only for the amount of the plaintiff’s damages that is proportional to the defendant’s percentage of fault. [] Thus, offsetting a plaintiff’s damages by the amount of a non-party’s settlement is unnecessary because the defendant pays only his share of the damages.”).

fault to the Nursing Home Defendants.” Response Brief at p. 12. Therefore, it completely belies commonsense for Respondents to receive the benefit of a contract (pretrial settlement agreement) entered into between the Nursing Home Defendants and Petitioner by having their jury-determined fault reduced from 90% to a mere 4.5%.⁵

On numerous occasions, this Court has interpreted the Legislature’s intent in such a way as to avoid injustice and absurdity. By way of example:

“Surely, the Legislature, in enacting W.Va. Code § 19-20-20, did not intend to deem every dog as dangerous for engaging in behavior that is part of its inherent nature: biting.” *Emphasis added, State v. Blatt*, 235 W.Va. 489, 505, 774 S.E.2d 570 (2015).

“We conclude that here, although the inclusion of the words ‘injury, death or loss’ in West Virginia Code section 29-12A-6(b) could warrant the construction urged by the petitioner – that the minority tolling provision applies even though the minor is deceased – this Court will disregard said construction because it would lead to an absurd result **surely not intended by the Legislature.**” *Emphasis added, Trivett v. Summers Cnty. Comm’n*, 895 S.E.2d 86, 95 (2023).

“Therefore, adopting the insurance commissioner’s position would bring about an absurd and unjust result that was **surely unintended by the Legislature.**” *Emphasis added, Sheena H. v. W.Va. Office of the Ins. Comm’r*, 235 W.Va. 132, 138, 772 S.E.2d 317 (2015).

”Surely the Legislature did not intend to prohibit those whose license are revoked for speeding from driving on our highways while at the same time permit those whose license are revoked for drunk driving to continue to drive.” *Emphasis added, State v. Euman*, 210 W.Va. 519, 522, 558 S.E.2d 319 (2001).

“Surely the legislature did not intend for the authority to transfer to be determined simply by the order in which the prosecutor brings the charges, considering that ‘the decision to try a juvenile as an adult has enormous and lifelong consequences for the child and for society.’” *Emphasis added, State v. D.D.*, 172 W.Va. 791, 796, 310 S.E.2d 858 (1983).

“Surely, the legislature did not intend to destroy or impair the contract, and to deny all remedy for its enforcement in the courts of this state and compel the obligee to resort to the courts of another state, would amount to a clear impairment of its obligation.” *Emphasis added, Billmyer Lumber Co. v. Merchants’ Coal Co.*, 66 W.Va. 696, 702 (1910).

Petitioner respectfully suggests that this Court should include within its decision reversing

⁵ \$225k is 90% of the jury verdict of \$250k, while \$11,250 is only 4.5% of the jury verdict of \$250k.

the decisions below in the instant matter the following sentence: *Surely, the Legislature, in enacting W.Va. Code § 55-7B-9, did not intend to treat multiple medical malpractice defendants as joint tortfeasors by subjecting favorable plaintiff verdicts to a pro tanto reduction for the amount of pretrial settlements when the jury is permitted to allocate fault among all parties (including settled defendants).*

3. W.Va. Code § 55-7B-9 is inconsistent with W.Va. Code § 55-7-13d.

Respondents criticize Petitioner’s citation to Chief Justice Armstead’s *dissenting* opinion in *State ex rel. Chalifoux v. Cramer* (2021 W.Va. LEXIS 317, memorandum decision), but as observed by Chief Justice Armstead, “[i]t is significant here that the majority recognized that we must look not only to the provisions of W.Va. Code § 55-7B-9 but must also consider W.Va. Code § 55-7-13d.” *Emphasis added*, 2021 W.Va. LEXIS 317, p. 29 (memorandum decision)(referencing the majority’s statement that “we must also consider whether the circuit court correctly interpreted the statutes governing liability – both West Virginia Code §§ 55-7-13d and 55-7B-9. . .”). *Chalifoux*, at p. 6, 29. Moreover, the Response Brief’s references to the *circuit* court’s order cited in *Chalifoux* are far from binding precedent – and far short of being “fatal” or “lethal” to Petitioner’s arguments, as Respondents suggest. Response Brief at p. 9.

Respondents failed to even address the fact that Chief Justice Armstead reiterated the position expressed in his *Chalifoux* dissent – that W.Va. Code § 55-7B-9 and W.Va. Code § 55-7-13d should be read in *para materia* – in a 2023 concurrence in *Wingett v. Challa*, 895 S.E.2d 107 (2023)(Chief Justice Armstead’s concurrence: “[B]ecause West Virginia Code § 55-7B-9 and West Virginia Code § 55-7-13d impose a statutory scheme imposing several liability rather than joint and several liability, the two sections should be read in *para materia*.” . . . “I believe we should. . . affirmatively find that West Virginia Code § 55-7-13d does apply to MPLA actions.”).

Petitioner submits that Chief Justice Armstead’s dissent in *Chalifoux*, and concurrence in *Wingett*, provide thoughtful analysis of the interplay between W.Va. Code § 55-7-13d and W.Va. Code § 55-7B-9, built upon citations to well-established W.Va. authority. Chief Justice Armstead’s analysis logically demonstrates why W.Va. Code § 55-7-13d (including its provision prescribing that a plaintiff’s recovery is reduced in proportion to the percentage of fault assigned to a settled party, “rather than by the amount of the nonparty’s or party’s settlement”) applies to MPLA cases like the one at bar. Respectfully, the ICA’s opinion does not reflect the thorough analysis of the two particular statutes at issue - W.Va. Code § 55-7-13d and W.Va. Code § 55-7B-9 – performed by Chief Justice Armstead and referenced above. A.R. 1358-1360. Rather, the ICA seemingly quickly determined that (a) because § 55-7B-9 is not ambiguous, it is not subject to the *in pari materia* rule of statutory construction, and (b) even if there was conflict between the two statutes, a specific statute (§ 55-7B-9) must be given precedence over a general statute (§ 55-7-13d). A.R. 1359.

Petitioner submits that this Court should follow Chief Justice Armstead’s analysis of these two statutes detailed in his *Chailifoux* dissent and *Wingett* concurrence, and in doing so find that surely, the Legislature intended for the Petitioner’s recovery to be reduced in proportion of the percentage of fault assigned to the Nursing Home Defendants, and not by a *pro tanto*/dollar-for-dollar offset in the amount of Petitioner’s pretrial settlement.

4. W.Va. Code § 55-7B-9 violates the certain remedy right provided by the W.Va. Constitution.

In their Response Brief, Respondents merely re-cite caselaw on this subject cited in Petitioner’s Brief and essentially assert that because § 55-7B-9 “does not restrict **completely** a medical plaintiff’s recovery”, then it does not violate the certain remedy right of W.Va. Const. art.

III, § 13. *Emphasis added*, Response Brief, p. 14. Respondents' statement, however, is not the test for compliance with the Constitution. More specifically, a statute does not have to completely deny a right/remedy before it is unconstitutional. Rather, a legislative enactment implicates the certain remedy provision of the W.Va. Constitution when it *substantially impairs* vested rights or *severely limits* existing procedural remedies. *Emphasis added*, Syl. pt. 6, *Gibson v. West Virginia Dept. of Highways*, 185 W.Va. 214, 406 S.E.2d 440 (1991). W.Va. Code § 55-7B-9's purported double verdict reduction formula clearly impairs and limits a medical malpractice plaintiff's rights and remedies. Therefore, the certain remedy provision is implicated.

Respondents concede that § 55-7B-9 has not previously been subjected to a certain remedy analysis in the Courts. Response Brief at p. 14. As set forth in Petitioner's Brief, there is no clear social or economic problem which W.Va. Code § 55-7B-9 can be claimed to reasonably curtail. Accordingly, the double verdict reduction methods prescribed by W.Va. Code § 55-7B-9 should be declared unconstitutional as violative of the certain remedy right of W.Va. Const. art. III, § 13.

5. A decision in this matter does not constitute an 'advisory opinion', but rather an opportunity for this Court to fulfill its role/duty.

The instant appeal does not represent a hypothetical situation or mere academic exercise. Petitioner has been harmed by the ambiguous and inconsistent provisions of § 55-7B-9. The settled parties (Nursing Home Defendants) were placed on the verdict form for an allocation of fault, no fault was allocated by the jury to the Nursing Home Defendants, and Petitioner's verdict was nonetheless reduced by the full amount of his pretrial settlement with the Nursing Home Defendants. There is nothing hypothetical or advisory about that fact. Rather, this case offers this Court an opportunity to fulfill its role in our civil justice system by interpreting an ambiguous statute (Syl. Pt. 1, *Ohio County Comm'n v. Manchin*, 171 W.Va. 552 (1983)), disregarding a construction of that statute which would lead to injustice and absurdity (Syl. Pt. 2, *Conseco Fin.*

Serv'g Corp. v. Myers, 211 W.Va. 631 (2022)), and refusing to enforce legislation which runs afoul of the West Virginia Constitution (*Boyd v. Merritt*, 177 W.Va. 472, 474 (1986)).

The current version of § 55-7B-9, titled “Several liability”, clearly contemplates that medical malpractice defendants be severally liable, yet contains conflicting language left over from the days of joint and several liability. This inconsistency and ambiguity, as applied by the Circuit Court and approved by the ICA, produces an absurd and unjust result.

In several instances in their Response Brief, Respondents incorrectly asserted that § 55-7B-9’s purported double verdict reduction formula aligns with the MPLA’s statutory purpose to “balance[] the interests of the claimants and the medical practitioners of the State.” Response Brief at p. 5, 11, 14. What the MPLA actually says is:

our system of litigation is an essential component of this state’s interest in providing **adequate and reasonable compensation** to those persons who suffer from injury or death as a result of professional negligence, and any limitation placed on this system must be balanced with and consider of the **need to fairly compensate patients who have been injured as a result of negligence** and incompetent acts by health care providers[.]

Emphasis added, W.Va. Code § 55-7B-1. Medical malpractice plaintiffs suing multiple tortfeasors do not have the opportunity to be made whole if non-settling defendants are provided the windfall of a *double* reduction of adverse verdicts on account of pre-trial partial settlements. Respondents’ suggestion that § 55-7B-9’s purported double verdict reduction formula provides “a level playing field for medical plaintiffs and health care providers” could not be further from the truth. Response Brief at p. 14.

IV. CONCLUSION

For the reasons and authority set forth in Petitioner’s Brief and above, Petitioner respectfully requests that this Court reverse the Circuit Court’s denial of Petitioner’s *Motion to Preclude Defendants from Receiving a Pro Tanto Verdict Reduction* – and ICA’s affirmance of the same - and direct the Circuit Court to enter a Judgment Order which does not reduce the jury’s

damage award to Petitioner by the amount of his pre-trial settlement with the Nursing Home Defendants, and awards Petitioner interest from the date of the Circuit Court's initial Judgment Order to present.

Respectfully submitted,
Petitioner Thomas A. Cummings,
by counsel:

/s/Chad L. Taylor

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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA
No. 24-235

THOMAS A. CUMMINGS,
Individually and as Executor of the Estate of
Cynthia M. Cummings,

Plaintiff below, Petitioner,

vs.

Appeal from an order of the
Intermediate Court of Appeals (No.
22-ICA-220), and formerly pending
in the Circuit Court of Monongalia
County (Civil Action No. 20-C-86)

WARD J. PAINE, MD, and,
BENJAMIN KLENNERT, PA,

Defendants below, Respondents.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the attached “*Petitioner’s Reply Brief*” was served
upon the following counsel of record, by the File&ServeXpress system on October 18, 2024:

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/s/Chad L. Taylor
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