# IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

**JOSEPHINE N. DUTTON,**
**Plaintiff Below, Petitioner**

**v.) No. 25-ICA-418** (Cir. Ct. of Ohio Cnty. Case No. CC-35-2025-C-12)

**STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,**
**Defendant Below, Respondent**

**FILED**
**November 5, 2026**
**released at 3:00 p.m.**
ASHLEY N. DEEM, CHIEF DEPUTY CLERK
INTERMEDIATE COURT OF APPEALS
OF WEST VIRGINIA

## MEMORANDUM DECISION

In this appeal, Petitioner Josephine N. Dutton argues that Respondent State Farm Mutual Automobile Insurance Company ("State Farm") breached the terms of her insurance policy by delaying payment of her uninsured motorist coverage claim, and that State Farm investigated and negotiated that claim in bad faith. In its September 23, 2025, order granting State Farm's motion to dismiss, the Circuit Court of Ohio County found that Ms. Dutton's claims were barred by res judicata and that her complaint failed to state a claim. State Farm filed a response in support of the circuit court order.[1] Ms. Dutton filed a reply.

This Court has jurisdiction over this appeal pursuant to West Virginia Code § 51-11-4 (2026). After considering the parties' arguments, the record on appeal, and the applicable law, this Court finds that there is error in the circuit court's decision, but no substantial question of law. For these reasons, a memorandum decision reversing the circuit court's order and remanding the matter to the circuit court is appropriate under Rule 21 of the West Virginia Rules of Appellate Procedure.

On November 1, 2019, Chelsea Keyser, an uninsured driver, struck Ms. Dutton's vehicle head-on while Ms. Dutton was driving in Marshall County. The accident caused a total loss to Ms. Dutton's vehicle and personal injuries to Ms. Dutton and her minor child. At the time of the accident, Ms. Dutton was insured under a State Farm policy that included up to $25,000 in coverage for uninsured motorist claims. Shortly after the accident, Ms. Dutton retained counsel and notified State Farm of her claim for uninsured motorist coverage. State Farm accepted the claim.

[1]Ms. Dutton is represented by George N. Sidiropolis, Esq., and Jordan M. Laird, Esq. State Farm is represented by Jill Cranston Rice, Esq., Alex M. Greenberg, Esq., and Lauren E. Motes, Esq.

On May 15, 2020, Ms. Dutton provided State Farm with medical records and bills demonstrating her treatment for injuries sustained in the accident. On May 29, 2020, State Farm offered Ms. Dutton $7,500 to settle her uninsured motorist claim. Ms. Dutton did not accept that offer, and on November 1, 2021, she filed a complaint in the Circuit Court of Marshall County[2] (the "Marshall County Action") raising a negligence claim against Ms. Keyser. Ms. Dutton also named State Farm as a defendant, though the complaint did not include any claim directly against State Farm. State Farm defended the Marshall County Action in Ms. Keyser's name. After negotiations between the parties, in February of 2024, State Farm offered to settle the case for $25,000, the policy limit of Ms. Dutton's uninsured motorist coverage. Ms. Dutton accepted the offer, and the parties moved to dismiss the case. On December 4, 2024, the circuit court entered an order dismissing the Marshall County Action with prejudice.

On January 16, 2025, Ms. Dutton filed her complaint in this action in the Circuit Court of Ohio County. In this complaint, Ms. Dutton raised three claims against State Farm: 1) a claim for attorney fees and damages under *Hayseeds, Inc. v. State Farm Fire & Cas.*, 177 W. Va. 323, 352 S.E.2d 73 (1986); 2) a statutory claim for violations of the West Virginia Unfair Trade Practices Act ("UTPA"); and 3) breach of contract. On March 3, 2025, State Farm filed a motion to dismiss the complaint under Rule 12(b)(6) of the West Virginia Rules of Civil Procedure, arguing that Ms. Dutton's claims were barred by res judicata because she could have raised the same claims in the Marshall County Action. State Farm also asserted that the allegations in the complaint failed to state a claim. Ms. Dutton filed a response in opposition, and State Farm filed a reply.

On September 23, 2025, the circuit court entered its order granting State Farm's motion to dismiss. The circuit court concluded that the Marshall County Action was res judicata as to Ms. Dutton's underlying claims. The court reasoned that there was a final adjudication in the Marshall County Action, that both Ms. Dutton and State Farm were parties to that action, and that Ms. Dutton could have litigated her subsequent claims in the Marshall County Action because both actions arose from the same facts. The circuit court also determined that Ms. Dutton's complaint failed to state a claim for breach of contract, as the complaint acknowledged that State Farm had already paid Ms. Dutton the policy limits of her uninsured motorist coverage. The court found that the failure of Ms. Dutton's breach of contract claim was fatal to her *Hayseeds* and UTPA claims. It is from the circuit court's order dismissing Ms. Dutton's claims that she now appeals.

Our review of an order granting a motion to dismiss is *de novo*. Syl. Pt. 2, *State ex rel. McGraw v. Scott Runyan Pontiac-Buick, Inc.*, 194 W. Va. 770, 461 S.E.2d 516 (1995). Moreover, "[t]he trial court, in appraising the sufficiency of a complaint on a Rule 12(b)(6) motion, should not dismiss the complaint unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Syl. Pt.

[2]This complaint was docketed as Marshall County Case No. CC-25-2021-C-94.

3, *Chapman v. Kane Transfer Co., Inc.*, 160 W. Va. 530, 236 S.E.2d 207 (1977). On appeal of an order dismissing a complaint under Rule 12(b)(6), the allegations of the complaint must be taken as true. Syl. Pt. 1, *Wiggins v. E. Associated Coal Corp.*, 178 W. Va. 63, 357 S.E.2d 745 (1987). Additionally, "where the issue on an appeal from the circuit court is clearly a question of law, we apply a *de novo* standard of review." Syl. Pt. 1, *Chrystal R.M. v. Charlie A.L.*, 194 W. Va. 138, 459 S.E.2d 415 (1995) (citation modified); *Mountain Am., LLC v. Huffman*, 229 W. Va. 708, 710, 735 S.E.2d 711, 713 (2012) (per curiam) ("The application of *res judicata* to bar litigation involves a question of law[.]").

Ms. Dutton raises four assignments of error on appeal. However, we have consolidated Ms. Dutton's broadly framed assignments of error into the following three discrete arguments: 1) that the circuit court erred in finding that her complaint failed to state a breach of contract claim; 2) that the circuit court erred in finding that her *Hayseeds* and UTPA claims depended on her breach of contract claim; and 3) the circuit court erred in finding that her claims were barred by res judicata. We will address each of these arguments in turn.

As to her breach of contract claim, the circuit court concluded that Ms. Dutton's complaint failed to state such a claim for two reasons. First, the court noted that the complaint itself acknowledged that State Farm paid Ms. Dutton the policy limits of her uninsured motorist coverage. Next, the court found that Ms. Dutton's allegations failed to identify any term of the policy that State Farm breached. On appeal, Ms. Dutton recites a number of allegations in support of her breach of contract claim and argues that it was not necessary for her to identify a specific provision of the policy in order to state a claim. We agree.

Notably, Ms. Dutton does not dispute that she cannot recover policy proceeds as damages for her breach of contract claim, because State Farm already paid the policy limits of her uninsured motorist coverage. However, she did not limit her claimed damages simply to the policy proceeds, but instead alleged that she suffered economic losses and other damages stemming from State Farm's alleged breach. While it is not entirely clear what additional damages Ms. Dutton believes she suffered from State Farm's alleged breach of the policy, "a party is not required to establish a *prima facie* case at the pleading stage."[3] *Mountaineer Fire & Rescue Equip., LLC v. City Nat'l Bank of W. Va.*, 244 W. Va. 508, 522, 854 S.E.2d 870, 884 (2020).

Moreover, the Supreme Court of Appeals of West Virginia ("SCAWV") has reasoned that "a plaintiff has no duty to specify precisely which term or paragraph of the contract was breached in order to properly state a claim; a plaintiff must only provide fair

[3]While recognizing the liberality of West Virginia's pleading standard, we reiterate that Ms. Dutton is only entitled to a single recovery for a single injury. *See* Syl. Pt. 7, *Harless v. First Nat. Bank in Fairmont*, 169 W. Va. 673, 289 S.E.2d 692 (1982).

notice of what the plaintiff's claim is and the grounds upon which it rests." *Id.* at 529, 854 S.E.2d at 891. Below, Ms. Dutton alleged that State Farm breached the policy by initially refusing to pay the limits of her uninsured motorist coverage and by failing to satisfy other policy obligations related to processing Ms. Dutton's claim, including that State Farm failed to "conduct a prompt and reasonable investigation" and "refus[ed] to acknowledge pertinent communications."[4] Ms. Dutton further alleged that the breach caused damages. Under West Virginia's notice pleading standards, we find that Ms. Dutton's allegations were sufficient to state a claim. Accordingly, we conclude that the circuit court erred in finding that Ms. Dutton failed to state a breach of contract claim.

Next, Ms. Dutton argues that the circuit court erred in finding that her *Hayseeds* and UTPA claims failed because her complaint did not state a claim for breach of contract. We agree. As an initial matter, we have determined that Ms. Dutton's complaint states a breach of contract claim. However, even absent that determination, we find that the circuit court erred in concluding that Ms. Dutton's *Hayseeds* and UTPA claims failed as a matter of law.

Here, the circuit court concluded, and State Farm maintains on appeal, that Ms. Dutton's *Hayseeds* claim fails because West Virginia law does not recognize a cause of action for a breach of the implied covenant of good faith and fair dealing independent of a breach of contract claim. The circuit court relied on a federal court ruling that "[i]n West Virginia, a claim for a breach of the covenant of good faith and fair dealing is not a cognizable claim." *Kohler v. State Farm Mut. Ins. Co.*, No. 5:20-CV-51, 2020 WL 6947388, at *1 (N.D.W. Va. Apr. 2, 2020). However, we find the *Kohler* case wholly distinguishable as the *Kohler* court did not address a *Hayseeds* claim, *id.*, nor is a *Hayseeds* claim based on a breach of the implied covenant of good faith and fair dealing.

Under *Hayseeds*, "[w]henever a policyholder substantially prevails in a property damage suit against its insurer, the insurer is liable for: (1) the insured's reasonable attorneys' fees in vindicating its claim; (2) the insured's damages for net economic loss caused by the delay in settlement, and damages for aggravation and inconvenience." Syl. Pt. 1, *Hayseeds, Inc. v. State Farm Fire & Cas.*, 177 W. Va. 323, 352 S.E.2d 73 (1986). It is true that the SCAWV has characterized a *Hayseeds* claim as "a common law bad faith claim." Syl. Pt. 5, in part, *Jordache Enters., Inc. v. Nat'l Union Fire Ins. Co. of Pittsburgh, Pa.*, 204 W. Va. 465, 513 S.E.2d 692 (1998). However, that Court has also recognized that "showing bad faith is wholly unnecessary for recovery under *Hayseeds.*" *Sizemore v. State Farm Gen. Ins. Co.*, 202 W. Va. 591, 598, 505 S.E.2d 654, 661 (1998). Indeed, in *Hayseeds*, the SCAWV explained that it was of "little importance whether an insurer

[4]State Farm argues that these allegations pertain to Ms. Dutton's UTPA claim, rather than a breach of contract claim. However, State Farm has not cited any authority for the proposition that these allegations could not support a breach of contract claim.

contests an insured's claim in good or bad faith." *Hayseeds*, 177 W. Va. at 329, 352 S.E.2d at 79.

While a *Hayseeds* claim does not require a showing of bad faith, State Farm is correct that a *Hayseeds* claim necessarily stems from the contractual relationship between an insurer and its insured. To pursue a *Hayseeds* claim, an insured must "substantially prevail" in a claim based on the underlying insurance policy. *See Jordache*, 204 W. Va. at 468, 513 S.E.2d at 695, Syl. Pt. 5. In other words, a *Hayseeds* claim is dependent on a claim invoking the underlying insurance policy. However, while *Hayseeds* dealt specifically with a property damage suit and a direct contract action against the insurer, the SCAWV later extended *Hayseeds* to the uninsured motorist context. *See Marshall v. Saseen*, 192 W. Va. 94, 100, 450 S.E.2d 791, 797 (1994). In *Marshall*, the SCAWV held that when an insured "substantially prevails in a suit involving [uninsured motorist] coverage under W. Va. Code[ §] 33–6–31(d), the insurer issuing such policy is liable for the amount recovered up to the policy limits, the policyholder's reasonable attorney fees, and damages proven for aggravation and inconvenience." *Id.* at 96, 450 S.E.2d at 793, Syl. Pt. 6.[5]

Ms. Dutton's Marshall County Action was a suit for uninsured motorist coverage benefits under West Virginia Code § 33–6–31(d). Pursuant to *Marshall v. Saseen*, to prove her separate *Hayseeds* claim in this case, Ms. Dutton must demonstrate that she substantially prevailed in the Marshall County Action. Therefore, Ms. Dutton's claim in the Marshall County Action, rather than the breach of contract claim in the complaint below, is the predicate for her *Hayseeds* claim in this action. Accordingly, irrespective of our finding that Ms. Dutton's complaint below states a claim for breach of contract, we conclude that the circuit court erred in finding that Ms. Dutton's *Hayseeds* claim failed as a matter of law.

The circuit court concluded that Ms. Dutton's UTPA claim failed as a matter of law because State Farm was entitled to investigate the merits of her policy claim, and that after doing so, State Farm paid the policy limits of her uninsured motorist coverage.[6] Ms. Dutton argues that the eventual payment of the policy limits did not extinguish her UTPA claim. We agree with Ms. Dutton.

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[5]*Marshall* involved underinsured motorist coverage, rather than uninsured motorist coverage, but the holding is applicable to both types of coverage.

[6]As discussed above, the circuit court reached this conclusion after stating that the failure of Ms. Dutton's breach of contract claim extinguished her UTPA claim. However, in analyzing the merits of Ms. Dutton's UTPA claim, the circuit court did not rely on the failure of her breach of contract claim as the basis to dismiss the UTPA claim. Therefore, we will address the circuit court's conclusion that Ms. Dutton's UTPA claim failed as a matter of law independently of our analysis of the breach of contract claim.

West Virginia Code § 33-11-4(9) (2002) designates various actions related to the handling of insurance claims as "unfair claim settlement practices." The SCAWV has recognized "[a]n implied private cause of action . . . for a violation by an insurance company of the unfair settlement practice provisions of W. Va. Code, 33-11-4(9)." Syl. Pt. 2, in part, *Jenkins v. J. C. Penney Cas. Ins. Co.*, 167 W. Va. 597, 280 S.E.2d 252 (1981), *overruled on other grounds by State ex rel. State Farm Fire & Cas. Co. v. Madden*, 192 W. Va. 155, 451 S.E.2d 721 (1994). To establish this UTPA claim, "a claimant must demonstrate that the insurer (1) violated the UTPA in the handling of the claimant's claim and (2) that the insurer committed violations of the UTPA with such frequency as to indicate a general business practice." *Holloman v. Nationwide Mut. Ins. Co.*, 217 W. Va. 269, 276, 617 S.E.2d 816, 823 (2005). In her underlying complaint, Ms. Dutton alleged that State Farm violated West Virginia Code § 33-11-4(9) in various ways, including by failing to reasonably investigate the claim and by failing to negotiate settlement in good faith, despite liability being reasonably clear.

State Farm does not identify any authority for the proposition that an insurer's eventual payment of policy limits automatically or necessarily extinguishes a UTPA claim. In fact, the SCAWV has particularly recognized that recovery on a UTPA claim is predicated "solely upon violation of the West Virginia Unfair Trade Practices Act" rather than success on the underlying policy claim. Syl. Pt. 9, in part, *McCormick v. Allstate Ins. Co.*, 197 W. Va. 415, 475 S.E.2d 507 (1996). In the instant case, State Farm argues that Ms. Dutton's UTPA claim fails as a matter of law because the basis for the claim is a good faith dispute over the value of her policy claim. While future discovery may yield evidence supporting State Farm's view, no such fact has yet been established.

Along that same line, while the circuit court found it appropriate to conclude that State Farm's investigation was reasonable as a matter of law, the SCAWV has recognized that the reasonableness of an investigation and whether liability was clear are typically issues of fact. *See* Syl. Pt. 3, *Jackson v. State Farm Mut. Auto. Ins. Co.*, 215 W. Va. 634, 600 S.E.2d 346 (2004). Here, based upon our review, we find the circuit court granted State Farm's Rule 12(b)(6) motion to dismiss but failed to take the UTPA allegations in Ms. Dutton's complaint as true. The SCAWV has long held that "[o]n appeal of a dismissal on granting a motion to dismiss pursuant to [Rule 12(b)(6)], the allegations of the complaint must be taken as true." Syl. Pt. 1, *Wiggins v. E. Associated Coal Corp.*, 178 W. Va. 63, 357 S.E.2d 745 (1987). Accordingly, as the circuit court failed to take the allegations set forth in Ms. Dutton's complaint as true, we find that the circuit court erred in concluding that Ms. Dutton's UTPA claim failed as a matter of law.

Finally, we address Ms. Dutton's argument that the circuit court erred in finding that the Marshall County Action is res judicata to the claims raised in her underlying complaint. With respect to res judicata, also known as claim preclusion, we apply the following three-factor test:

> Before the prosecution of a lawsuit may be barred on the basis of *res judicata,* three elements must be satisfied. First, there must have been a final adjudication on the merits in the prior action by a court having jurisdiction of the proceedings. Second, the two actions must involve either the same parties or persons in privity with those same parties. Third, the cause of action identified for resolution in the subsequent proceeding either must be identical to the cause of action determined in the prior action or must be such that it could have been resolved, had it been presented, in the prior action.

Syl. Pt. 4, *Blake v. Charleston Area Med. Ctr., Inc.*, 201 W. Va. 469, 498 S.E.2d 41 (1997). Ms. Dutton does not contest the circuit court's conclusions that the dismissal order in the Marshall County Action was a final adjudication on the merits or that the two actions involve the same parties. Instead, she specifically argues that the causes of action raised in her current complaint could not have been resolved in the prior proceeding because they arise from substantially different evidence than she relied on in the Marshall County Action.

The SCAWV has held that in evaluating the third element of res judicata, courts must apply a "same evidence" test:

> For purposes of *res judicata* or claim preclusion, "a cause of action" is the fact or facts which establish or give rise to a right of action, the existence of which affords a party a right to judicial relief. The test to determine if the issue or cause of action involved in the two suits is identical is to inquire whether the same evidence would support both actions or issues. If 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.*

Syl. Pt. 4, *Slider v. State Farm Mut. Auto. Ins. Co.*, 210 W. Va. 476, 557 S.E.2d 883 (2001).[7] Invoking this test, Ms. Dutton contends that the Marshall County Action involved establishing Ms. Keyser's negligence and Ms. Dutton's resulting injuries, while the evidence in this case will involve State Farm's improper actions and delay in handling her claim for uninsured motorist coverage. Accordingly, she argues that the circuit court erred in finding that her current claims were barred. We agree.

As an initial matter, Ms. Dutton could not raise a direct contract action against State Farm in her complaint in the Marshall County Action. In her suit against the uninsured

[7]The SCAWV has explained that the same evidence test is "narrow" compared to the test used for res judicata in federal courts, which focuses on whether the subsequent litigation arises from the same transaction as the claim resolved in the prior judgment. *See Dan Ryan Builders, Inc. v. Crystal Ridge Dev., Inc.*, 239 W. Va. 549, 558 n.26, 803 S.E.2d 519, 528 n.26 (2017).

tortfeasor—Ms. Keyser—in that action, Ms. Dutton sought uninsured motorist coverage under her own State Farm policy. Such coverage is statutorily mandated under West Virginia Code § 33-6-31(b) (2015), and its invocation provides the insurer with the right to participate in the underlying tort lawsuit:

> Any insured intending to rely on the coverage required by subsection (b) of this section shall, if any action be instituted against the owner or operator of an uninsured or underinsured motor vehicle, cause a copy of the summons and a copy of the complaint to be served upon the insurance company issuing the policy, in the manner prescribed by law, as though such insurance company were a named party defendant; such company shall thereafter have the right to file pleadings and to take other action allowable by law in the name of the owner, or operator, or both, of the uninsured or underinsured motor vehicle or in its own name.

W. Va. Code § 33-6-31(d). The SCAWV has held that "W. Va. Code § 33–6–31(d), our uninsured motorist statute, does not authorize a direct action against the insurance company providing uninsured motorist coverage until a judgment has been obtained against the uninsured motorist." Syl. Pt. 2, *Postlethwait v. Bos. Old Colony Ins. Co.*, 189 W. Va. 532, 432 S.E.2d 802 (1993) (citation modified).[8] Therefore, Ms. Dutton technically could not have raised a breach of contract claim against State Farm in the Marshall County Action because she had not yet obtained a judgment against Ms. Keyser.

Moreover, based on the allegations in her instant complaint, Ms. Dutton's breach of contract claim will require substantially different evidence than her tort claim in the Marshall County Action. As discussed above, here, Ms. Dutton has alleged that State Farm breached its policy by initially failing to pay her claim and by conducting an inadequate investigation, failing to communicate with her, and negotiating in bad faith. While there may be some overlap with the evidence that would have been necessary to demonstrate Ms. Keyser's liability in the Marshall County Action, the breach Ms. Dutton alleged below will require evidence of State Farm's conduct in its investigation and negotiation of her uninsured motorist claim, which was not at issue in the prior action. Accordingly, we find

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[8]The SCAWV recognizes an exception to this general rule, not applicable to this case, under which "[a] plaintiff is not precluded under W. Va. Code, 33–6–31(d) (1988), from suing an uninsured/underinsured insurance carrier if the plaintiff has settled with the tortfeasor's liability carrier for the full amount of the policy and obtained from the uninsured/underinsured carrier a waiver of its right of subrogation against the tortfeasor." *Postlethwait*, 189 W. Va. at 533, 432 S.E.2d at 803, Syl. Pt. 4. The Court has also clarified that "establishment of liability," rather than judgment, "is the key prerequisite to permitting direct recovery against an underinsurance carrier." *State ex rel. Motorists Mut. Ins. Co. v. Broadwater*, 192 W. Va. 608, 612, 453 S.E.2d 591, 595 (1994).

that the circuit court erred in concluding that Ms. Dutton's breach of contract claim was barred by res judicata.

Similarly, Ms. Dutton's claim for consequential damages under *Hayseeds* will rely on substantially different evidence than the Marshall County Action. Under *Hayseeds* as applied to the uninsured motorist coverage context by *Marshall*, Ms. Dutton must demonstrate that she "substantially prevailed" in the Marshall County Action. *See* Syl. Pt. 6, *Marshall v. Saseen*, 192 W. Va. 94, 450 S.E.2d 791 (1994). As the SCAWV has explained, whether an insured has "substantially prevailed" involves a review of "the negotiations as a whole from the time of the insured event to the final payment of the insurance proceeds." Syl. Pt. 4, in part, *Miller v. Fluharty*, 201 W. Va. 685, 500 S.E.2d 310 (1997). Additionally, an insured substantially prevails "when the action is settled for an amount equal to or approximating the amount claimed by the insured immediately prior to the commencement of the action[.]" Syl. Pt. 1, in part, *Jordan v. Nat'l Grange Mut. Ins. Co.*, 183 W. Va. 9, 393 S.E.2d 647 (1990).

Therefore, as Ms. Dutton argues, her allegations supporting her *Hayseeds* claim relate to the claim she made for uninsured motorist coverage under her policy, State Farm's initial offers to settle the claim, and the fact that she was compelled to file suit under W. Va. Code § 33–6–31(d) before receiving an offer to settle the claim for policy limits. Supporting these allegations will require substantially different evidence than would have been required to prove Ms. Keyser's negligence in the Marshall County Action; indeed, Ms. Dutton's success in resolving the Marshall County Action is part of the necessary evidence to support her claim for damages under *Hayseeds*. Accordingly, we find that the circuit court erred in concluding that Ms. Dutton's *Hayseeds* claim was barred by res judicata.

Ms. Dutton's UTPA claim will also rely on substantially different evidence than would have been necessary to demonstrate Ms. Keyser's liability in the Marshall County Action. To prove this claim, Ms. Dutton must demonstrate that State Farm violated the UTPA in the handling of her claim and State Farm violated the UTPA frequently enough to indicate a general business practice. *See Holloman*, 217 W. Va. at 276, 617 S.E.2d at 823. As discussed, Ms. Dutton alleges that State Farm violated the UTPA in its investigation, negotiation, and settlement of her policy claim. The evidence necessary to support these allegations would not have been necessary or relevant in the prior action to show Ms. Keyser's negligence and Ms. Dutton's resulting damages. Therefore, we find that the circuit court erred in concluding that Ms. Dutton's UTPA claim was barred by res judicata.

Based on the foregoing, we reverse the September 23, 2025, order of the Circuit Court of Ohio County and remand this matter for further proceedings consistent with this decision.

Reversed and Remanded.

**ISSUED:** November 5, 2026

**CONCURRED IN BY:**

Chief Judge Daniel W. Greear
Judge Charles O. Lorensen
Judge S. Ryan White