

COURTWATCH



A report prepared for members of the
West Virginia Chamber of Commerce
2026

THE IMPACT OF THE
WEST VIRGINIA
SUPREME COURT OF APPEALS
ON OUR STATE'S ECONOMY





We express deep appreciation to the attorneys and law students of our Legal Review Team who volunteered their time and expertise to review cases decided by the West Virginia Supreme Court, the Intermediate Court of Appeals, and the federal courts in the Fall 2025 and Spring 2026 Terms of Court and present this report on the impact of those Court decisions on our state's economy to Chamber members.

DISCLAIMER: *The information in this document is not legal advice. This document was prepared by members of the West Virginia Chamber of Commerce, and it is intended to provide general information regarding recent decisions of the West Virginia Supreme Court of Appeals, the Intermediate Court of Appeals, and federal courts. As with all guides and documents prepared by the West Virginia Chamber of Commerce, if you have any legal questions, please seek the assistance of legal counsel.*



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No. 25-ICA-300 (May 1, 2026)

Credit Acceptance Corp. v. Stanley
Case No. 24-305 (June 1, 2026)

What the Court was Asked to Decide:

The West Virginia Supreme Court of Appeals considered whether Credit Acceptance Corporation waived its contractual right to compel arbitration by filing and litigating a debt collection action in circuit court for more than three years before moving to compel arbitration after the defendants filed an amended answer and expansive counterclaims. Specifically, the Court addressed:

1. Whether the company's litigation conduct constituted an implied waiver of its arbitration rights under West Virginia law; and
2. Whether an arbitration agreement expressly permitting arbitration "before or after a lawsuit has been started" and covering later-filed counterclaims preserved the right to compel arbitration despite prior litigation activity.

What the Court Decided:

The Court reversed the Circuit Court of Jackson County and held:

1. Credit Acceptance did **not** waive its contractual right to arbitrate.
2. Courts determining whether a contractual right has been impliedly waived must first examine the specific contractual language defining that right before evaluating whether a party acted inconsistently with it.
3. Because the arbitration clause expressly allowed either party to compel arbitration before or after litigation began—including after counterclaims were filed—and because Credit Acceptance promptly sought arbitration after the counterclaims dramatically expanded the lawsuit, the respondents failed to prove waiver by clear and convincing evidence.

The Court announced a new syllabus point requiring courts to consider the language of the contract itself when analyzing implied waiver of contractual rights.

Facts:

Kenneth and Kerry Stanley purchased a used vehicle in 2018 through a retail installment contract that was immediately assigned to Credit Acceptance Corporation. The contract contained a broad arbitration provision permitting either party to require arbitration before or after a lawsuit had been initiated and specifically contemplated arbitration of counterclaims filed later in litigation.

After the Stanleys defaulted on the loan and voluntarily surrendered the vehicle, Credit Acceptance filed a collection action in Jackson County Circuit Court in February 2020 seeking approximately \$8,173 in deficiency balance.

The Stanleys, initially proceeding without counsel, filed a brief answer disputing the debt. Credit Acceptance served limited written discovery and later moved for summary judgment after the Stanleys failed to respond to requests for admission. The circuit court never ruled on the summary judgment motion, and the case remained largely inactive for several years.

In June 2023, after obtaining counsel, the Stanleys filed an amended answer asserting numerous affirmative defenses and extensive counterclaims alleging fraud, unconscionable inducement under the West Virginia Consumer Credit and Protection Act, violations of the Truth in Lending Act and the federal Odometer Act, commercially unreasonable disposition of collateral, and other claims seeking compensatory damages, punitive damages, attorney's fees, and equitable

relief.

Approximately two months later, Credit Acceptance moved to compel arbitration pursuant to the arbitration clause. The circuit court denied the motion, concluding that Credit Acceptance had waived arbitration by litigating in court for more than three years before invoking the arbitration provision.

Holding:

The Supreme Court reversed, emphasizing that waiver is the intentional relinquishment of a known contractual right and must be established by clear and convincing evidence.

The Court explained that the circuit court improperly focused solely on Credit Acceptance's litigation conduct without first considering the language of the arbitration agreement. The agreement expressly preserved the parties' ability to compel arbitration both before and after litigation commenced and specifically authorized arbitration of disputes and counterclaims brought later in the lawsuit.

The Court announced a new rule that when determining whether a contractual right has been impliedly waived, courts must first identify the exact contractual right created by the agreement and then determine whether the party's conduct was inconsistent with that particular right.

Applying that standard, the Court found Credit Acceptance's litigation activity relatively modest. The company conducted only limited discovery, received no discovery responses, obtained no substantive rulings from the circuit court, and never gained any litigation advantage before moving to compel arbitration.

The Court also found it significant that the respondents' amended counterclaims fundamentally transformed the case from a straightforward debt collection action into complex consumer protection litigation involving numerous state and federal statutory claims. Credit Acceptance promptly moved to compel arbitration shortly after those counterclaims were filed, consistent with the arbitration clause's express language.

Relying heavily on its earlier decision in *Citibank, N.A. v. Perry*, the Court concluded that a party does not necessarily waive arbitration by litigating an initial debt collection claim before later seeking arbitration of substantially expanded counterclaims.

Accordingly, the respondents failed to demonstrate that Credit Acceptance intentionally relinquished its contractual arbitration rights.

How They Voted:

Justice Trump delivered the opinion of the Court. Justice Wooton dissented and reserved the right to file a separate opinion. Justice Titus was disqualified and did not participate. Judge David Amsbary sat by temporary assignment.

Impact on Business:

This decision strengthens the enforceability of arbitration agreements in West Virginia by emphasizing that courts must honor the parties' contractual language when evaluating waiver. Businesses with arbitration provisions that expressly preserve the right to compel arbitration after litigation has commenced retain significant flexibility, particularly when later-filed counterclaims substantially change the scope or complexity of a case.

The opinion also raises the burden on parties asserting waiver by requiring courts to analyze the specific contractual rights at issue rather than simply examining the amount of litigation activity. Businesses utilizing arbitration agreements should nevertheless invoke arbitration promptly when disputes evolve and should ensure their arbitration clauses clearly preserve the right to compel arbitration throughout the course of litigation.

Coffman v. Nexstar Media

Case No. 23-2253 (July 22, 2025)

What the Court was Asked to Decide:

Did the district court properly grant summary judgment with respect to Petitioners' asserted claims of failure to accommodate, discriminatory discharge, and retaliatory discharge under the West Virginia Human Rights Act ("WVHRA") and a Family and Medical Leave Act ("FMLA") retaliatory discharge claim?

What the Court Decided:

The United States Court of Appeals for the Fourth Circuit affirmed the district court's grant of summary judgment with respect to all of Coffman's claims under the WVHRA and the FMLA.

Facts:

Coffman worked as an Account Executive at Nexstar's news station in Beckley, West Virginia, from February 17, 2020, to August 19, 2022. In 2021, Coffman became pregnant with twins and towards the end of her pregnancy she was diagnosed with placenta previa (a condition that causes severe bleeding). Subsequently, she was placed on bed rest and Nexstar approved her request to work remotely.

Coffman worked remotely for approximately eight weeks before delivering her twins via c-section on February 23, 2022. Immediately following the birth of the twins, Coffman received 12 weeks of FMLA leave. A few days into her FMLA leave, Coffman learned her ureter had been damaged during the c-section and required surgery to repair it. After the surgery, Coffman was given a nephrostomy bag to drain her urine which caused severe pain when standing, walking, and driving.

In early April, about halfway through Coffman's FMLA leave, she spoke with her supervisor, regional sales manager Ms. Large, and explained that she was "in and out of the hospital" and would require another surgery. Coffman claimed that she spoke with Large again in mid to late April to request a remote work accommodation; however, Large denied this conversation occurred.

From March 10th to June 27th, Coffman received short-term disability benefits. On June 28th, Nexstar had not received a doctor's return-to-work approval; therefore, a Nexstar human resources representative called Coffman to check in. During the call, Coffman explained that she was unable to return to work because she still had the nephrostomy tube and her short-term disability was being extended. The HR representative explained that disability benefits did not extend her protected leave under the FMLA, to which Coffman responded by asking if HR would like to speak to her lawyer. Following the phone call, Coffman texted the HR representative asking not to contact her again regarding her return-to-work date and provided her lawyer's contact information.

On July 28th, Nexstar sent a letter to Coffman requesting a return-to-work date. The letter outlined the history of Coffman's leave starting on February 23, 2022. On August 4th, Coffman responded explaining that she was "still under intense care" and had another surgery scheduled for August 8th. She further added that her recovery time would be four-to-six weeks, with the potential for yet another surgery in October. On August 15th, Nexstar terminated Coffman by email, effective August 19th.

About a month after Coffman's termination, she filed suit in the United States District

Court for the Southern District of West Virginia, alleging three counts under the WVHRA for failure to accommodate, discriminatory discharge, and retaliatory discharge. Coffman also alleged retaliatory discharge under the FMLA. Nexstar moved for summary judgment on all counts, and the district court granted the motion in full, reasoning that Nexstar provided Coffman with six months of leave, the last communication showed an inability and unwillingness to work, and Coffman failed to demonstrate the existence of reasonable accommodations that met her needs. Coffman appealed to the United States Court of Appeals for the Fourth Circuit.

Holding:

First, the Fourth Circuit affirmed the district court's finding that Coffman's proposed accommodations were not reasonable. Coffman argued as a threshold matter that the district court erred by taking the fact-specific inquiry of "reasonableness" away from the jury. However, while the determination of a proposed accommodation is often fact-specific, courts may nevertheless find proposed accommodations unreasonable at the summary judgment stage if they are not "reasonable on their face."

The three accommodations Coffman proposed were: (1) unpaid leave, (2) paid parental leave, and (3) remote work. The Court found that unpaid leave was not reasonable because at the time of her termination she could not provide a return-to-work date, essentially translating to indefinite leave. Paid parental leave was not reasonable for the same reason; moreover, Coffman was not eligible for paid parental leave at the time of termination. Remote work was unreasonable because Coffman "failed to demonstrate that, at the time of her August 2022 termination, she was able to work at all, whether in person or remotely."

Second, the Court affirmed the district court's grant of summary judgment as to the WVHRA discriminatory discharge claim because Coffman failed to show that she was a qualified individual with a disability given her inability to work. Third, the Court affirmed the district court's decision that Coffman's WVHRA retaliatory discharge claim failed because none of her proffered accommodations were "reasonable" and therefore she did not engage in protected activity.

Lastly, the Court affirmed the district court's finding that Coffman was unable to establish causation in her FMLA retaliatory discharge claim. Almost three months passed between the end of Coffman's FMLA leave and her termination, undermining any inference of a causal link.

How They Voted:

A panel of Judge Wynn, Judge Thacker, and Judge Floyd delivered the opinion per curiam.

Impact on Business:

This case reflects the limitations of WVHRA and retaliation claims in general. The WVHRA does not require employers to provide unreasonable accommodations, such as indefinite leave, whether paid or unpaid. It also reinforces that passage of an extended period of time can weaken an allegation of a causal link between a protected activity and adverse action taken in a retaliation claim.

Kelly v. City of Alexandria

Case No. 23-1752 (December 31, 2025)

What the Court was Asked to Decide:

Did the district court properly grant summary judgment on the issue of whether chiefs are compensated on a salary basis, as required to satisfy the “highly compensated employee” exemption to overtime pay under the Fair Labor Standards Act (“FLSA”)?

What the Court Decided:

The United States Court of Appeals for the Fourth Circuit affirmed the district court’s grant of summary judgment on different grounds. The appropriate test is 29 C.F.R. § 541.602(a) because the chiefs received predetermined amounts biweekly regardless of time worked.

Facts:

The Alexandria Fire Department employs ten battalion chiefs who rotate through operational or administrative schedules. Typically, the fire department assigns six chiefs to an operational schedule, and the remaining four chiefs work an administrative schedule.

The city of Alexandria sets the annual base salary for each chief which it uses to calculate two “hourly rates,” one for operational shifts and one for administrative shifts. The chiefs are paid every two weeks at the set hourly rate for the scheduled hours they worked, the hours they worked off schedule, and the hours they didn’t work with that time being supplemented by paid leave. Chiefs on administrative schedules are paid for the 80 hours they were scheduled to work and chiefs on operational schedules are paid for at least 106 hours due to the complicated work period.

The chiefs sued the city of Alexandria claiming they were entitled to overtime pay for the off-schedule hours under the FLSA. The city countered that the chiefs fell within the “highly compensated employee” exemption. The district court applied the 29 C.F.R. § 541.604(b) salary basis test and concluded that because the chiefs were paid on a salary basis they fell into the “highly compensated employee” exemption. The chiefs appealed to the United States Court of Appeals for the Fourth Circuit.

Holding:

The Court affirmed the district court’s grant of summary judgment, albeit on different grounds. Specifically, the Court reasoned that the chiefs were paid on a salary basis under 29 C.F.R. § 541.602(a) and exempt from the FLSA overtime pay as “highly compensated employees.” The chiefs “pay [being] calculated on a hourly basis because the ‘unit or method for calculating pay’ was an hourly unit” was not enough to trigger 29 C.F.R. § 541.604(b).

Rather, the chiefs’ “hopelessly convoluted” pay scheme fit slightly better under 29 C.F.R. § 541.602(a). The chiefs received guaranteed predetermined biweekly payments for 80 or 106 hours no matter how many hours they worked. The predetermined amount in each paycheck represented payment by the week, not by the hour. Further, there were no deductions from the chiefs’ paychecks; therefore, the chiefs were exempt from FLSA overtime by the “highly compensated employee” exemption of 29 C.F.R. § 541.602(a).

How They Voted:

Chief Judge Diaz authored the opinion sitting on a panel with Judge King and District Court Judge Xinis, sitting by designation.

Impact on Business:

This case clarifies the distinction between the alternative test for “salary basis” requirements established by 29 C.F.R. § 541.602(a) and § 541.604(b). Specifically, merely having an hourly rate appear on a paystub is not enough to trigger the 29 C.F.R. § 541.604(b) test.

Geneva Enterprises LLC v. Chavez
Case No. 25-1469 (April 10, 2026)

What the Court was Asked to Decide:

Did the district court properly reject the Petitioners' request for relief compelling arbitration and ordering Respondent to pay arbitration initiation fees?

What the Court Decided:

The United States Court of Appeals for the Fourth Circuit dismissed the appeal for lack of appellate jurisdiction because the district court's order essentially maintained the existing stay and directed arbitration to proceed before the American Arbitration Association (the "AAA"), which is non-appealable under 9 U.S.C.S. § 16(b).

Facts:

In February 2024, 31 former employees initiated a mass arbitration against Geneva Enterprises, alleging wage-related claims under the Virginia Wage Payment Act and the Fair Labor Standards Act. Geneva refused to pay the arbitration initiation fee to AAA because it argued the former employees failed to comply with the conditions precedent for arbitration.

In March 2024, Geneva also commenced a civil action against the former employees in the Circuit Court of Fairfax County. Geneva was seeking an injunction against the arbitration under Virginia Law and the Federal Arbitration Act (the "FAA"), as well as a declaratory judgment regarding the scope of the arbitration agreement. The former employees removed this action to the Eastern District of Virginia. After removing the case to federal court, the former employees filed a motion to compel arbitration and to stay the federal court proceeding pending the arbitration.

In June 2024, the district court denied Geneva's request to enjoin the arbitration and for a preliminary injunction and, furthermore, granted the former employees' request to stay the federal court proceedings pending resolution in arbitration, and declined to adjudicate the motion to compel arbitration. Upon returning to the AAA, Geneva continued to refuse to pay the arbitration initiation fees. The AAA's response to this issue was to have the former employees advance the fees and seek recovery from an arbitrator.

The former employees were dissatisfied with the AAA's approach and eventually returned to the district court in March 2025 seeking entry of an order directing Geneva to pay arbitration initiation fees. The district court's March 2025 Order denied the relief sought explaining that the case had previously been referred to arbitration and the case was stayed as of June 2024. The former employees appealed.

Holding:

The Court held that it lacked appellate jurisdiction over the March 2025 Order denying the renewed motion concerning AAA fees. The March 2025 Order was essentially an extension of the June 2024 order that previously directed the parties to arbitration and stayed the proceedings. The former employees' renewed motion sought to order Geneva to pay the arbitration initiation fees; however, this motion was mis-captioned because the relief is not provided under the FAA. Therefore, the parties forfeited the right to an interlocutory appeal.

The Court declined to address the district court's subject-matter jurisdiction, reasoning that doing so despite the lack of appellate jurisdiction could open the floodgates to improper review of jurisdictional issues that are not immediately appealable.

How They Voted:

Judge King delivered the opinion, sitting on a panel with Chief Judge Diaz and Judge Thacker.

Impact on Business:

This case is an important reminder of the primacy of arbitration under the FAA and courts' hesitance to invade issues subject to a valid arbitration agreement. Moreover, it is a cautionary tale against procedural gamesmanship. In other words, labeling a motion that seeks to order substantive relief as a motion to compel will not allow you to receive that relief if it is not available under the law.

Chavez-DeRemer v. Medical Staffing of America

Case Nos. 23-2176 and 23-2284 (July 17, 2025)

What the Court was Asked to Decide:

Did the district court err in its decision to hold that the nurses of Steadfast Medical Staffing (“Steadfast”) were employees under the Fair Labor Standards Act (“FLSA”)?

What the Court Decided:

The Fourth Circuit Court of Appeals affirmed the district court’s judgment, holding Steadfast liable for unpaid overtime and damages, and upheld the injunction against further FLSA violations.

Facts:

Steadfast is a Virginia medical staffing services business that supplies licensed nurses to healthcare facilities. Steadfast maintained a “registry” of its nurses and connected those nurses with work opportunities at healthcare facilities. To join Steadfast, a nurse had to complete an employment application, undergo a background check, and submit to drug screening.

Steadfast classified the nurses in its registry as independent contractors rather than employees. Steadfast unilaterally determined which nurses were eligible for available shifts and notified them of opportunities by phone. Steadfast also set the nurses’ pay rates, required timesheets, required nurses to wear Steadfast identification badges, established standards for workplace conduct, and handled disciplinary matters for violations of those standards. Lastly, Steadfast required the nurses to sign a non-compete clause.

In 2017, the United States Department of Labor (“DOL”) investigated Steadfast and concluded it was violating the FLSA by classifying the nurses as independent contractors, and further advised Steadfast to reclassify them as employees. Steadfast did not comply and continued to operate as it had been. In March 2018, the Secretary of Labor initiated an enforcement action against Steadfast, which was resolved by bench trial in 2021.

Holding:

This Court affirmed the district court’s holding that the nurses working for Steadfast were employees under the FLSA, not independent contractors. The Court agreed with the district court’s determination that the most important factor of the six-factor economic realities test established by the Court in *McFeeley v. Jackson Street Ent., LLC*, 825 F.3d 235 (2016) is the degree of control over an alleged employee’s work; however, it emphasized that the test allows for flexible application and that no one factor is necessarily dispositive.

That said, the Court reasoned that Steadfast exercised significant control over the nurses, including setting pay rates, schedules, and discipline. Moreover, the nurses had no opportunities for profit or loss in their relationship with Steadfast. The evidence presented at trial showed nurses could not increase income through managerial skills, only by working more hours. The investment factor weighed heavily in favor of the nurses being employees because Steadfast was solely responsible for all administrative costs, the cost of advertising, insurance coverage, and contracting with facilities. Lastly, the Court agreed that the nurses’ relationship with Steadfast was permanent in nature.

The Court also affirmed the district court's ruling that Steadfast failed to satisfy its burden of proof with respect to the good faith defense, failing to show that it took "serious and informed steps" to adhere to the FLSA.

Next, the Court affirmed the district court's ruling on damage computation because Steadfast waived challenges to the initial damages computations by failing to contest them before or during the trial. Lastly, the Court found that Steadfast's post-trial motions under Rules 52(b), 54(b), and 60(a)-(b) failed on both procedural and substantive grounds.

How They Voted:

Judge King authored the majority opinion in which he was joined by Judge Floyd. Judge Richardson filed a dissenting opinion.

Impact on Business:

This case reinforces the need to correctly classify workers' employment status under the FLSA, particularly in the context of staffing agencies and registry-style business models. It also highlights application of the six-factor economic realities test, including the importance of control and economic dependence in worker classification disputes.

St. Joseph's Hospital of Buckhannon v. Stonewall Jackson Memorial Hospital Co.
Case No. 24-347 (November 13, 2025)

What the Court was Asked to Decide:

The Supreme Court of Appeals of West Virginia considered whether Stonewall Jackson Memorial Hospital ("Stonewall") was required to obtain a certificate of need ("CON") before constructing a new hospital building and relocating its operations from its existing facility in Weston, West Virginia. St. Joseph's Hospital of Buckhannon, Inc. ("St. Joseph's") challenged a decision by the West Virginia Health Care Authority ("Authority"), later affirmed by the Intermediate Court of Appeals ("ICA"), that Stonewall's proposed \$56 million project did not require CON review.

What the Court Decided:

The Supreme Court reversed the decisions of the ICA and the Authority. The Court held that W. Va. Code § 16-2D-8(a)(1) unambiguously requires a health care entity to obtain a CON for the construction of a new health care facility. Therefore, Stonewall's construction of a new hospital building required CON review, regardless of whether the project could be characterized as a relocation of an existing hospital or fell below the statutory capital expenditure threshold.

Facts:

St. Joseph's operates a twenty-five-bed rural hospital in Buckhannon and has held a federal critical access hospital ("CAH") designation since 2014. The designation permits higher Medicare and Medicaid reimbursement rates and requires the hospital to be located more than fifteen mountainous miles from another hospital. St. Joseph's maintained that losing its CAH designation would substantially threaten its financial stability.

Stonewall operates a seventy-bed hospital in Weston, approximately sixteen mountainous miles from St. Joseph's. Its existing facility, constructed in 1972, had accessibility, space, layout, and expansion limitations. Stonewall planned to build a new hospital complex near Interstate 79 and U.S. Highway 33, approximately four miles from its existing site, at an anticipated cost of about \$56 million. The new site would be about twelve mountainous miles from St. Joseph's.

In 2021, Stonewall applied for a CON to construct the new facility. St. Joseph's intervened and presented evidence that the new location would cause it to lose its CAH designation. In June 2022, the Authority denied Stonewall's CON application, finding that the proposed project was not a superior alternative because of the likely harm to St. Joseph's and the community it serves. The ICA affirmed that decision, and Stonewall did not appeal.

While that appeal was pending, the Legislature amended the CON statutes. Among other changes, it raised the expenditure threshold relevant to certain capital expenditures from \$5 million to \$100 million. Stonewall then filed a request for a determination of reviewability ("RDOR"), asserting that its \$56 million project no longer required a CON.

St. Joseph's opposed the RDOR, arguing that W. Va. Code § 16-2D-8(a)(1) independently requires a CON for the construction, development, acquisition, or other establishment of a health care facility, without reference to a capital expenditure threshold.

In July 2023, the Authority ruled that Stonewall did not need a CON. It relied on an unwritten guideline under which a complete relocation of an existing health care facility within the same service area was not subject to CON review unless it exceeded the capital expenditure minimum. The ICA affirmed, finding the statute ambiguous when applied to a relocation of an existing health care provider to a newly constructed building. St. Joseph's appealed.

Holding:

The Supreme Court of Appeals reviewed the statutory question de novo and reversed.

West Virginia Code § 16-2D-8(a)(1) provides that proposed health services may not be acquired, offered, or developed without a CON when they involve the “construction, development, acquisition, or other establishment of a health care facility.” The Court held that this language is clear and unambiguous. In this context, “construction” includes erecting or building a structure, and a “health care facility” includes a building or place where health services are provided.

The Court expressly held that the statutory phrase “construction . . . of a health care facility” includes the erection or building of a structure for offering or providing health services. Because Stonewall undisputedly planned to erect a new hospital building, the statute required it to seek a CON.

The Court rejected the Authority’s former unwritten relocation guideline, which exempted projects relocating an existing health care provider to a new building unless the project exceeded the capital-expenditure threshold. Section 16-2D-8(a)(1) neither uses the phrase “capital expenditure” nor incorporates the \$100 million expenditure minimum. The Court concluded that the Authority and ICA erred by reading those requirements into the provision.

The Court also rejected Stonewall’s argument that the Authority’s historical interpretation deserved *stare decisis* effect. Administrative decisions generally do not receive *stare decisis* effect, and an agency may abandon an interpretation that it recognizes is inconsistent with its statutory authority.

The Court reversed the ICA’s decision and the Authority’s July 2023 RDOR decision and remanded the matter to the Authority for further proceedings. The Court did not reach St. Joseph’s alternative argument that Stonewall’s anticipated reduction in bed capacity independently required CON review.

How They Voted:

Chief Justice Wooton delivered the unanimous opinion of the Court.

Impact on Business:

This decision confirms that a health care provider must obtain a CON before erecting a new hospital building under W. Va. Code § 16-2D-8(a)(1), even if the project replaces or relocates an existing facility and does not exceed the capital expenditure threshold applicable to other CON provisions. Health care providers should evaluate every potential statutory basis for CON review. A project may require a CON because it involves the construction of a health care facility even where it does not meet an expenditure-based threshold. The decision also cautions against relying on informal or unwritten agency practices that add exemptions not found in the governing statute.

Ghaphery v. Wheeling Treatment Center, LLC and John Schultz
Case No. 24-52 (May 18, 2026)

What the Court was Asked to Decide:

The West Virginia Supreme Court of Appeals was asked to decide whether Wheeling Treatment Center and its medical director could be sued for medical negligence even though the patient was never formally admitted into the treatment program. More specifically, the issue was whether the patient became a “patient” for purposes of the MPLA when the treatment center performed an initial screening and assessment, or whether no duty existed because the center ultimately rejected him for admission.

What the Court Decided:

The West Virginia Supreme Court of Appeals held that the patient did not have to be formally admitted into the treatment program for a duty of care to arise. Because Wheeling Treatment Center evaluated him, performed an initial assessment required by regulation, documented him as a patient, and had its medical director assess concerns about suicide risk, the Court found that a health care provider-patient relationship existed during that assessment process. The Court therefore held that the treatment center had a limited duty to perform the initial assessment in a non-negligent manner. The Court did not decide whether the treatment center actually did anything wrong or whether its actions caused the patient’s death; those issues were left for the Circuit Court on remand.

Facts:

Nick Ghaphery was struggling with substance abuse, and his father arranged for him to be evaluated by Wheeling Treatment Center (“WTC”), a medication-assisted treatment facility that treated opioid addiction.

On September 28, 2017, Ghaphery went to WTC for an initial assessment to determine whether he qualified for admission into its treatment program. His drug screen was positive for THC and amphetamines, but negative for opioids, and WTC staff determined that he was not showing signs of opioid withdrawal. Because WTC only treated opioid addiction, he was told he was not eligible for admission into the program.

During the assessment, however, concerns arose that Ghaphery may have been suicidal. WTC’s counselor noted that he had reported suicidal thoughts and a plan involving a gun. The counselor attempted to contact his emergency contact multiple times, but no one answered. WTC’s medical director then spoke with Ghaphery and assessed him for suicide risk. Ghaphery told WTC that he had been prescribed Lexapro by his family doctor and agreed to follow up with that doctor the next week. WTC also gave him referral numbers for counseling. Based on that agreement, WTC allowed him to leave.

Thirty-six days later, Ghaphery was found dead. His death was ruled accidental and caused by intoxication from multiple drugs, including fentanyl, heroin, amphetamine, and cocaine. Ghaphery’s estate sued WTC for medical professional liability resulting in wrongful death. The estate claimed that once WTC undertook the initial assessment and identified possible suicidal ideation, WTC had a duty to properly evaluate Ghaphery and arrange for him to be transported to a psychiatric facility for further assessment. The estate alleged that WTC failed to meet the applicable standard of care and that those failures caused Ghaphery’s death.

WTC moved for summary judgment, arguing that it owed Ghaphery no duty because he was never accepted into the MAT program and therefore never became its patient. The Circuit Court initially denied summary judgment but later reconsidered the issue and granted summary judgment in favor of WTC. The Circuit Court held that no patient-health care provider relationship existed because Ghaphery was only screened for admission and was never accepted into the treatment program. Because the court found that no relationship existed, it concluded that WTC owed him no duty of care.

Ghaphery's estate appealed to the Intermediate Court of Appeals. The ICA affirmed the Circuit Court's decision, agreeing that because Ghaphery was not accepted into WTC's MAT program, no express or implied contract for treatment was formed, no health care provider-patient relationship existed, and WTC did not owe him a duty to provide care.

The estate then appealed to the West Virginia Supreme Court of Appeals. The Supreme Court reversed the ICA and the Circuit Court, holding that Ghaphery did not have to be formally admitted into the MAT program for a limited patient-provider relationship to exist. Because WTC performed an initial assessment required by regulation, documented him as a patient, and had its medical director assess his suicide risk, the Court held that WTC owed him a duty to perform that assessment in a non-negligent manner. The Court emphasized that it was deciding only whether a duty existed, not whether WTC breached that duty or caused Ghaphery's death.

Holding:

The West Virginia Supreme Court of Appeals held that Wheeling Treatment Center and its medical director owed Ghaphery a limited duty of care during the initial assessment process, even though Ghaphery was not ultimately admitted into the treatment program. Because WTC performed a required pre-admission assessment, documented Ghaphery as a patient, and involved its medical director in assessing concerns about suicide risk, a health care provider-patient relationship existed during that assessment. The Court held that WTC had a duty to perform the assessment in a non-negligent manner, so summary judgment on the basis of "no duty" was improper.

How They Voted:

The decision was unanimous. The Court reversed the ICA's decision in a 5-0 opinion authored by Justice Trump.

Impact on Business:

This decision is significant for health care providers, treatment centers, hospitals, and other businesses that perform screenings, intake evaluations, or pre-admission assessments. The Court made clear that a provider may owe a duty of care during an assessment even if the individual is never formally admitted or accepted for treatment. Businesses that offer health care-related evaluations should be careful not to assume that "screening only" means "no patient relationship."

The decision does not mean that providers must accept every person for treatment, nor does it decide whether WTC breached the standard of care or caused Ghaphery's death. But it does mean that once a provider undertakes an assessment, especially one required by regulation or involving medical judgment, the provider must perform that assessment in a non-negligent manner. For businesses, the practical takeaway is that intake procedures, documentation, referral practices, emergency protocols, and staff training may create legal exposure if they are not handled consistently and carefully.

Hernandez v. WVU Medicine Berkeley

Case No. 25-ICA-224 (May 18, 2026)

What the Court was Asked to Decide:

The Intermediate Court of Appeals was asked to decide whether the Circuit Court properly granted summary judgment to the hospital after finding that the plaintiffs failed to establish causation in an MPLA case, or whether the plaintiffs' expert testimony was sufficient to create a jury question on whether the hospital's failure to escalate Mr. Hernandez's condition through the chain of command caused him to lose a greater chance of improved recovery.

What the Court Decided:

The Intermediate Court of Appeals reversed the Circuit Court's grant of summary judgment. The Court held that the plaintiffs presented sufficient expert testimony on causation to allow the case to proceed to a jury. The Court reasoned that the experts did not merely speculate about what might have happened; instead, they testified that the standard of care required escalation, further physician evaluation, an MRI, and additional decompression surgery, and that those steps would have given Mr. Hernandez a greater than twenty-five percent chance of improved recovery. Any weaknesses or gaps in that causation theory went to the weight of the testimony, not its sufficiency at summary judgment.

Facts:

Mr. Hernandez fell and injured his cervical spine. He was initially treated for his spinal injuries at University of Virginia Medical Center ("UVA") and was discharged with instructions for close follow-up care. Rather than continuing that follow-up at UVA, Mr. Hernandez elected to pursue treatment locally in West Virginia.

Mr. Hernandez was later evaluated at Berkeley Medical Center ("BMC"). He underwent spinal surgery, but after that procedure, he was unable to move his lower extremities and had weakness in his left arm. A stat MRI was ordered, and he underwent a second surgery that same evening. Despite the second procedure, Mr. Hernandez remained unable to feel or move his legs. Mr. Hernandez was then discharged to a rehabilitation facility. At that time, he was quadriplegic and dependent on others for all activities of daily living. Approximately eleven months later, he underwent a third spinal surgery. After that surgery, he regained some sensation and movement, but he remained wheelchair-bound and continued to require assistance with activities of daily living.

Mr. Hernandez and his wife filed an MPLA lawsuit against the hospital. Their theory was that hospital staff failed to properly assess changes in Mr. Hernandez's condition after surgery, failed to seek appropriate physician intervention, failed to advocate for additional medical care before he was discharged to rehabilitation, and failed to use the hospital's chain of command when his condition declined.

The plaintiffs supported their claims with expert testimony. Their experts testified that, if BMC staff had escalated Mr. Hernandez's condition through the chain of command, further physician assessment would have occurred. They further testified that a physician presented with Mr. Hernandez's condition would have been required by the standard of care to order an MRI and proceed with another spinal decompression procedure before discharge. According to the plaintiffs' experts, earlier decompression would have given Mr. Hernandez a greater than twenty-five percent chance of improved recovery.

The hospital moved for summary judgment, arguing that the plaintiffs could not establish causation. The hospital contended that the plaintiffs' theory depended on speculation about a series of events that may or may not have occurred, including whether staff would have escalated the issue, whether a physician would have been contacted, whether that physician would have ordered an MRI, and whether another surgery would have changed the outcome.

The circuit court agreed with the hospital and granted summary judgment. The court found the plaintiffs' experts' opinions speculative because they depended on an asserted "chain reaction" and on assumed actions by third parties. The circuit court concluded that the record did not show what would have happened if hospital staff had used the chain of command and, therefore, there was no basis for a jury to reasonably infer that the hospital's conduct proximately caused Mr. Hernandez's injuries.

The plaintiffs filed a motion to reconsider, but the circuit court denied it. They then appealed to the Intermediate Court of Appeals. On appeal, the plaintiffs argued that the circuit court wrongly took the causation issue away from the jury because their experts had testified, to a reasonable degree of medical probability, that proper escalation would have led to further assessment, an MRI, decompression surgery, and a better outcome. The ICA agreed, reversed the summary judgment order, vacated the order denying reconsideration as moot, and remanded the case for further proceedings.

Holding:

The ICA held that the circuit court erred in granting summary judgment to the hospital because the plaintiffs offered sufficient expert testimony to create a genuine issue of material fact on causation. The Court found that the experts' opinions were not merely speculative because they were based on the hospital's chain-of-command policies, Mr. Hernandez's post-operative condition, and what the applicable standards of care required. Any alleged gaps or contingencies in the experts' causation opinions went to the weight of the evidence, not its sufficiency at the summary judgment stage.

How They Voted:

The ICA reversed and remanded in a 3-0 opinion authored by Judge Greear.

Impact on Business:

This decision is significant for hospitals, healthcare providers, and their insurers because it makes summary judgment more difficult in MPLA cases where the plaintiff has expert testimony connecting a provider's alleged failure to follow policies or escalate care with a worse medical outcome. The opinion signals that, if expert testimony is admissible and stated to a reasonable degree of medical probability, courts may treat alleged weaknesses in the causal chain as issues for the jury rather than grounds for dismissal. For healthcare defendants, the case also underscores the importance of directly challenging expert opinions through pretrial motions when the defense believes the opinions are speculative, unsupported, or unreliable.

State ex rel. West Virginia University Hospitals, Inc. v. Simms

Case No. 25-145 (May 29, 2026)

What the Court was Asked to Decide:

The Supreme Court of Appeals of West Virginia considered whether to issue a writ of prohibition to prevent the Circuit Court of Monongalia County from enforcing its denial of West Virginia University Hospitals, Inc.'s ("WVUH") motion to dismiss claims brought by Cody and Brooke Morton, individually and as administrators of the Estate of their infant son, Brody Morton.

WVUH argued that the claims were governed by the West Virginia Medical Professional Liability Act ("MPLA"), and that purported deficiencies in the Mortons' pre-suit screening certificate of merit deprived the circuit court of subject matter jurisdiction. The circuit court had concluded that certain claims were not subject to the MPLA and, therefore, did not address the sufficiency of the certificate.

What the Court Decided:

The Supreme Court denied the writ of prohibition, holding that while a total failure to provide MPLA pre-suit notice when the MPLA applies is jurisdictional, an alleged deficiency in the contents of a screening certificate of merit is not. Because the Mortons served pre-suit notices and screening certificates of merit, WVUH's challenge concerned the certificates' sufficiency rather than the complete absence of notice. That issue does not deprive a circuit court of subject matter jurisdiction.

The Court did not decide whether the MPLA ultimately applies to the claims or whether the Mortons' certificates were legally sufficient under the MPLA.

Facts:

On April 4, 2021, Brooke Morton presented to J.W. Ruby Memorial Hospital's labor-and-delivery unit to induce labor at 37 weeks because of cystic fibrosis-induced diabetes. Her son, Brody Morton, was later delivered by emergency cesarean section. He had no heart rate or respiratory effort at delivery but was resuscitated and transferred to the Neonatal Intensive Care Unit. Brody died approximately five hours later.

Following the delivery, Mrs. Morton suffered severe hemorrhaging, was placed on a ventilator, and was admitted to the Surgical Intensive Care Unit. Mr. Morton consented to an autopsy of Brody. The Mortons later alleged that they believed the Office of the Chief Medical Examiner would perform the autopsy, but that WVUH performed it instead. They further alleged that the infant's internal organs were not preserved, preventing an additional autopsy.

The Mortons sent WVUH two pre-suit notices of claim, each accompanied by screening certificates of merit. One notice, on behalf of Brody's estate, alleged a medical professional negligence claim against WVUH related to management of Mrs. Morton's labor and the timing of delivery. It included certificates of merit from an obstetrician and a neonatologist.

The other notice, on behalf of Mr. and Mrs. Morton, identified potential claims for intentional and negligent infliction of emotional distress arising from the autopsy and destruction of the infant's internal organs; negligent infliction of emotional distress arising from the delivery; fraudulent inducement regarding autopsy consent; intentional spoliation; and fabrication or alteration of medical records. It included a certificate of merit from a registered nurse. The Mortons stated that they did not believe the MPLA applied to those claims but provided the notice and certificate out of an abundance of caution.

WVUH sent a written request for a more definite statement under *Hinchman v. Gillette*, 217 W. Va. 378, 618 S.E.2d 387 (2005), identifying alleged deficiencies in the notices of claim and certificates of merit. The Mortons responded with an additional certificate from a nurse qualified in electronic medical record systems and an amended certificate addressing the autopsy consent process and the alleged failure to preserve the organs.

After mediation did not resolve the claims against WVUH, it moved to dismiss. WVUH argued that the MPLA applied, that the screening certificates of merit were deficient, and that those deficiencies deprived the circuit court of subject matter jurisdiction. The circuit court found that the MPLA did not apply to the negligent and intentional infliction of emotional distress claims and denied WVUH's motion to dismiss as to those claims. WVUH sought a writ of prohibition.

Holding:

The Supreme Court of Appeals denied WVUH's requested writ. A writ of prohibition lies as a matter of right when a lower court lacks subject matter jurisdiction. When a lower court is alleged only to have exceeded its legitimate powers, issuance of a writ is discretionary and guided by the five factors set out in *State ex rel. Hoover v. Berger*, 199 W. Va. 12, 483 S.E.2d 12 (1996), with clear legal error given substantial weight.

The Court reaffirmed that MPLA pre-suit notice requirements are jurisdictional when a claimant completely fails to serve required notice and a screening certificate of merit. But the Court distinguished a total failure to provide notice from a dispute over whether a notice or certificate that was served is sufficiently detailed or otherwise legally adequate.

The Court held that the latter issue is not jurisdictional. The procedures established in *Hinchman v. Gillette* confirm the distinction. Under *Hinchman*, a health care provider challenging a certificate's sufficiency must first give written, specific notice of the alleged defects and an opportunity to cure them. Objections not specifically included in that request are waived. Those features are incompatible with subject matter jurisdiction, which cannot be waived, may be raised at any time, and must exist as a matter of law.

The Court explained that the adequacy of a notice or certificate should instead be evaluated under *Hinchman*'s practical, good-faith framework. The principal considerations are whether the notice advanced the MPLA's purposes of screening frivolous claims and encouraging pre-suit resolution of nonfrivolous claims, and whether the provider was prejudiced in its ability to evaluate and mediate the claim. The MPLA should not be used to prevent adjudication on the merits through technical objections to pre-suit notice.

Because the Mortons served notices of claim and certificates of merit, any question about their sufficiency did not deprive the circuit court of jurisdiction. Therefore, the Court declined to issue a writ of prohibition.

How They Voted:

Chief Justice Bunn delivered the opinion for the unanimous court.

Impact on Business:

The decision draws an important distinction for health care providers and medical liability litigants. If the MPLA applies, a claimant's complete failure to provide the required pre-suit notice and screening certificate of merit remains jurisdictional. But where the claimant serves the required pre-suit notice and screening certificate of merit, disputes about their legal sufficiency generally do not eliminate the circuit court's power to hear the case. The decision also may signal the Court's reluctance to entertain writ petitions focused solely on alleged defects in the pre-suit notice requirements.

County Commission of Fayette County v. Pardee & Curtin Realty, LLC

Case No. 25-68 (May 22, 2026)

What the Court was Asked to Decide:

The Supreme Court of Appeals of West Virginia was asked to answer a certified question from the United States District Court for the Southern District of West Virginia: whether a West Virginia political subdivision that brings a citizen suit under the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6972, is entitled to prosecutorial immunity from an award of a prevailing opponent’s attorney fees and costs.

What the Court Decided:

The Supreme Court of Appeals declined to answer the certified question. Although it had accepted the question for review, the Court learned at oral argument that the federal summary-judgment order underlying the potential fee award was pending before the United States Court of Appeals for the Fourth Circuit. Because that order could be reversed and the certified question therefore might not substantially control the federal case, the Court concluded that answering it would amount to an impermissible advisory opinion.

Facts:

The County Commission of Fayette County filed a broad federal lawsuit seeking environmental remediation of coal refuse piles in Fayette County. Among other claims, the County brought an RCRA citizen suit against Pardee and Curtin Realty, LLC (“Pardee”), alleging that Pardee owned surface lands containing coal refuse piles and should bear some of the remediation costs. Pardee disputed that it owned the contaminated piles. It maintained that it owned surrounding surface tracts, but that its deeds expressly excluded the environmentally contaminated areas.

On March 21, 2023, the district court granted summary judgment to Pardee. Pardee then sought attorney fees and costs as a prevailing defendant under RCRA. The County opposed the fee request, asserting that it was a political subdivision protected by prosecutorial immunity under the West Virginia Governmental Tort Claims and Insurance Reform Act, W. Va. Code §§ 29-12A-1 to -18.

The parties did not identify controlling West Virginia authority on the immunity question. The district court certified the question to the Supreme Court of Appeals. However, during oral argument, the parties disclosed that the summary judgment ruling on which Pardee’s fee request rested was on appeal to the Fourth Circuit.

Holding:

The Supreme Court of Appeals declined to answer the certified question. Under the Uniform Certification of Questions of Law Act, W. Va. Code § 51-1A-3, the Supreme Court may answer a certified question only when the answer “may be determinative of an issue in a pending cause” in the certifying court. Relying on *City of Huntington v. AmerisourceBergen Drug Corp.*, 251 W. Va. 637, 915 S.E.2d 828 (2025), the Court explained that a determinative question is one concerning a legal issue that substantially controls the case.

The Court concluded that the pending Fourth Circuit appeal made the summary judgment order provisional or tentative. If that ruling were reversed, Pardee’s claim to fees and costs could be affected or eliminated. Thus, an answer to the state-law immunity question would not necessarily substantially control the outcome of the federal action.

The Court held that the certification statute precluded it from rendering an advisory opinion under those circumstances and declined to answer the certified question without deciding whether a political subdivision has prosecutorial immunity from attorney fees and costs arising from an RCRA citizen suit.

How They Voted:

Chief Justice C. Haley Bunn, Justice William R. Wooton, Justice Gerald M. Titus III, and Judge Gregory L. Howard, sitting by temporary assignment, joined the memorandum decision declining the certified question. Judge Catie Wilkes Delligatti, sitting by temporary assignment, dissented. Justices Charles S. Trump IV and Thomas H. Ewing did not participate because they deemed themselves disqualified.

Impact on Business:

The Court's decision does not resolve the question of whether a West Virginia county commission or political subdivision can invoke prosecutorial immunity to avoid a fee-and-cost award under the RCRA. That question remains open under West Virginia law.

The case underscores the limitation of certified-question practice. A federal court's request for guidance may be declined when the state-law issue rests on a ruling that remains subject to appellate review and, as a result, may not substantially control the pending federal action.

Swisher v. Braxton County Memorial Hospital

Case No. 25-ICA-221 (December 22, 2025)

What the Court was Asked to Decide:

Did the circuit court err in finding that a plaintiff could not rely upon the West Virginia Patient Safety Act (“WVPSA”) as the substantial public policy supporting her Harless claim, and did the circuit court deprive her of her right to a jury trial by entering summary judgment against her?

What the Court Decided:

The Intermediate Court of Appeals (“ICA”) affirmed the circuit court’s grant of summary judgment because the WVPSA did not establish a substantial public policy to support Ms. Swisher’s Harless claim.

Facts:

Ms. Swisher was a registered nurse employed by Braxton County Memorial Hospital from April 2014 until her termination on April 28, 2022, for unprofessional conduct. Prior to her termination, the Hospital had disciplined Ms. Swisher for unprofessional conduct in May 2020, October 2020, and January 2022, resulting in written warnings and verbal counseling. After the January 2022 incident, the Hospital warned that further inappropriate, unprofessional, or disrespectful conduct could lead to discipline up to and including termination.

On February 5, 2022, a Hospital visitor physically pushed Ms. Swisher while visiting a critically ill parent. Ms. Swisher reported the incident the next day, describing it as an assault but stating that she did not feel threatened and attributed the visitor’s behavior to the circumstances. Her report did not allege a threat to patient safety, and she received no discipline related to the incident.

The Hospital later received additional complaints about Ms. Swisher’s conduct on April 5, 11, and 12, 2022. The allegations included profane language, intimidation of staff, and other unprofessional behavior. The Hospital suspended her on April 19, 2022, pending investigation. By letter dated April 28, 2022, the Hospital terminated Ms. Swisher after concluding that the April incidents were substantiated and involved repeated unprofessional conduct, including profane and abusive language toward staff and patients and intimidating verbal and physical encounters with staff.

Ms. Swisher filed a two-count complaint against the Hospital asserting a common-law wrongful discharge claim under *Harless v. First National Bank in Fairmont*, alleging that she was terminated in retaliation for reporting patient-safety concerns protected by West Virginia public policy and the West Virginia Whistle-Blower Act.

At the pretrial hearing, the parties agreed that the West Virginia Whistle-Blower Act did not apply because the Hospital is not a public employer. Ms. Swisher conceded that her remaining claims were *Harless* claims and that she relied on the WVPSA as the public policy source for both. The circuit court subsequently granted the Hospital’s motion for summary judgment on the Harless claims.

Holding:

The ICA rejected Ms. Swisher’s argument that repeated references to “patient safety” were enough to plead a substantial public policy under the WVPSA. Her complaint mentioned patient

safety only generally and did not cite supporting authority, and her appellate argument was similarly undeveloped. Because generalized references and unsupported assertions do not preserve or establish a *Harless* claim, the court held that she was not entitled to relief on that basis.

The ICA also agreed that prior cases recognizing the WVPSA as a source of public policy no longer controlled because those decisions relied on West Virginia Code § 16-39-2, the WVPSA's legislative-purpose section, which the Legislature repealed in 2021 without a savings clause. As a result, Ms. Swisher could not rely on those earlier decisions to establish the WVPSA as the substantial public policy supporting her *Harless* claims.

The ICA further rejected Ms. Swisher's argument that the visitor incident qualified as statutory "wrongdoing." She did not cite record evidence or specific language from her incident report showing that she reported violations involving Hospital policy, training, or staff protection, and she never argued that the statutory definition was ambiguous. The court found her generalized assertions and hypotheticals insufficient to show error or satisfy her burden at summary judgment.

The court concluded that the Hospital supported its summary judgment motion with affirmative evidence showing no genuine issue of material fact. Once the burden shifted, Ms. Swisher was required to produce evidence, rehabilitate challenged evidence, or seek further discovery by affidavit. She did none of those things and instead relied on the broad assertion that reporting a third party's conduct was protected under the WVPSA. The ICA held that speculation, unsupported inferences, and a disagreement with the circuit court's application of the law were not enough to defeat summary judgment. The court found no indication that the circuit court misapplied the WVPSA or failed to give its provisions their plain meaning.

Finally, the ICA rejected Ms. Swisher's assertion that summary judgment deprived her of a jury trial. Because summary judgment determines only whether a triable issue of fact exists, and because the circuit court properly found none, the order did not violate her right to a jury trial.

How They Voted:

The memorandum decision was concurred in by Chief Judge Lorensen, Judge Greear, and Judge White.

Impact on Business:

The repeal of a statute's purpose section might eliminate its use as a basis for *Harless* retaliatory discharge claims. Accordingly, the WVPSA may no longer be a valid basis for a *Harless* claim. More broadly, the decision highlights the requirement that a *Harless* plaintiff produce evidence to connect their allegedly wrongful termination to a specific complaint of a violation of public policy to survive summary judgment, not merely argue vague generalizations.

Mengyang Li v. Shepherd University
Case No. 25-ICA-121 (December 4, 2025)

What the Court was Asked to Decide:

Did the circuit court erroneously grant a motion to dismiss to which no response was filed by a self-represented (“*pro se*”) plaintiff?

What the Court Decided:

The Intermediate Court of Appeals (“ICA”) affirmed the circuit court’s dismissal of the case. The appellate review of a circuit court’s grant of a motion to dismiss is typically *de novo* (“anew” or “from the beginning”). However, a *de novo* review of the merits was unnecessary because Petitioner procedurally waived his right to appeal when he failed to oppose the Respondent’s motion to dismiss.

Facts:

Mengyang Li filed a *pro se* complaint in the Circuit Court of Jefferson County on November 6, 2024, arising from Shepherd University’s (“Shepherd”) denial of Mengyang Li’s promotion from the rank of “Associate Professor” to “Professor” and his eventual termination. Mengyang Li alleged that both actions were retaliatory for the employment grievances he filed and his complaint vaguely raised myriad claims of retaliation, discrimination, breach of contract, and conspiracy reaching back to at least 2016, echoing his longstanding disgruntlement with Shepherd.

On December 2, 2024, Shepherd University filed a timely motion to dismiss pursuant to the West Virginia Rules of Civil Procedure, arguing that several of Mengyang Li’s claims relied upon facts dismissed in a prior action regarding the same facts and circumstances, several claims were barred by the statute of limitations, and his pleadings did not satisfy the requisite elements. Mengyang Li did not respond to the motion in writing, file a proposed order, or otherwise attempt to oppose the motion. On February 18, 2025, the circuit court entered an order with detailed findings dismissing the case and disposing of Mengyang Li’s claims. Mengyang Li appealed the circuit court’s ruling.

Holding:

The ICA affirmed the circuit court’s dismissal of the case because Mengyang Li waived his appellate challenge when he failed to oppose Shepherd’s motion. It is well established in West Virginia that a party may not raise an issue for the first time on appeal; it must have previously been properly raised in the circuit court. Mengyang Li failed to undertake any affirmative action to resist the motion to dismiss and, therefore, could not point to anywhere in the record where his objections to the motion or the court’s order were preserved.

How They Voted:

The memorandum decision was concurred in by Chief Judge Lorensen, Judge Greear, and Judge White.

Impact on Business:

This case demonstrates the ICA’s strict application of appellate preservation rules, even when the case involves a *pro se* party. The outcome strongly reinforces the need to be vigilant and not to “sleep on your rights” because doing so could potentially waive the right to appellate challenges.

What the Court was Asked to Decide:

Did the circuit court properly dismiss a “heightened” deliberate intent claim against a fellow individual employee?

What the Court Decided:

The ICA reversed the circuit court’s dismissal of Stanley’s “heightened deliberate intent” claim against the individual co-employee and remanded for further proceedings because the complaint contained an allegation that the co-employee specifically intended his injury, constituting a *prima facie* claim under West Virginia Code § 23-4-2(d)(2)(A). Further, the ICA affirmed the dismissal of claims against the employing company as Stanley failed to challenge this aspect of the circuit court’s order in his appeal.

Facts:

Stanley filed his complaint in the Circuit Court of Putnam County against Structsure Scaffold (“Structsure”) and his supervisor, Mr. Lasure, alleging claims of deliberate intent, including that Lasure “acted with consciously, subjectively, and deliberately formed intention to strike the Plaintiff, Lonnie Stanley with [a] truck, constituting deliberately formed intention to injure Lonnie Stanley.” The complaint also claimed that previous employees complained about how Lasure’s alleged anger issues created a dangerous and unsafe work environment that Structsure permitted.

Structsure and Lasure filed a motion for partial dismissal, or in the alternative, a motion for partial summary judgment noting that the alleged incident occurred while working at a job site when a disagreement arose over the timeframe for delivery of materials. During this disagreement, Lasure was sitting in his truck with the passenger door open when he began to move his truck, which caused the passenger door to strike Stanley’s elbow. The motion argued that Stanley’s complaint failed to satisfy the requirements for properly pleading a deliberate intent claim pursuant to the “five-factor test” of West Virginia Code § 23-4-2(d)(2)(B).

Stanley filed a response arguing that his deliberate intent claim was proceeding under the “specific intent” provisions of West Virginia Code § 23-4-2(d)(2)(A) (sometimes called the “heightened” claim) and not West Virginia Code § 23-4-2(d)(2)(B); therefore, he was not required to plead the five factors of the latter provision. Structsure and Mr. Lasure filed a reply arguing that Mr. Stanley’s complaint had not specified whether he was proceeding under West Virginia Code § 23-4-2(d)(2)(A) and not West Virginia Code § 23-4-2(d)(2)(B), but regardless, his claims were insufficient under both.

The circuit court granted Structsure and Lasure’s motion to dismiss, holding that Stanley failed to adequately plead his claims under either West Virginia Code § 23-4-2(d)(2)(A) or West Virginia Code § 23-4-2(d)(2)(B). Stanley appealed.

Holding:

The ICA did not address dismissal of Stanley’s claims against Structsure because Stanley did not include the issue in his appeal. As to the claim against Lasure, the Court noted that Stanley’s complaint specifically alleged that “Defendant, Jonathan Lasure, the plaintiff’s supervisor, acted with consciously, subjectively, and deliberately formed intention to strike the Plaintiff, Lonnie Stanley with the truck, constituting deliberately formed intention to injure Lonnie Stanley.”

The Court found that this allegation meets the standard of a *prima facie* pleading for a West Virginia Code § 23-4-2(d)(2)(A) claim and, accordingly, the circuit court had erred when it dismissed Stanley's "heightened deliberate intent" claim.

How They Voted:

The memorandum decision was delivered by Judge Lorensen.

Impact on Business:

This case is an important reminder that covered co-employees can lose the benefit of workers' compensation immunity if a person against whom liability is asserted acted with deliberate intention to cause an injury. Moreover, in contrast to the hoops necessary to plead a "five-factor" claim under West Virginia Code § 23-4-2(d)(2)(B), mere bare-bones allegations may be sufficient to survive a motion to dismiss for a "specific intent" or "heightened" claim under West Virginia Code § 23-4-2(d)(2)(A). Although such claims may ultimately be harder to prove than claims under the five-factor test, employers could see an increase in "heightened" claims in the wake of Stanley.

What the Court was Asked to Decide:

The Intermediate Court of Appeals of West Virginia (“ICA”) considered whether the Circuit Court of Putnam County properly granted summary judgment to Mount Vernon Baptist Church (“MVBC”), its Board of Deacons, and church leaders on Amber Elmore’s employment-related claims. Elmore, MVBC’s former Children’s Minister and Sunday School Teacher, alleged that the church terminated her in retaliation for reporting suspected child abuse and for complaints involving alleged sexual harassment of her daughter. She also alleged claims for gender discrimination, unequal pay, violation of free-speech rights, and retaliation related to her petition for a domestic violence protective order.

What the Court Decided:

The ICA affirmed summary judgment for the respondents. The Court held that West Virginia’s constitutional protections for religious freedom barred judicial inquiry into Elmore’s claims because MVBC’s congregation met and voted to terminate her in accordance with its bylaws. Under *Gillespie v. Elkins Southern Baptist Church*, 177 W. Va. 88, 350 S.E.2d 715 (1986), courts generally may not examine the reasons for a congregational church’s decision to terminate a pastor or minister absent a compelling reason.

The ICA found that Elmore did not establish a compelling reason for the Court to look behind the congregation’s vote. Chief Judge Greear concurred separately, agreeing that the claims were barred but concluding that the federal ministerial exception independently precluded judicial review of the employment dispute.

Facts:

MVBC is a congregational church governed by its constitution and bylaws. Under its bylaws, the Board of Deacons may recommend termination of a pastoral-staff member after notice is read from the pulpit on two prior Sundays. At least twenty-five percent of the active membership must be present at the meeting, and a majority vote terminates the staff member’s employment.

Elmore served as MVBC’s Children’s Minister and Sunday School Teacher for approximately two years. In 2021, the Board of Deacons met several times to discuss her employment and unanimously recommended her termination. The Board notified the congregation during Sunday services on June 13 and June 20, 2021, that it would hold a special meeting to vote on Elmore’s separation from employment. The Board stated that it had concluded, after discussions with Elmore and other staff members, that her working relationships with staff were irreparable and that her continued employment was not in the church’s best interests.

At the special meeting on June 27, 2021, the congregation voted fifty-one to sixteen, with two abstentions, to terminate Elmore’s employment. The church notified her that her employment would end on July 29, 2021.

Elmore filed suit in June 2023 and later filed an amended complaint. She alleged that, on May 9, 2021, two children of another MVBC employee made statements suggesting that their parents physically abused them. Elmore alleged that she reported the suspected abuse to the Putnam County Sheriff’s Department and Child Protective Services, and that she was retaliated against for doing so. She also alleged that she had previously complained to church leaders that MVBC’s Youth Minister sexually harassed her thirteen-year-old daughter.

Elmore alleged five claims: retaliatory discharge for performing mandatory-reporting obligations; gender discrimination and retaliation under the West Virginia Human Rights Act; gender-based unequal pay; violation of free-speech rights; and retaliation for seeking a domestic violence protective order. The circuit court granted the respondents' renewed motion for summary judgment on June 2, 2025, holding that Elmore's claims were barred by the federal ministerial exception and by West Virginia church-autonomy principles.

Holding:

The ICA reviewed the summary-judgment order *de novo* and affirmed. The Court found it unnecessary to decide whether the federal ministerial exception applied. Instead, it held that *Gillespie v. Elkins Southern Baptist Church*, 177 W. Va. 88, 350 S.E.2d 715 (1986), was dispositive. Under *Gillespie*, civil courts are severely limited in their ability to interfere with a church's internal operations. In a wrongful discharge action involving a minister of a congregational church, courts may generally determine only whether the congregation met and acted to terminate the minister; they may not examine church doctrine, arbitrariness, or the reasons for the termination absent a compelling reason to do otherwise.

Elmore did not dispute that MVBC's congregation met, voted to terminate her, and complied with the bylaws' procedures. Nor did she contest that she was a pastor or minister for purposes of *Gillespie*. Instead, she argued that her claims implicated substantial public policy, and that the Board of Deacons fraudulently concealed material facts from the congregation by failing to disclose the child-abuse report and the alleged harassment complaint.

The ICA rejected both arguments, explaining that a public-policy wrongful discharge claim would necessarily require a court to analyze the reasons for a minister's termination, which is an inquiry *Gillespie* prohibits. The Court also held that Elmore's allegation that the Board's stated reasons were pretextual did not establish fraud, collusion, or another compelling reason to go beyond the congregation's vote. The bylaws did not require the Board to give reasons for recommending termination, and the Board's statement did not purport to provide an exhaustive account of every employment issue.

Therefore, the ICA held that the circuit court properly granted summary judgment on all of Elmore's claims. It also affirmed summary judgment on her unequal-pay claim because she did not separately argue that the claim survived if the termination-based claims were barred.

How They Voted:

Judge Charles O. Lorensen and Judge S. Ryan White joined the memorandum decision affirming summary judgment. Chief Judge Daniel W. Greear concurred and wrote separately.

Impact on Business:

This decision reinforces the significant constitutional protection afforded to churches in disputes involving ministerial employment decisions. Where a church follows its governing bylaws and the congregation votes to terminate a minister, West Virginia courts generally will not review the reasons for the decision, even where the former employee alleges retaliation or a violation of substantial public policy.

Henline v. MacKenzie

Case No. 25-ICA-119 (December 4, 2025)

What the Court was Asked to Decide:

The Intermediate Court of Appeals was asked to determine whether the circuit court's ruling was against the substantial evidence of record. David and Michelle Henline argued that the circuit court ignored evidence that the Henlines spent substantial sums of money to establish a permanent residence on the property. The Henlines believed that they overcame the statute of frauds and proved their equitable claim, although the circuit court's order did not expressly discuss those issues. Donna MacKenzie argued that the Henlines' argument ignores the circuit court's controlling finding that the Henlines breached the agreement's maintenance provision.

What the Court Decided:

The ICA affirmed the lower court's findings. Notably, the circuit court's finding of a contract is not disputed by the parties, nor was it disputed in the circuit court. The ICA determined that the circuit court's ultimate determination in the case was driven by its factual determination that the Henlines breached the agreement by failing to maintain the property.

Facts:

Donna MacKenzie owns and lives on a 2.36-acre tract of land in Lewis County and is also Michelle Henline's mother. In 2013, the parties entered into an oral agreement in which Ms. MacKenzie permitted the Henlines to establish a separate home on her property and reside there in exchange for their maintaining Ms. MacKenzie's property. The parties also agreed that if the Henlines met those conditions, Ms. MacKenzie would later convey a portion of her property to them.

Afterward, with Ms. MacKenzie's permission, the Henlines undertook efforts to install utilities in anticipation of placing a residence on the property, establish a 911 address, and construct a road to access their portion of the property. In 2018, Ms. MacKenzie placed markers on a portion of her property to designate the portion she would eventually convey to the Henlines under the parties' agreement. In 2021, Ms. MacKenzie installed a fence to demarcate the boundary lines between the parties' lots. Eventually, the Henlines placed a prefabricated structure upon the property with the intent of using it as a residence. They subsequently built an addition onto the structure.

Subsequently, the parties' relationship deteriorated. According to the Henlines, after their utilities were hooked up, Ms. MacKenzie began threatening to evict them from the property. Shortly before this case was filed in circuit court, Ms. MacKenzie filed an eviction action in magistrate court. However, the matter was dismissed for lack of jurisdiction when disputes arose regarding the Henlines' claim of title under the agreement. In response, the Henlines filed the underlying action, seeking to enforce the parties' oral agreement and compel Ms. MacKenzie's conveyance of a designated portion of her property to the Henlines. The complaint contained claims for adverse possession, detrimental reliance, unjust enrichment, and promissory estoppel, alleging that the Henlines expended more than \$70,000 to establish residence on the property.

After a bench trial, the court found that the terms of the undisputed agreement included the Henlines' promise to reside on and maintain the property, and that the parties' conduct in furtherance of the agreement overcame the requirement of a writing under the statute of frauds.

The circuit court determined that the Henlines breached the agreement's maintenance provision when they filled the property with salvage-related items and stopped mowing the yard around Ms. MacKenzie's home. The circuit court determined that due to the breach, the Henlines

were not entitled to enforce the agreement or compel conveyance of the subject property. The court also found that the Henlines' adverse possession claim failed because the Henlines were not on the property adversely, but instead, by invitation. Ultimately, the court concluded that the Henlines had failed to prove the claims in their complaint, dismissed the action in favor of Ms. MacKenzie, and directed the Henlines to vacate the premises, including removing their structure, salvage items, and personal property within ninety days.

Holding:

In a memorandum decision, the ICA affirmed the lower court's order. The ICA held that the circuit court's factual findings were not clearly erroneous and that the ultimate disposition of the case was not an abuse of discretion. The circuit court held a bench trial and was in the best position to weigh the evidence and apply the law to the facts to reach its determination.

The Henlines made no argument directly challenging the finding that they breached the maintenance provision. The Henlines breached the oral agreement's maintenance provision by filling Ms. MacKenzie's property with salvage-related items and stopping yard maintenance; therefore they could not enforce the agreement to compel conveyance of the property. The adverse possession claim failed because they were on Ms. MacKenzie's property by invitation pursuant to their agreement, not adversely.

How They Voted:

Chief Judge Charles O. Lorensen, Judge Daniel W. Greear, and Judge S. Ryan White concurred in the opinion.

Impact on Business:

Owners and occupants who enter into land-use or future-conveyance agreements under handshake terms should state upkeep and condition obligations explicitly and document lapses as they occur, because the breach finding rather than the writing requirement is what decided this case. Part performance may overcome the statute of frauds, but it does not excuse the claimant's own failure to perform a material condition of the bargain. This case warns against leaving a land-use or conveyance agreement unwritten, especially when one party makes substantial improvements in reliance on the agreement.

What the Court was Asked to Decide:

The Court was asked to determine whether the Circuit Court of Ohio County erred in granting summary judgment in favor of The Health Plan of West Virginia, Inc. in a dispute over whether a participating physician agreement was ambiguous regarding Dr. Roland Chalifoux's obligation to maintain hospital privileges.

What the Court Decided:

The Court determined that it is undisputed that Dr. Chalifoux had staff privileges in good standing at Wetzel County Hospital when he contracted with The Health Plan in January 2022 and that he did not maintain those privileges once they were revoked later that year. The Health Plan was therefore entitled to immediately terminate Dr. Chalifoux's contractual rights. The provision of the Agreement did not depend upon Dr. Chalifoux's medical specialty or scope of practice. On the contrary, it clearly and unambiguously conferred a right of termination if Dr. Chalifoux's privileges at any hospital were limited in any manner. Based upon a plain reading of the Agreement, the Court found that there was no error in the circuit court's ruling granting summary judgment to The Health Plan.

Facts:

Dr. Chalifoux, then a board-certified neurosurgeon who operated an outpatient pain management clinic, and The Health Plan, a health insurance provider, entered into a participating physician agreement on January 1, 2022, under which Dr. Chalifoux contracted to provide physician services to The Health Plan's members based upon his training, expertise, and board certification as a neurological surgeon. Under the terms of the Agreement, Dr. Chalifoux was required to maintain clinical privileges at a participating hospital, meaning a hospital within The Health Plan's contracted network of providers that renders services to its members.

At the time of the Agreement, Dr. Chalifoux had privileges at Wetzel County Hospital in New Martinsville, West Virginia. Wetzel County Hospital is a participating hospital as contemplated by the Agreement, and when the Agreement was executed, Wetzel County Hospital was the only participating hospital at which Dr. Chalifoux had privileges.

In June 2022, Wetzel County Hospital revoked Dr. Chalifoux's privileges. Dr. Chalifoux challenged this revocation in state court, but the revocation was upheld in October 2022. With the confirmed loss of his clinical privileges at a participating hospital, The Health Plan considered Dr. Chalifoux to be in breach of the Agreement. Accordingly, The Health Plan terminated the Agreement with Dr. Chalifoux.

In January 2023, Dr. Chalifoux filed suit in circuit court, alleging that The Health Plan breached the Agreement by wrongfully terminating the Agreement based on a claimed false assumption that he was required to maintain hospital privileges. Dr. Chalifoux contended that because he operated an outpatient interventional pain clinic, his specialty did not necessitate that he maintain hospital privileges. During litigation, he argued that the Agreement was ambiguous because it failed to state with specificity which medical specialties require hospital admission privileges. Dr. Chalifoux argued that his practice as an interventional pain management specialist is the type of specialty that does not necessitate hospital privileges.

The Health Plan filed its motion for summary judgment in January 2025, which the circuit court decided on the briefing. The circuit court found that the Agreement's language was clear and unambiguous in its requirement that Dr. Chalifoux maintain staff privileges in good standing at a participating hospital. The court found that when Dr. Chalifoux failed to meet that requirement, The Health Plan unambiguously had the right to terminate the Agreement, unless Dr. Chalifoux qualified for and received approval for an exception from the hospital privileges requirement.

The court found that Dr. Chalifoux did not receive approval for an exception from the hospital privileges requirement, and furthermore, found that even if the Agreement did not require Dr. Chalifoux to seek approval for an exception, The Health Plan would have been entitled to terminate the Agreement upon the revocation of Dr. Chalifoux's hospital privileges because his specialty relevant to the contract was neurological surgery, not pain management. Furthermore, the court found that by Dr. Chalifoux's own admission, portions of both his neurosurgical and pain management practices required him to maintain hospital privileges. The court concluded that The Health Plan was entitled to summary judgment and dismissed the case with prejudice.

Holding:

In a memorandum decision, the ICA upheld the circuit court's decision. The ICA held that the Agreement regarding medical practice between Dr. Chalifoux and The Health Plan clearly and unambiguously obligated him to maintain his hospital privileges. The Health Plan was therefore entitled to terminate the Agreement once those privileges were revoked, regardless of his medical specialty. The court found that there was no ambiguity regarding Dr. Chalifoux's contractual obligation to maintain his hospital privileges. The Agreement clearly stipulated that The Health Plan could terminate Dr. Chalifoux's contractual rights with immediate effect if his hospital privileges were limited, suspended, or terminated. This provision was not contingent upon Dr. Chalifoux's medical specialty or scope of practice. Furthermore, Dr. Chalifoux failed to request or receive an exemption from the hospital privilege requirement set forth in The Health Plan's Credentialing and Recredentialing Policy.

How They Voted:

Chief Judge Charles O. Lorensen, Judge Daniel W. Greear, and Judge S. Ryan White concurred in the opinion.

Impact on Business:

Independent credentialing and termination provisions contained within a participating physician agreement are controlling, regardless of whether the parties disagree over whether the physician's particular practice requires those privileges. Businesses that condition participation on licenses, privileges, certifications, or other credentials should state those requirements separately from any discretionary exception and identify who may approve an exception.

What the Court was Asked to Decide:

The United States Court of Appeals for the Fourth Circuit certified a question asking whether West Virginia recognizes the gross disproportionality rule to limit damages in construction contract disputes. If so, the Fourth Circuit asked the Court to determine how gross disproportionality should be calculated, which party bears the burden of proving it, and what the appropriate measure of damages is if that burden is not met.

What the Court Decided:

The Court adopted the gross disproportionality rule in construction contract cases. It held that the ordinary measure of damages remains the reasonable cost to repair or complete the contracted work. A breaching party may limit those damages by proving that the cost of completion is grossly disproportionate to the property's diminution in value. The breaching party bears the burden of proving gross disproportionality, and if it does not meet that burden, the injured party is entitled to recover the reasonable cost of completion.

Facts:

The Central West Virginia Regional Airport Authority entered into an agreement with Corotoman, Inc. to remove a knoll from Corotoman's property as part of the Yeager Airport runway extension project. In exchange, the Airport Authority agreed to perform additional blasting work to lower the elevation of Corotoman's remaining property.

The Airport Authority removed the knoll but did not complete the additional blasting work required under the agreement. The parties agreed that completing the remaining work would cost approximately \$4.38 million. The federal district court concluded that the cost of completion was grossly disproportionate to the increase in the property's value and awarded nominal damages. The Fourth Circuit then certified questions of West Virginia law to the Supreme Court of Appeals.

Holding:

The Court adopted the gross disproportionality rule in West Virginia construction contract cases. It held that the default measure of damages is the reasonable cost to complete or repair the work. However, when the breaching party proves that the cost of completion is grossly disproportionate to the property's diminution in value, damages may instead be measured by the diminution in value. The Court also held that the breaching party bears the burden of proving gross disproportionality. If the breaching party does not meet that burden, the injured party's proven measure of damages applies.

How They Voted:

Justice Wooton delivered the opinion of the Court. Chief Justice Bunn and Justice Trump were disqualified and did not participate in the decision. Judges McLaughlin and White sat by temporary assignment. Judge White concurred and filed a separate opinion.

Impact on Business:

This decision establishes that the gross disproportionality rule may apply in West Virginia construction contract cases and provides guidance on how damages should be measured when the cost to complete or repair construction work greatly exceeds the resulting increase in the property's value. By placing the burden on the breaching party to prove gross disproportionality, the decision provides greater predictability for contractors, developers, property owners, and others involved in construction disputes. Businesses negotiating construction contracts and evaluating potential litigation should consider how this framework may affect the calculation of damages in future disputes.

What the Court was Asked to Decide:

The West Virginia Intermediate Court of Appeals (“ICA”) was asked to determine whether the Oil and Gas Conservation Commission failed to properly consider whether the Application for Pooling and Unitization of Horizontal Well Operation (the “Application”) met the good-faith negotiation requirements of West Virginia Code § 22C-9-7a (2022) (the “Act”).

What the Court Decided:

The ICA vacated the Oil and Gas Conservation Commission’s order and remanded the matter for further proceedings. The Court held that the Commission’s order did not contain sufficient findings of fact or credibility determinations to permit meaningful appellate review under the State Administrative Procedure Act. The ICA did not reach the merits of whether Arsenal Resources satisfied the Act’s good-faith negotiation requirements; instead, it directed the Commission to consider the evidence and enter a new order with adequate factual findings.

Facts:

Petitioners are a group of mineral rights owners whose tracts were combined into a horizontal drilling unit. They object to their inclusion in the unit, alleging that Respondent Arsenal Resources, LLC, failed to make required good faith offers for their interests.

Respondent filed for a unitization of certain tracts in Harrison County pursuant to the Act after gaining 88% consent from the owners of oil and gas rights and 100% of the net acreage of operators. In this filing, Respondent asserted that a good-faith effort was made to acquire a lease or consent from all interests within the unit. During the Commission’s evidentiary hearing evaluating the good faith effort, Petitioners and Respondent produced conflicting testimony about the negotiation efforts. Petitioners supported their testimony by submitting five exhibits containing identical offers made to them by Respondent during the course of negotiations – offers the Petitioners asserted were inadequate and made in bad faith. Notwithstanding this evidence, the Commission determined that Arsenal acted in good faith and approved the Application. Petitioners appealed.

On appeal, Petitioners contended that the Commission failed to properly consider whether the Application met the Act’s requirements. Respondent asserted that the Commission properly approved the Application.

Holding:

The ICA found legal and factual deficiencies in the Commission’s order, in violation of West Virginia Code § 29A-5-3 (1964). These deficiencies prevented the Court from engaging in a meaningful appellate review.

The ICA could not reach the merits because the Commission’s order was a simple recitation of findings of fact in bare statutory language instead of an explicit explanation of the facts showing substantive compliance with the statute. While the order did identify witnesses and exhibits, it only summarily addressed Respondent’s witness testimony and entirely failed to address the substance of Petitioners’ testimony. The Commission failed to make findings concerning the weight or credibility of the evidence presented during the hearing. Furthermore, the Commission failed to make factual findings on the communications and negotiations between the parties. The ICA concluded that the order only included conclusory statements, not actual findings of fact.

As a result of this failure to follow procedure, the ICA vacated the Commission's order and remanded for further proceedings, instructing the Commission to consider all the evidence and enter a new, corrected order.

How They Voted:

Chief Judge Daniel W. Greear, Judge Charles O. Lorensen, and Judge S. Ryan White all concurred in the judgment.

Impact on Business:

The decision by the ICA emphasizes the importance of process and procedure when an administrative body is ruling on matters before it. Oil and gas-oriented businesses should be mindful when seeking unitization orders to ensure they fulfill the appropriate statutory requirements to withstand a reviewing court's scrutiny. Failing to do so may cause oil and gas production to pause until procedurally correct documents are obtained.

What the Court was Asked to Decide:

The ICA reviewed whether a series of commercial general liability insurance policies (the “Evanston Policies”) issued by Evanston Insurance Company (“Evanston”) to Dan Ryan Builders, Inc. (“DRB”) provided coverage to DRB for claims asserted by thirty-seven (37) homeowners in the Crystal Ridge Development in Bridgeport, West Virginia, alleging negligence in the planning, design, and construction of the development.

What the Court Decided:

The ICA affirmed the circuit court’s determination that the Evanston Policies were excess to the Travelers Policy and that Evanston’s duties to defend and indemnify DRB had not been triggered because DRB had not satisfied the \$100,000 self-insured retention. The ICA further held that, because those threshold coverage requirements had not been satisfied, the circuit court’s rulings applying policy exclusions were not ripe for adjudication and therefore should not have been reached.

Facts:

DRB planned, designed, and constructed numerous homes in the Crystal Ridge Development. Numerous homeowners filed civil actions against DRB that asserted negligence claims against DRB related to the planning, design, and construction of the homes.

Evanston issued a series of CGL policies to DRB over a five-year period that contained identical terms and conditions, each effective for one year. Each of the Evanston Policies contained a Self-Insured Retention (“SIR”) provision under which DRB was responsible for paying the first \$100,000 of any claim, including defense costs, before coverage attached under the Evanston Policies:

1. The total limit of liability of the Company as stated in the policy declarations shall apply excess of the retained limit (herein called the [SIR]) as stated in the endorsement, and the Named Insured agrees to assume this retained limit: Self Insured Retention: \$100,000 per occurrence

2. The Company’s obligation under this policy applies only to the amount excess of the [SIR]. Your bankruptcy, insolvency, or inability to pay the [SIR] shall not increase our obligation under the policy.

The Insured shall have the obligation to provide, at his own expense, proper defense and investigation of any claim and to accept any reasonable offer of settlement within the [SIR]. The Insured’s obligation to provide for his own defense is terminated upon the exhaustion of the [SIR] referenced above. In the event that there is any other insurance, whether or not collectible, applicable to an occurrence, claim or suit within the [SIR], the Insured must make actual payment for the full [SIR] amount before the limits of insurance under this policy apply. Compliance with this clause is a condition precedent for coverage under this policy. In the event of the failure of the Insured to comply with this clause, no loss, cost or expense shall be payable by the Company.

In addition, each of the Evanston Policies contained an identical “Other Insurance” provision:

4. Other Insurance.

If other valid and collectible insurance is available to the insured for a loss we cover ... our obligations are limited as follows:

b. Excess Insurance

This insurance is excess over

(1) Any valid and collectible insurance available to you covering liability for damages arising out of your ... operations ... and/or completed operations.

(2) Any other valid and collectible insurance available to you covering liability for damages arising out of the premises, operations, products and/or completed operations for which you have been added as an additional insured by an endorsement, or by definition via a contract or agreement, or by combination thereof.

When this insurance is excess, we will have no duty ... to defend any claim or “suit” that any other insurer has a duty to defend.

The Evanston Policies also contained a number of exclusions to coverage that Evanston contended applied to exclude coverage for the homeowners’ claims, including a subsidence/earth movement exclusion.

Upon receipt of the various complaints in 2009, DRB timely notified Evanston of the claims. Notably, DRB also notified Travelers Insurance (“Travelers”) of the claims. Travelers issued a CGL insurance policy (the “Travelers Policy”) to Lang Brothers, a contractor of DRB allegedly responsible for the work that formed the basis of the homeowners’ claims. DRB demanded that Travelers defend and indemnify DRB as an “additional insured” under the Travelers Policy, and Travelers agreed. DRB informed Evanston, therefore, that while it intended to look to Travelers as the “primary” insurance policy for purposes of both a defense and indemnity, DRB nonetheless considered Evanston’s duties under the Evanston Policies to have been “triggered” because of the claims.

The homeowners filed a Third Amended Complaint in October 2015 that contained a declaratory judgment claim against Evanston to determine whether coverage existed under the Evanston Policies for the homeowners’ claims. DRB thereafter filed a crossclaim for a declaratory judgment on coverage and alleged extra-contractual claims, which the circuit court stayed pending resolution of the coverage issue. DRB and Evanston filed competing motions for summary judgment on the coverage issues in October 2022, and the circuit court entered an order in September 2024 finding that Evanston’s duty to defend and indemnify DRB under the Evanston Policy had not been triggered because DRB failed to satisfy the SIR endorsements within the Evanston Policies, which were conditions precedent to Evanston’s duty to defend and indemnify DRB. The circuit court also found that Travelers was the primary insurer of DRB, making the Evanston Policies excess. Finally, the circuit court also found that, even assuming that DRB met the threshold requirements (satisfaction of the SIR and extinguishment of primary coverage of Travelers), various exclusions in the Evanston Policies excluded coverage.

Holding:

The ICA held that (1) the Other Insurance provision in the Evanston Policies meant that the Evanston Policies were excess to the coverage provided under the Travelers Policy; (2) DRB’s

apparent failure to show that it exhausted the SIR requirements meant that the Evanston Policies had “not been implicated”; and (3) because DRB failed to satisfy the \$100,000 SIR, a condition precedent, the circuit court erred in analyzing and applying any exclusions to coverage.

The ICA’s analysis started with the familiar rule that a court must apply the plain language of an insurance policy as written because “[w]e will not rewrite the terms of the policy; instead, we enforce it as written.”

Applying this rule to the language in the Other Insurance provision in the Evanston Policies, the ICA agreed with the circuit court’s determination that the language of the Other Insurance provision “clearly provides that said Evanston Policies are excess, as there is ‘valid and collectible’ insurance available to DRB to cover its liability for plaintiffs’ alleged damages – the Travelers policy under which it was named as an additional insured.” Likewise, the ICA agreed with the circuit court that “the duties of Evanston to defend and indemnify DRB for the underlying claims has not yet been triggered” because “DRB has not made the required ‘actual payment’ for satisfaction of the SIR endorsements[.]” Finally, the ICA found that, because the duty to defend and indemnify had not been triggered under the Evanston Policies, “the circuit court’s rulings as to the application of specific exclusions under the Evanston Policy were not ripe for adjudication, thus depriving the circuit court of the subject matter jurisdiction necessary to make such rulings.”

How They Voted:

Judge Greear authored the unanimous decision of the ICA.

Impact on Business:

Facially, the ICA’s decision is unremarkable and stands for the well-established proposition that courts will apply the plain, unambiguous language of an insurance policy as written. Here, the plain language of the SIR clearly required DRB to expend \$100,000 (either in defense costs or in settlement proceeds) to trigger coverage under the Evanston Policy. Likewise, the plain language of the Other Insurance provision made it clear that DRB still had to expend the full amount of the SIR even if other insurance was available, and the Evanston Policies were excess to any other insurance available.

The ICA’s written opinion, however, also raises many questions not answered in the opinion. For example, what if the Travelers Policy also contained an “Other Insurance” provision that made coverage under that policy excess to the coverage provided in the Evanston Policies? Did the Evanston Policies contain an aggregation or related claims provision, and how would that impact the SIR requirements? As the written opinion did not reflect whether the landowners’ claims had been resolved, could DRB trigger coverage in the future under the Evanston Policies?

The ultimate lesson for businesses is to carefully review and understand the terms of all insurance policies that may provide coverage for a claim or loss, and if necessary, find and retain experienced coverage counsel to assist in that review. Businesses need to understand and carefully track potential barriers to coverage, including satisfaction of conditions precedent, to better ensure coverage under a policy. Failure to understand the limits on insurance, including conditions precedent and exclusions, often leads to frustrations during the claims administration process that may lead to unexpected costs to the bottom line.

National Union Fire Insurance Co. of Pittsburgh, PA v. Westlake Chemical Corp.
Case Nos. 25-ICA-16 & 25-ICA-17 (November 13, 2025)

What the Court was Asked to Decide:

The Intermediate Court of Appeals was asked to determine whether several insurance policy exclusions barred coverage for damage caused by a chlorine spill at a chemical plant. The Court also considered whether the circuit court correctly ruled on collateral estoppel, breach of contract, bad faith, setoff, and prejudgment interest.

What the Court Decided:

The Court held that the faulty workmanship exclusion did not bar coverage because the damage caused by the chlorine spill qualified as an ensuing loss under the policies. It further held that the general pollution exclusion applied, but an exception preserved coverage for all insurers except National Union, whose separate pollution exclusion barred coverage under its policy. The Court also concluded that genuine issues of material fact remained regarding whether certain corrosion damage existed before the chlorine spill, requiring further proceedings. The Court reversed the circuit court's application of collateral estoppel, affirmed summary judgment on Westlake's bad faith claim, and remanded the case for further proceedings on damages.

Facts:

Westlake Chemical Corporation owned a chemical manufacturing plant in Natrium, West Virginia. In 2016, a railroad tank car that had recently undergone repairs ruptured shortly after being returned to the plant, releasing approximately ninety tons of chlorine and causing extensive damage to the plant. Westlake sought coverage under commercial property insurance policies issued by twelve insurers, but the insurers denied coverage based on faulty workmanship, pollution, and corrosion exclusions. Westlake then filed suit against the insurers for breach of contract and bad faith. At the same time, Westlake pursued claims in Pennsylvania against the companies that repaired the tank car and ultimately obtained a judgment arising from the same incident.

Holding:

The Court held that the damage caused by the chlorine spill qualified as an ensuing loss and was therefore not barred by the faulty workmanship exclusion. The Court further held that, although the chlorine spill constituted contamination under the policies' general pollution exclusion, an exception to that exclusion preserved coverage for all insurers except National Union, whose policy contained a separate pollution exclusion that barred coverage. The Court also concluded that genuine issues of material fact remained regarding whether certain corrosion damage existed before the chlorine spill, making summary judgment on that issue improper. Finally, the Court held that the Pennsylvania judgment did not collaterally estop Westlake from proving its damages because the measure of damages under the insurance policies differed from the measure of damages at issue in the Pennsylvania litigation.

How They Voted:

Chief Judge Lorensen delivered the opinion of the Court. Judges Greear and Scarr concurred.

Impact on Business:

This decision provides guidance on the interpretation of commercial property insurance policies containing faulty workmanship, pollution, and corrosion exclusions. The opinion emphasizes the importance of the specific language used in policy exclusions and any applicable exceptions when determining insurance coverage. The decision also clarifies that a prior judgment arising from the same loss does not necessarily determine damages in a subsequent insurance coverage dispute where the applicable measure of damages differs. Businesses should carefully review the scope of their insurance coverage and policy exclusions when evaluating potential claims and coverage disputes.

What the Court was Asked to Decide:

The ICA examined (1) whether an uncontested five-year delay in providing notice to an insurer of a claim represented “reasonable” notice, and (2) whether G&G Builders, Inc. (“G&G”), which had its defense fully paid for by other insurers at no cost to it, and which was fully indemnified for all claims asserted against it in a construction defect matter, could pursue common law and statutory bad faith claims against an insurer.

What the Court Decided:

The ICA reversed the circuit court on the disputed coverage and bad-faith issues and remanded for further proceedings. The Court held that Central was not equitably estopped from relying on the notice provision in its policy merely because the provision did not appear in the certificate of insurance. It further held that whether G&G’s nearly five-year delay in providing notice was reasonable presented a question for the jury, rather than an issue that could be resolved as a matter of law on the existing record. Finally, the ICA reversed summary judgment for Central and Builders Premier on G&G’s breach-of-contract and common-law and statutory bad-faith claims and directed the circuit court to reconsider those claims based on the particular facts of the case without treating Soaring Eagle as controlling.

Facts:

These consolidated cases present a complex factual and procedural history that centered on claims asserted by homeowners Randie and Deanna Lawsons (“Lawsons”) against G&G, the owners’ representative/general contractor for the construction of the Lawsons’ home near Milton, West Virginia. Work on the home began in late 2010 and continued until 2012, when the Lawsons fired G&G and prevented any further work on the property.

Thereafter, G&G filed a civil action against the Lawsons in March 2014 to enforce a mechanic’s lien that it filed against the Lawsons’ property for monies allegedly due for work performed on the home. The Lawsons filed a counterclaim in June 2014 alleging numerous construction defects arising from the alleged negligent work of various subcontractors and G&G and negligent supervision by G&G of the contractors. After a failed attempt by G&G to enforce an arbitration provision against the Lawsons, G&G filed a third-party complaint against a few contractors and their insurers alleging (1) that the contractors and insurers owed a duty to defend and indemnify G&G under both the subcontracts signed by the subcontractors and the insurance policies purchased by the subcontractors, and (2) common law and statutory bad faith claims against the insurers. Eventually, G&G filed a total of five third-party complaints, including against Central Mutual Insurance Company (“Central”) and its insured, Stone by Lynch (“SBL”), and against Builders Premier Insurance (“Builders Premier”) and its insured, Archetype.

As the litigation progressed, insurers began to settle the coverage claims with G&G, as a result of which G&G was provided a full defense for all claims asserted against it by the Lawsons by various insurance companies at no cost to G&G. Further, the underlying construction defect claims were settled in late 2022, with all monies to settle paid by insurers of the subcontractors.

Central insured SBL, a masonry contractor, until July 7, 2011, at which time Cincinnati insured SBL. G&G, an additional insured under the Central Policy, did not provide notice to Central of the Lawsons’ claims until June 2019 – almost five years after the Lawsons’ counterclaim con-

tained allegations of defective masonry work. As a result, Central denied G&G's claim for coverage because G&G failed to provide notice of the claims within a reasonable period of time after becoming aware of the claims. Builders Premier insured Archetype, which provided trim-related work on the Lawsons' home. G&G never put Builders Premier on notice of the claims.

Central and G&G both filed motions for summary judgment on coverage issues. The circuit court found that (1) the Central Policy provided coverage to G&G for the claims asserted by the Lawsons related to the work of SBL; (2) Central could not rely upon the notice provision in its policy because the certificate of insurance ("COI") issued to G&G did not contain the notice provision; and (3) even if the COI had contained the notice provision, the five-year delay was "reasonable" under the circumstances. Central appealed this decision to the West Virginia Intermediate Court of Appeals ("ICA").

Following settlement of the claims, both Central and Builders Premier filed motions for summary judgment on G&G's claims for breach of contract and common law and statutory bad faith based upon the West Virginia Supreme Court's memorandum opinion in *Soaring Eagle Dev. Co., LLC v. Travelers Indemnity Co. of America*, 19-0841, 2020 WL 6131741 (W. Va. Oct. 19, 2020), arguing that such claims could not be pursued when the insured received both a defense and indemnification paid for by insurers at no cost to the insured. The circuit court agreed and granted summary judgment to Central and Builders Premier, and G&G appealed those decisions to the ICA.

Holding:

The ICA reversed the circuit court's order on the insurance coverage issue. In a significant win for insurers, the ICA first reversed the circuit court's decision that Central was equitably estopped from relying upon the notice provision in its policy because the provision was not in the COI issued to G&G. In doing so, the ICA reiterated that, "[g]enerally, the principles of waiver and estoppel are inoperable to extend insurance coverage beyond the terms of an insurance contract." The ICA then recognized that some exceptions to the general rule exist, the most important of which is found in *Marlin v. Wetzel County Bd. of Education*, 212 W. Va. 215, 569 S.E.2d 462 (2002), in which the court noted: "A certificate of insurance is evidence of insurance coverage, and is not a separate and distinct contract for insurance. However, because a certificate of insurance is an insurance company's written representation that a policyholder has certain insurance coverage in effect at the time the certificate is issued, the insurance company may be estopped from later denying the existence of that coverage when the policyholder or the recipient of a certificate has reasonably relied to their detriment upon a misrepresentation in the certificate."

Finding that the circuit court erred in applying equitable estoppel without a finding that G&G relied to its detriment on the COI, and erred when it held that the notice requirements had to be in the COI to be effective, the ICA reversed the circuit court's application of equitable estoppel against Central and allowed Central to rely upon the notice requirements in the policy.

The ICA also reversed the circuit court's determination that the uncontested five-year delay in providing notice was reasonable as a matter of law under the circumstances. Specifically, the ICA noted that "while Central and G&G both suggest that there are no facts in dispute as to the question of reasonableness, we note that even with an agreement as to the facts in dispute there are drastically different conclusions that can be drawn from such facts, as exhibited by the parties' differing positions as to reasonableness." As a result, the ICA reversed the circuit court's finding of reasonableness and remanded with directions that a jury determine whether the delay was reasonable.

Finally, the ICA reversed the circuit court's summary judgment for Central and Builders Premier on G&G's claims of breach of contract and common law and statutory bad faith. In doing

so, the ICA attempted to distinguish the uncontested facts before it from *Soaring Eagle* and labeled the circuit court's reliance on *Soaring Eagle* "misplaced." The ICA's analysis focused, in part, on G&G's release of part of its mechanic's lien as part of the settlement of the Lawsons' claims against G&G and SBL. While the ICA acknowledged that G&G had a defense provided at no cost to it, and was fully indemnified for all monies paid to settle the Lawsons' claim, it determined that the release of the mechanic's lien made the facts sufficiently different from *Soaring Eagle* such that, on remand, it directed the circuit court to "re-examine this matter without reference to *Soaring Eagle* and with particular consideration of the specific facts of the underlying case."

How They Voted:

Judge Daniel W. Greear authored the decision of the ICA.

Impact on Business:

The ICA's decision in *G&G Builders* represents a mixed bag for businesses. On the one hand, the ICA refused to find that an uncontroverted five-year delay in providing notice of claims to an insurance company was unreasonable, even though G&G Builders was represented by counsel during the entirety of the five-year delay and had all the information necessary to submit the notice of claim. While bad for insurance companies, the ICA's refusal to rule on the "reasonableness" of the notice means that businesses may have luck in submitting claims to their insurers years after being on notice of those claims. Likewise, businesses may be able to pursue bad faith claims against insurers per the ICA even if the business is fully defended in the underlying civil action at no cost to it, and the insurer pays all or part of the monies necessary to settle the underlying claims against it.

The ultimate impact, however, is unknown as the ICA's decision is currently on appeal to the West Virginia Supreme Court.

NEXT Insurance, Inc. v. Mullins
Case No. 25-ICA-164 (February 3, 2026)

What the Court was Asked to Decide:

Whether an insurance policy provides coverage for property damage caused by work performed by subcontractors on behalf of the insured, where the policy excludes subcontractor work and a separate endorsement permits coverage only if certain conditions are met, which were not satisfied.

What the Court Decided:

The NEXT Insurance Commercial General Liability Policy (“Policy”) did not provide coverage for the property damage caused by work performed by subcontractors. The Policy was clear and unambiguous, and under its plain and ordinary meaning, it required a written agreement with the subcontractor and a certificate of insurance naming the insured for coverage to apply. The Court agreed with the Defendant that coverage for subcontractor work was precluded because these conditions precedent were not satisfied.

Facts:

Plaintiff Tiffany Mullins hired DG Home Repair (“DG Home”) to repair flood damage to her home in Charleston, West Virginia, paying over \$70,000 for the work.

Much of the work was performed by individuals whom Plaintiff identified as subcontractors, including Arlie Richards and Ethan Goodwin, who were paid in cash and were not formally employed. Some of the work was completed satisfactorily, while other portions were allegedly substandard.

NEXT Insurance, Inc. (“NEXT”) insured Donnie Goodwin, the sole proprietor of DG Home, under a Policy that excluded coverage for subcontractor work unless certain conditions were met, including a written agreement with the subcontractor and a certificate of insurance naming the insured. These requirements were not satisfied.

Nonetheless, the circuit court held that the Policy provided coverage for work performed by subcontractors, reasoning that it “gave coverage and then took it away,” relying on *Cherrington v. Erie*, 231 W. Va. 470 (2014), and applied the reasonable expectations doctrine. The court granted summary judgment in favor of Plaintiff and denied summary judgment in favor of NEXT. NEXT appealed the decision to the Intermediate Court of Appeals.

Holding:

The Intermediate Court of Appeals reversed and remanded, finding that the Policy clearly precluded coverage for work performed by subcontractors.

The Court reasoned that the Policy language was clear and unambiguous; therefore, the reasonable expectations doctrine was improperly applied. Furthermore, the conditions precedent for subcontractor coverage were not satisfied, as no written agreements or insurance certificates were provided.

The Court rejected the circuit court’s reliance on *Cherrington*, explaining that the Policy did not contain contradictory provisions that both granted and removed coverage, as in *Cherrington*. Instead, the provisions operated together logically and consistently to limit and condition coverage.

Accordingly, the Court reversed the grant of summary judgment to Plaintiff and remanded with instructions for the circuit court to enter summary judgment in favor of NEXT on the coverage issue.

How They Voted:

All three ICA judges concurred in the memorandum decision.

Impact on Business:

While the terms of an insurance policy should control the parties' rights and obligations, this decision reinforces that courts will strictly enforce clear and unambiguous policy language, even where it results in a denial of coverage. Here, the Policy required specific conditions, written agreements and certificates of insurance, to trigger coverage for subcontractor work, and the failure to satisfy those requirements resulted in no coverage.

For contractors and businesses, this ruling highlights the risk of relying on informal subcontractor arrangements. Businesses that fail to properly document subcontractor relationships or verify insurance coverage may expose themselves to significant uninsured liability.

Unlike cases that expand coverage, this decision limits recovery and places the burden on insureds to strictly comply with policy conditions, underscoring that failure to do so can leave them solely responsible for costly claims.

Dobbins v. West Virginia National Auto Insurance Company
Case No. 24-362 (May 21, 2026)

What the Court was Asked to Decide:

Whether an insurer can deny uninsured motorist (“UM”) coverage based solely on the insured’s failure to report a hit-and-run accident to police within 24 hours, as required by the insurance policy, when the policy expressly provides that noncompliance bars coverage only if the failure prejudices the insurer.

What the Court Decided:

The insurance company could not deny coverage based solely on the failure to report the accident within 24 hours. The policy clearly and unambiguously required the insurer to prove actual prejudice resulting from the delay before denying coverage. Because the insurer failed to prove that its investigation was prejudiced by the failure to report, it could not deny coverage on that basis alone.

Facts:

Petitioners Danny and Jackie Dobbins sought UM coverage after Mr. Dobbins was struck by an unknown hit-and-run driver while operating his vehicle in Logan County, West Virginia.

Although the insurance policy required accidents involving unknown drivers to be reported to police within 24 hours, the Petitioners failed to do so. They instead reported the accident to their insurer, West Virginia National Auto Insurance Company (“West Virginia National”), four days later, explaining that the accident occurred late on a Friday and the following Monday was a holiday, and Logan City Hall was closed.

The insurance policy contained a provision stating that the insurer would have “no duty to provide coverage... if the failure to comply... is prejudicial to us.” Despite this language, West Virginia National denied coverage solely because the accident was not reported to police within the required timeframe.

After receiving notice of the claim, the insurer conducted an investigation but delayed several months before inspecting the vehicle and obtaining witness statements. Petitioners filed suit seeking coverage, and the circuit court granted partial summary judgment in their favor, finding that the insurer failed to demonstrate prejudice. The Intermediate Court of Appeals reversed, concluding that the circuit court should have enforced the reporting requirement without conducting a prejudice analysis.

Holding:

The Court reversed and remanded, determining that the policy required proof of prejudice and that the insurer failed to meet that burden.

The Court reasoned that insurance contracts must be enforced according to their plain terms, and the policy language was clear and unambiguous in stating that noncompliance with reporting requirements bars coverage only if the insurer is prejudiced. Therefore, absent a showing of actual prejudice, late reporting alone was insufficient to deny coverage.

The Court rejected the insurer’s argument that prejudice should be presumed based on the statutory reporting requirement. Instead, it held that speculative claims, such as the possibility that earlier reporting might have improved the investigation, do not constitute actual prejudice. The insurer’s own delay in investigating the claim further undermined its argument of prejudice.

The Court also clarified that the statutory reporting requirement does not override more favorable policy language. Because the policy provided greater protection to the insured by requiring a showing of prejudice, that provision controlled.

Accordingly, the Court reinstated the circuit court's ruling granting partial summary judgment to the Petitioners on the coverage issue.

How They Voted:

Justice Trump authored the unanimous decision of the Court.

Impact on Business:

This decision reinforces that clear insurance policy language governs coverage disputes, particularly when it benefits the insured. Even where statutes impose strict reporting requirements, insurers may be held to more favorable contractual terms they include in their policies.

For insurers, this ruling highlights the importance of careful policy drafting. Including a prejudice requirement limits the ability to deny claims based on technical violations and shifts the burden to the insurer to prove actual harm.

Overall, the decision limits insurers' ability to rely on procedural technicalities to avoid coverage, requiring proof of real, demonstrable harm. It also serves as a reminder for both insurers and insureds to act promptly in reporting and investigating claims to avoid further disputes.

Lemley v. MarkWest

Case No. 24-ICA-438 (November 12, 2025)

What the Court was Asked to Decide:

The Intermediate Court of Appeals of West Virginia (“ICA”) was asked whether the Office of Tax Appeals (“OTA”) erred in reducing the taxable assessed value of multiple natural gas pipelines. Additionally, the ICA was asked to determine whether the OTA erred in holding that only one of the methods used to determine economic obsolescence was valid under West Virginia law.

What the Court Decided:

The ICA affirmed the Office of Tax Appeals’ decision reducing the assessed value of MarkWest’s pipelines by thirty-five percent for economic obsolescence. The Court held that the OTA properly applied the preponderance-of-the-evidence standard, credited MarkWest’s expert evidence and utilization data, and found that external economic forces supported an obsolescence adjustment. The ICA rejected the Wetzel County Assessor’s challenges to the reduction and concluded that the OTA’s valuation was supported by the evidentiary record. The Court declined to address MarkWest’s cross-assignment of error concerning the validity of additional valuation methodologies because MarkWest sought affirmance of the OTA’s decision and did not request a remand.

Facts:

Respondent, MarkWest Liberty Midstream & Res., LLC, is the owner of various processing plants and liquid natural gas pipelines in Wetzel County. These pipelines were created in three development phases: an 8/10” diameter in 2012, 12” diameter in 2015, and 20” diameter in 2018.

MarkWest filed its commercial personal property tax returns for 2023, in which it determined the value of the 20” lines based on cost minus depreciation valuation. Additionally, MarkWest included a reduction for economic obsolescence, claiming the lines were not yet at full capacity, resulting in a total valuation differential between the parties of approximately \$32,000,000.

As a result of this differential, MarkWest provided an expert to support its valuation. The expert prepared a report using four methods to determine the loss in value. Subsequently, the Wetzel County Assessor denied this reduction request, arguing that the loss was not caused by economic obsolescence and that MarkWest failed to show sufficient evidence of external forces. In his denial notice, the Assessor supported his decision with his own expert reports.

MarkWest then appealed the denial to the OTA. During OTA proceedings, MarkWest argued that the 20” line was created in preparation of production that failed to materialize due to the COVID-19 pandemic. The OTA issued a Final Decision allowing a 35% reduction in the assessed value of the lines due to economic obsolescence. The Assessor appealed.

Holding:

The ICA held that the OTA did not err in its decision to reduce the valuation of the pipelines by 35%. Additionally, it declined to address MarkWest’s cross-assignment of error for the OTA’s rejection of its experts’ methodologies.

The court began by explaining that while there are multiple methods for determining taxable value and depreciation, the methods relevant to the Court were cost valuation and economic-obsolescence depreciation. The court noted that the Tax Commissioner is not required to adjust

valuations using depreciation; the Commissioner is only obligated to consider adjustments.

Prior to January 2023, review of these decisions was done through county commissions, which required the property owner to prove the assessments were incorrect by clear and convincing evidence. However, after that date, the reviewing body and the standard were changed to the OTA and preponderance of the evidence, respectively. This change also clarified that while the owner has the initial burden of proof, after the owner has presented its case, the burden shifts to the Assessor to rebut the owner's evidence.

Turning to the valuation issue, the ICA clarified that decisions involving economic obsolescence are subject to a preponderance of the evidence standard of review, not an abuse of discretion. The court agreed with the OTA's ruling that MarkWest introduced sufficient expert evidence and utilization percentages to support the use of economic obsolescence. Additionally, the Assessor and his experts failed to account for economic obsolescence, deviating from accepted appraisal principles. As a result, the OTA's ruling on that matter was upheld.

Next, the court agreed with the Assessor that the OTA has no mechanism to take judicial notice of the COVID-19 pandemic. However, the court noted that while it may not use judicial notice to definitively recognize the effect the pandemic had on the economy, it may use this information to support the factual determination that the production reduction was due to external forces. Therefore, the OTA did not err in finding that a reduction in supply and demand was due to external forces.

Additionally, the court disagreed with the Assessor's argument that utilization of the pipeline does not impact value, as it is not an "income approach" to valuing the involved commercial property. The court disagreed, finding that the determination of economic obsolescence is within the OTA's authority and should not be disturbed unless clearly wrong. Here, the OTA's ruling was based on the evidence presented at the evidentiary hearing, and therefore the ICA found no error. Moreover, the capitalization of income method was proper because the weight of the conflicting expert reports was left to the OTA as the finder of fact. Finally, the chosen 35% reduction was within the authority of the OTA to allocate, not arbitrarily chosen from experts' opinions, and was supported by facts.

Lastly, the Court declined to address the validity of the methodology question, because MarkWest conceded that the OTA is authorized to make such decisions, requested the ICA to affirm the OTA's decision, and failed to request a remand.

How They Voted:

Judge Greear authored the opinion of the court.

Impact on Business:

The decision by the ICA allows businesses with underutilized assets to reduce their tax burden through depreciation on projects that are impacted by outside forces. In counties with significant energy infrastructure, local governments may receive lower tax revenues due to this opinion.

Mountain Valley Pipeline, LLC v. Zinn
Case No. 24-ICA-447 (November 6, 2025)

What the Court was Asked to Decide:

The Intermediate Court of Appeals of West Virginia (“ICA”) considered whether the Circuit Court of Summers County properly dismissed Mountain Valley Pipeline, LLC’s claims arising from a September 2023 protest that temporarily halted pipeline-construction operations. Mountain Valley asserted claims for tortious interference with business relations, trespass, violations of the West Virginia Critical Infrastructure Protection Act, civil conspiracy, punitive damages, and injunctive relief against the protestors.

What the Court Decided:

The ICA affirmed in part and reversed in part, holding that Mountain Valley adequately pleaded claims for tortious interference and trespass, as well as its request for injunctive relief, and those claims could proceed. The ICA affirmed dismissal of Mountain Valley’s claims under the West Virginia Critical Infrastructure Protection Act, civil conspiracy, and its stand-alone claim for punitive damages.

Facts:

Mountain Valley was authorized to construct a natural-gas transmission pipeline from Wetzel County, West Virginia, to Pittsylvania County, Virginia. In connection with the project, Mountain Valley obtained temporary and permanent easements and licenses on property in Summers County, including a perpetual right-of-way for the pipeline and a license to use a private access road.

The respondents opposed the pipeline project. On September 7, 2023, they entered the project property without permission to stage a protest. Mary Beth Naim, Judy Kay Smucker, and Jessica Grim positioned themselves in rocking chairs along the right-of-way to block the access road. Martha Ann Zinn attached herself to Mountain Valley’s drilling equipment. The respondents refused to leave when confronted, and the West Virginia State Police ultimately removed them. They were arrested and charged with offenses connected to the protest.

Mountain Valley filed separate complaints against Zinn and the other respondents, alleging that the respondents’ actions delayed construction and caused quantifiable out-of-pocket losses. Mountain Valley sought damages and injunctive relief based on trespass, tortious interference, violations of the West Virginia Critical Infrastructure Protection Act, civil conspiracy, and punitive damages.

The circuit court granted the respondents’ Rule 12(b)(6) motions to dismiss, ruling that Mountain Valley’s easement and license did not create a legally protectable possessory interest sufficient to support trespass and that a one-day protest and operational delay could not sustain a tortious-interference claim. The court also dismissed the remaining claims. Mountain Valley appealed.

Holding:

The ICA reversed dismissal of the tortious-interference claims. To state such a claim, a plaintiff must allege a contractual or business relationship or expectancy, intentional interference by an outsider, harm caused by that interference, and damages. Mountain Valley alleged that it acquired its easement and license to complete the pipeline project; that the respondents intentionally obstructed the use of those rights; and that the obstruction caused actual, quantifiable damages from construction delay. The ICA rejected the circuit court’s conclusion that a single-day delay

could not support tortious interference. Although West Virginia has not expressly adopted the Restatement (Second) of Torts theory of interference by hindrance, nothing in West Virginia law prevents a plaintiff from using hindrance to establish actual harm and related damages. Whether the delay caused the claimed damages, and the proper amount of damages, were factual questions for later resolution.

The ICA also reversed dismissal of Mountain Valley's trespass claim against Zinn. The Court held that Mountain Valley's easement and access-road license were legally protectable interests even though they were nonpossessory interests in the underlying land. The Court distinguished cases addressing whether a right-of-way holder could label another person as a trespasser on real property. Relying on *Moundsville Water Co. v. Moundsville Sand Co.*, 124 W. Va. 118, 19 S.E.2d 217, 219 (1942), which recognizes that a licensee may protect its lawful property interests against third-party obstruction, the ICA determined that Mountain Valley pleaded facts showing it had a right to use the property for pipeline construction, and that Zinn obstructed that use. The Court held that damages in trespass are not limited to physical damage to real property, as loss of use and costs proximately caused by the obstruction may be recoverable.

The ICA affirmed dismissal of Mountain Valley's claim under the West Virginia Critical Infrastructure Protection Act, W. Va. Code § 61-10-34(d)(1). The statute authorizes civil liability for damages to personal or real property while trespassing. The ICA held that physical damage to personal or real property is an essential element of the statutory civil remedy. Mountain Valley's complaints did not allege that type of property damage and, therefore, failed to state a claim under the Act.

The ICA affirmed dismissal of the civil-conspiracy claims. Civil conspiracy is not an independent, stand-alone cause of action; rather, it permits liability for those who share a common plan to commit an underlying tort but do not themselves commit it. Because Mountain Valley alleged that the respondents themselves committed the alleged tortious conduct, the conspiracy allegations improperly duplicated the substantive tort claims.

The ICA held that punitive damages cannot be pleaded as a separate cause of action under West Virginia law. Therefore, the Court affirmed dismissal of Mountain Valley's stand-alone punitive-damages count, while recognizing that punitive damages may remain available as a remedy if supported by the surviving tort claims.

Finally, the Court reversed dismissal of Mountain Valley's request for injunctive relief. Because Mountain Valley's trespass and tortious-interference claims survived, injunctive relief remained available in connection with those claims.

How They Voted:

Judge Daniel W. Greear delivered the opinion for a unanimous court.

Impact on Business:

The decision confirms that holders of easements and licenses may use trespass and equitable remedies to protect their contractual rights to use property. A nonpossessory interest in land does not leave an easement or license holder without a remedy when others interfere with the authorized use of the property. The decision also recognizes that a temporary operational delay may support a tortious interference claim when the plaintiff plausibly alleges actual and quantifiable harm. At the pleading stage, the fact that an alleged interference was brief does not necessarily make resulting damages too speculative.

Clay Music Corp. v. Mountaineer Gas
Case No. 24-ICA-457 (October 15, 2025)

What the Court was Asked to Decide:

The Intermediate Court of Appeals (“ICA”) considered Clay Music Corp.’s appeal from the Circuit Court of Kanawha County’s dismissal of its claims against Mountaineer Gas Company. The circuit court held that Clay Music’s negligence claim was barred by the statute of limitations, and that Clay Music had not adequately pleaded a claim for intentional spoliation of evidence.

What the Court Decided:

The ICA affirmed, holding that Clay Music’s negligence claim accrued on the date of the explosion and was untimely under the applicable two-year limitations period. The ICA further held that neither the discovery rule nor fraudulent concealment tolled the limitations period. Because the underlying negligence claim was time-barred, Clay Music could not establish essential elements of its intentional-spoliation claim.

Facts:

In July 2021, Clay Music owned two video lottery terminals at Judy’s, a commercial gambling establishment in Beaver, West Virginia. Mountaineer Gas maintained an underground natural-gas distribution line near the premises, although Clay Music was not a Mountaineer Gas customer and no gas line ran to or under the premises of Judy’s.

Before July 18, 2021, a puncture in Mountaineer Gas’s distribution line allegedly leaked natural gas. The gas accumulated in a nearby sewer line extending under Judy’s. On July 18, the gas ignited, causing an explosion and fire that damaged Clay Music’s two lottery terminals.

Clay Music filed suit on August 1, 2023, alleging negligence and intentional spoliation of evidence. The complaint alleged that, during the post-explosion investigation, a Mountaineer Gas employee removed portions of the sewer line and hid them to impede the investigation and conceal Mountaineer Gas’s potential liability. Clay Music alleged that investigators informed Clay in late August 2021 that the gas line leak caused the explosion.

Mountaineer Gas moved to dismiss under Rule 12(b)(6). On October 21, 2024, the circuit court dismissed both claims, applying the five-step limitations analysis in *Dunn v. Rockwell*, 225 W. Va. 43, 689 S.E.2d 255 (2009). The circuit court found that the negligence claim accrued no later than July 18, 2021; that the discovery rule did not apply; that Clay Music had not alleged facts to support tolling the limitations period under the doctrine of fraudulent concealment; and that Clay Music failed to state a claim for intentional spoliation.

Holding:

The ICA reviewed the dismissal *de novo* and affirmed the circuit court’s decision. Clay Music did not dispute that negligence is governed by a two-year statute of limitations or that the elements of the claim occurred on or before July 18, 2021. The dispute revolved around whether the discovery rule and/or the doctrine of fraudulent concealment tolled the statute of limitations.

Under the discovery rule, a negligence claim accrues when the plaintiff knows, or through reasonable diligence should know, that it was injured, the identity of a party that may have breached a duty of care, and a causal connection between that conduct and the injury. The ICA emphasized that this is an objective inquiry and requires knowledge of the factual basis of a claim.

The ICA concluded that Clay Music’s claim accrued on July 18, 2021. Clay Music knew of the explosion and damage to its machines that day. The complaint did not allege that it was unaware that natural gas caused the explosion, or that a reasonably prudent person could not have promptly identified Mountaineer Gas as the gas provider with a distribution line in the area. The fact that Clay Music allegedly did not understand the exact mechanics by which gas entered the sewer line until investigators completed their work did not delay accrual.

The ICA also rejected fraudulent concealment as a basis for tolling. Although Clay Music alleged that Mountaineer Gas removed pieces of sewer line, it did not plead particularized facts showing that the absence of those pieces prevented Clay Music from discovering or pursuing its negligence claim. Indeed, Clay Music alleged that it discovered the claim despite the allegedly missing evidence. The ICA also rejected the premise that delayed understanding of the explosion’s precise cause itself established tolling. Because Clay Music filed suit more than two years after July 18, 2021, the negligence claim was time-barred.

Regarding Clay Music’s spoliation claim, the ICA applied the intentional spoliation elements set out in *Hannah v. Heeter*, 213 W. Va. 704, 584 S.E.2d 560 (2003). It held that the untimeliness of Clay Music’s negligence claim was fatal to the spoliation claim. A time-barred negligence claim could not succeed regardless of the allegedly removed sewer-line evidence. Thus, Clay Music could not show that the evidence was vital to its ability to prevail, that it would have prevailed but for the alleged spoliation, or that it suffered spoliation damages.

How They Voted:

The ICA issued a memorandum decision affirming the circuit court. Chief Judge Charles O. Lorensen, Judge Daniel W. Greear, and Judge S. Ryan White concurred.

Impact on Business:

This decision reinforces that the limitations clock may begin when a business knows of an injury and has sufficient facts to investigate a potentially responsible party—not when it obtains expert confirmation of the exact mechanism of injury. Businesses suffering damage from an explosion, fire, or other incident should promptly preserve evidence, identify potentially responsible parties, and evaluate claims before the limitations period expires.

Hall v. John Doe

Case No. 25-ICA-300 (May 1, 2026)

What the Court was Asked to Decide:

Whether a court can dismiss a case with prejudice under Rule 41(b) of the West Virginia Rules of Civil Procedure when a plaintiff files a complaint naming only a “John Doe” defendant, uses the case primarily to conduct discovery from non-parties, fails to identify or serve a defendant for over two years, and provides no documented evidence of efforts to prosecute the claim.

What the Court Decided:

Dismissal was proper. Plaintiff failed to demonstrate good cause for more than one year of inactivity, and the circuit court properly acted within its discretion when it dismissed the action with prejudice under Rule 41(b). Plaintiff’s unsupported claims of outside investigative efforts were insufficient because they were not reflected in the record.

Facts:

Petitioner Timothy Hall filed a pro se complaint in May 2023 naming only “John Doe” as the defendant. The complaint expressly stated that it was filed to obtain records and identify individuals allegedly involved in incidents at Independent Bible Church (“the Church”) affecting his child.

Although the Church was not named as a defendant, Petitioner served it with a subpoena seeking documents and information. The Church objected, and the circuit court denied Hall’s motion to compel, finding that the rules do not permit filing a lawsuit solely for discovery purposes.

Petitioner later filed a second motion to compel against Fidelity Investments regarding an unrelated alleged breach of his retirement account. The court denied that motion as irrelevant to the complaint.

After March 2024, there was no activity recorded in the case; Hall did not amend his complaint, identify the defendant, or serve a defendant.

In March 2025, the court issued a notice of intent to dismiss for inactivity under Rule 41(b). Petitioner responded by asserting he had pursued Freedom of Information Act requests and foreign subpoenas in an effort to identify the defendant. This was insufficient because Petitioner provided no documentation of such efforts, and his response focused on unrelated claims involving Fidelity Investments rather than the original allegations.

The circuit court dismissed the case with prejudice in June 2025, and Petitioner appealed.

Holding:

The Court affirmed the dismissal, concluding that the circuit court did not abuse its discretion.

The Court reasoned that Rule 41(b) permits dismissal when a case remains inactive for more than one year, a threshold that was clearly met. Although Hall claimed to have pursued efforts outside the court, those actions were not documented in the record. The Court reiterated the principle that matters not appearing in the record do not exist for purposes of appellate review.

The Court further explained that Petitioner failed to show good cause to avoid dismissal. Petitioner made no meaningful progress toward identifying or serving a proper defendant, and his complaint remained essentially a vessel for discovery rather than a valid cause of action. The Court emphasized that parties may not use civil litigation solely as a tool to conduct investigative discovery against non-parties.

The Court found that the circuit court acted within its permissible authority after providing notice and an opportunity to respond, and that dismissal with prejudice was appropriate.

How They Voted:

Chief Judge Daniel W. Greear and Judge S. Ryan White concurred in the memorandum decision. Judge Charles O. Lorensen did not participate.

Impact on Business:

This decision underscores the importance of actively prosecuting claims and maintaining a clear record of all litigation activity. Courts will strictly enforce procedural rules requiring timely action, and failure to move a case forward, even when informal or external efforts are allegedly underway, can result in dismissal. Additionally, this case demonstrates the broad discretion trial courts have in managing their dockets.



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