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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA  
NO. 070080

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**JEFFREY A. HORKULIC, REBECCA A. HORKULIC, his wife and  
JEFFREY HORKULIC as natural parent and legal guardian of STEPHANIE  
HORKULIC and BENJAMIN HORKULIC, minors,**

**Plaintiffs below/Appellees herein,**

v.

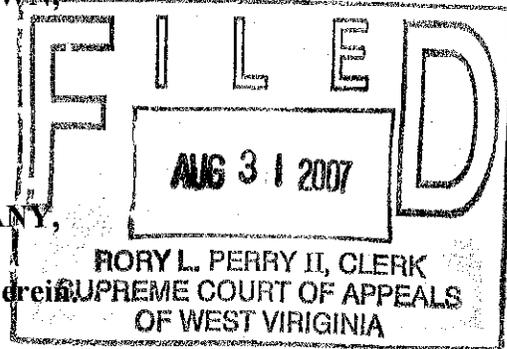
**WILLIAM O. GALLOWAY, GALLOWAY LAW OFFICES, CAMBRIDGE  
PROFESSIONAL LIABILITY SERVICES and ACORDIA OF WEST VIRGINIA, INC.,  
and JOHN DOES UNKNOWN,**

**Defendants below,**

**and**

**TIG INSURANCE COMPANY,**

**Defendant below/Appellant herein**



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On Appeal from the Circuit Court of Hancock County  
(Honorable Arthur Recht)  
Civil Action No. 02-C-244 R

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**REPLY BRIEF OF APPELLANT  
TIG INSURANCE COMPANY TO APPELLEES' BRIEFS**

Respectfully Submitted,

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## I. INTRODUCTION

Pursuant to Rule 10(c) of the West Virginia Rules of Appellate Procedure, the appellant, TIG Insurance Company ["TIG"], submits this reply brief in response to the briefs filed by Jeffrey A. Horkulic, Rebecca A. Horkulic, and Jeffrey A. Horkulic, as natural parent and legal guardian of Stephanie Horkulic and Benjamin Horkulic ["Appellees"] and William O. Galloway ["Mr. Galloway"].

## II. ARGUMENT

### A. THE CIRCUIT COURT OF HANCOCK COUNTY ERRED BY FINDING THAT TIG CONSENTED TO THE SETTLEMENT WITHOUT ALLOWING TIG TO PARTICIPATE IN THE PLENARY HEARING.

Appellees reliance on the self-serving evidence against TIG adduced from the plenary hearing evidences the very fact that the Circuit Court of Hancock County erred by finding that TIG consented to the settlement without allowing TIG to participate in the plenary hearing. Appellees, in the section titled "Statement of Facts," rely on the testimony of Mr. Wilmoth adduced in the plenary hearing mindless of the fact that the validity of this very testimony is in dispute as TIG not only was denied the opportunity to redress it, but also maintains that some of the testimony is excludable hearsay. The purpose of the plenary hearing was to determine whether the purported settlement that Appellees moved to compel was actually entered into by Mr. Galloway and TIG. However, in a March 29, 2006 status conference, counsel for Appellees, Robert P. Fitzsimmons, strenuously argued against the participation of TIG in the plenary hearing claiming that the purported settlement was only between the Appellees and Mr. Galloway despite the fact that TIG was being called upon to fund the purported settlement. Hearing Transcript, March 29, 2006, p. 12-13, Index. No. 14. Consequently, TIG was not allowed to participate in the hearing. Notwithstanding, the Circuit Court entered the Order

making findings of fact and conclusions of law against TIG without allowing TIG the opportunity to respond to the testimony tendered against it.

**1. The Circuit Court denied TIG its due process rights when it ordered that TIG could not participate in the plenary hearing.**

Despite Appellees' assertions to the contrary, the Circuit Court denied TIG its due process rights by entering findings of fact and conclusions of law regarding disputed material facts that are central to the bad faith portion of the underlying case. Specifically, the Circuit Court made findings that (1) TIG consented to the purported settlement on May 6, 2005; (2) Mr. Wilmoth had authority to enter into the purported settlement on TIG's behalf; (3) TIG failed to communicate to Mr. Wilmoth that it would not agree to the stipulated judgment; and, (4) the only disagreement TIG had to the proposed settlement was the consent judgment. Order, p. 4 – 16, Index No. 27. However, TIG was denied the ability to defend itself against these allegations made by Appellees in the plenary hearing. See Hearing Transcript, March 29, 2006, p. 12 – 13, 16, Index No. 14. As such, these findings of fact, along with the consent judgment for \$1.5 million, will be used against TIG to deprive TIG of property, being money, in the third-party bad faith portion of the underlying action. Under due process, a court cannot preclude an individual from litigating an issue central to his or her case. G.M. v. R.G., 211 W.Va. 528, 531, 566 S.E.2d 887, 890 (2002). Issues regarding TIG's consent to the purported settlement are central to TIG's defense in the bad faith portion of the underlying case. Accordingly, by entering findings of fact and conclusions of law against TIG, TIG was denied its due process rights in the underlying action.

Appellees focus only on the eleven items that the Circuit Court held to be the terms of the purported settlement. Order at ¶ 30, Index No. 27. Appellees completely ignore the rest of the Order making findings of fact that will most certainly be used against TIG to deprive it of

property in the bad faith portion of the underlying action. Appellees feel that since TIG has already tendered five hundred thousand dollars that it is no longer under any risk of being deprived of property without due process of law. However, Appellees proceed with this argument mindless of the fact that the Circuit Court has made findings of fact regarding TIG's conduct in the course of the negotiation of the purported settlement, notably TIG's alleged authorization for the \$1.5 million consent judgment. Also, the finding of fact that TIG authorized the entry of the consent judgment for \$1.5 million deprives TIG of the opportunity to dispute the value of the Appellees' damages as a result of the underlying automobile accident in the subsequent third-party bad faith action. In other words, the Circuit Court has held that TIG agrees that the value of the underlying automobile accident case is \$1.5 million without giving TIG an opportunity to present evidence that it did not consent to such an agreement.

"A due process analysis is founded upon the concept of fundamental fairness." Marcus v. Holley, 217 W.Va. 508, 618 S.E.2d 517, 536 (2005); State ex rel. Peck v. Goshorn, 162 W.Va. 420, 422, 249 S.E.2d 765, 766 (1978). Under due process, a court cannot order one to pay money, which is property, to another without some legal basis or jurisdiction requiring the party to do so. Steel v. Hartwick, 209 W.Va. 706, 709, 551 S.E.2d 42, 45 (2001). Accordingly, a court cannot preclude an individual from litigating an issue central to his or her case. G.M. v. R.G., 211 W.Va. at 531, 566 S.E.2d at 890. Therefore, an individual is entitled to procedural due process rights which entitle him or her to representation by counsel, notice, an opportunity to be heard, and the right to present evidence. Marcus, 217 W.Va. at 527, 618 S.E.2d at 536; Barazi v. W.Va. State College, 201 W.Va. 527, 498 S.E.2d 720 (1997); Clay v. City of Huntington, 184 W.Va. 708, 403 S.E.2d 725 (1991). At minimum, the due process clause requires an adjudication preceded by notice and an opportunity for a hearing appropriate to the nature of the

case. Layne v. W.Va. Child Support Enforcement Div., 205 W.Va. 353, 355, 518 S.E.2d 357, 355 (1998). While the applicable standard for procedural due process depends upon the circumstances of each particular case, this Court recognizes three fundamental principles:

First, the more valuable the right sought to be deprived, the more safeguards will be interposed. Second, due process must generally be given before the deprivation occurs unless a compelling public policy dictates otherwise. Third, a temporary deprivation of right may not require as large a measure of procedural due process protection as a permanent deprivation.

Syl. Pt. 2, Higgenbotham v. Clark, 189 W.Va. 504, 432 S.E.2d 774 (1993).

Contrary to Appellees' assertion in the March 29, 2006 status conference, and now in the Appellees' brief, whether TIG provided consent to Mr. Galloway to enter into the purported settlement became the focus of the Motion, the plenary hearing, and the Order. Due to the fact that TIG's consent to the settlement became the focus, TIG was entitled to procedural due process pursuant to the three fundamental principles inherent in procedural due process. Syl. Pt. 2, Higgenbotham, 189 W.Va. 504, 432 S.E.2d 774. First, TIG was entitled to procedural due process due to the large amount of property at issue; notably, the \$1.5 million consent judgment. As such, the Circuit Court should have provided safeguards to protect TIG's interest. Second, TIG should have been provided due process before the Order was entered. And, third, TIG was owed a greater amount of procedural due process as it is being permanently deprived of its property. The Circuit Court further ordered that TIG had no right of redress against Mr. Galloway. The Circuit Court ordered TIG to abide by the settlement based on TIG's alleged consent to the purported settlement of which TIG was denied the opportunity to dispute. These findings of fact and conclusions of law were with regard to facts disputed by TIG. Absent a hearing, this Order is in complete contravention of TIG's due process rights. Layne, 205 W.Va. at 355, 518 S.E.2d at 355.

Moreover, the Court entered findings of fact and conclusions of law regarding Mr. Wilmoth's conversations with an agent of TIG as well as Mr. Wilmoth's authority to bind TIG, which TIG, again, was not permitted to dispute. The Circuit Court expressly stated that there were two issues relating to motions at issue. Order at p. 15, Index No. 27. One of the issues was "[w]hether TIG precluded Wilmoth from including the consent judgment as part of the settlement." *Id.* at p. 16. This issue was of major importance considering that TIG's agreement to the consent judgment was allegedly the sticking point to TIG's approval of the settlement in general. The Circuit Court also referred to the purported settlement as between Appellees, Mr. Galloway, and TIG. *Id.* at 16, 21. There is no doubt that TIG was deprived of its procedural due process rights when the Circuit Court entered the Order providing that TIG was a party to the settlement.

TIG has the right to participate in the hearing before the Circuit Court could hold that TIG consented to the purported settlement along with the consent judgment. Accordingly, the Circuit Court erred.

**2. Mr. Wilmoth's testimony is not effective as to TIG as West Virginia does not recognize a tripartite relationship between an insurance company and the counsel retained to represent its insured.**

Appellees circularly argue that TIG had no standing to participate in the plenary hearing because it was not a party to the purported settlement, but at the same time argues that TIG is bound by the purported settlement because Mr. Wilmoth, as counsel retained by TIG to defend its insured, was impliedly authorized to consent to the settlement on TIG's behalf. Appellees' Brief at p. 26. However, not only was Mr. Wilmoth not authorized to enter into any sort of agreement of TIG's behalf, but Mr. Wilmoth was not an agent of TIG of any kind. Notwithstanding Appellees' contention to the contrary, West Virginia does not recognize any

tripartite relationship between an insurance company and the counsel retained to represent its insured. Counsel representing the insured owes its duties to the insured only. Barefield v. DPIC Companies, Inc., 215 W.Va. 544, 556, 600 S.E.2d 256, 268 (2004). And, to the extent that counsel retained by the insurance company makes decisions in order to ensure that the insured is covered by his or her policy, counsel is acting for the insured and not for the insurance company. Accordingly, Appellees' argument that TIG was bound by the purported settlement because the counsel it retained for its insured agreed to the purported settlement is without merit.

Appellees argue that an attorney retained by an insurance company to represent an insured is cloaked with the authority to speak on behalf of his client's insurance carrier. See Appellee Brief at p. 26. However, this Court has made clear that an attorney hired by an insurance company to represent its insured is not an agent of the insurance company. Barefield, 215 W.Va. at 556, 600 S.E.2d at 268. As this Court stated in Barefield, "...[t]he attorney is professionally obligated to represent only the interests of the client/insured, not the interests of the insurance company." Id. See also State ex rel. Allstate Ins. Co. v. Gaughan, 203 W.Va. 358, 508 S.E.2d 75 (1998) (a defense attorney represents only the insured, and not the insurer that is paying the defense attorney's fee). "While it has been argued that the attorney represents both the insurer and insured, we acknowledged that '[i]n reality, the insurer actually hires the attorney to represent the insured.' Gaughan, Id. at 372, 89 quoted in Barefield, 215 W.Va. at 556, 600 S.E.2d at 268.

This proposition is further supported by the West Virginia Rules of Professional Conduct which provide that an attorney paid by the insurance company cannot jointly represent both the insurance company and the insured in a liability matter. W.Va.R.Prof.Conduct. 1.7 (2007) ("A lawyer shall not represent a client if the representation of that client will be directly adverse to

another client[.]”); W.Va.R.Prof.Conduct 1.8(f) (2007). “In sum, our *Rules of Professional Conduct* compel us to the conclusion that when an insurance company hires a defense attorney to represent an insured in a liability matter, the attorney's ethical obligations are owed to the insured and not to the insurance company that pays for the attorney's services.” Barefield, 215 W.Va. at 558, 600 S.E.2d at 270.

In this case, if the Circuit Court had allowed TIG to participate in the plenary hearing, it would have been made clear that TIG did not agree to the entry of the consent judgment or grant Mr. Wilmoth authority to agree to the consent judgment on its behalf. Moreover, the fact that TIG had its own personal counsel involved in this case that also communicated with Appellees' counsel belies the very proposition that Mr. Wilmoth was authorized to agree to the consent judgment on TIG's behalf. Mr. Wilmoth was not in any way, shape or form serving as counsel for TIG. In fact, Mr. Wilmoth is ethically precluded from serving as counsel for Mr. Galloway and TIG at the same time. Therefore, any argument that Mr. Wilmoth's ratification of the consent judgment on behalf of his client, Mr. Galloway, may necessarily be imputed to TIG on the grounds that TIG retained Mr. Wilmoth to represent Mr. Galloway runs afoul of West Virginia law as well as the ethical rules imposed on West Virginia attorneys. The only persons qualified to testify as to TIG's stance with regard to the purported settlement is TIG itself and its own personal counsel, which Appellees effectively blocked from participation in the plenary hearing. Had TIG been permitted to participate there would have been no doubt that TIG did not agree to the consent judgment. There is no legal or factual basis for the Court's conclusion that Mr. Wilmoth had authority to enter into the settlement or agree to the consent judgment on behalf of TIG.

**B. THE CIRCUIT COURT ERRED IN ORDERING THE WAIVER OF ATTORNEY-CLIENT PRIVILEGE TO THE EXTENT THAT THE ORDER WAIVES TIG'S ATTORNEY-CLIENT PRIVILEGE.**

**1. The Circuit Court erred in ordering the waiver of documents protected by quasi attorney-client privilege belonging to TIG.**

In the Order, the Circuit Court ordered "that Defendant Galloway waives all attorney-client privileges he has to any and all documents, records and things maintained by TIG and/or Cambridge and his or *their* attorneys." (*emphasis added*) Order at p. 28, Index No. 27. Appellees erroneously argue that this was not a waiver of any privilege belonging to TIG. Appellees fail to recognize that TIG maintains a quasi attorney-client privilege with regard to communications between itself and the attorney retained to represent its insured. See State ex rel. Allstate Ins. Co. v. Gaughan, 203 W.Va. 358, 508 S.E.2d 75 (1998). And, to the extent that any documents, records and things maintained by TIG and TIG's attorneys are protected by the quasi attorney-client privilege as well as the attorney-client privilege between Mr. Galloway and his counsel, Mr. Galloway may not waive TIG's privilege.

Attorney-client privilege belongs to the client. Id. at 372, 89. When the attorney-client privilege is applicable, it is absolute. Franklin D. Cleckley, 1 Handbook on Evidence for West Virginia Lawyers, § 5-4(E)(3) (3d ed. 1994) cited in Gaughan, Id. An attorney cannot be compelled to release privileged information without the express consent of the client. Gaughan, Id. As such, persons not a party to the attorney-client relationship cannot waive attorney-client privilege on the client's behalf. Therefore, the Circuit Court erred to the extent that it ordered that Mr. Galloway waived TIG's quasi attorney-client privilege to any information so protected.

Moreover, as Mr. Galloway's insurer, TIG's claim file in the underlying lawsuit is protected by the quasi attorney-client privilege. "All communications in an insured's claim file generated on and after the filing date of a third-party's complaint against an insured, are

presumptively quasi attorney-client privilege communications.” Gaughan, 203 W.Va. at 373, 508 S.E.2d at 90 (1998). In a third-party bad faith action by an injured party against a liability insurer, where an insured has signed a release of his/her claim file, the insurer may raise a quasi attorney-client privilege to communications in the insured’s file. Id. at 372, 89. “The quasi attorney-client privilege belongs to the insurer, not the insured, and may be waived only by the insurer.” Id. at 372, 89. The purpose of quasi attorney-client privilege is to protect an insurer in a “third-party bad faith action where an insured has signed a release of his/her claim file to a third-party litigant[.]” Id. at 373, 90. According to the Order, Mr. Galloway waived “all attorney-client privileges he has to any and all documents, records and things maintained by TIG and/or Cambridge and his or their attorneys.” Order at p. 28, Index No. 27. Mr. Galloway is prohibited from exercising a waiver implicating TIG’s claim file regarding the defense of either the legal malpractice or the third-party bad faith portion of the underlying lawsuit. Only TIG may waive the quasi attorney-client privilege. Therefore, the Circuit Court erred to the extent that it orders that Mr. Galloway waived information subject to TIG’s quasi attorney-client privilege.

**2. The Circuit Court erred in allowing privileged documents to be entered into evidence at the plenary hearing over TIG’s objection.**

In the plenary hearing, Appellees called Mr. Wilmoth to testify as to Mr. Galloway and TIG’s alleged consent to settle the legal malpractice portion of the underlying action. In the course of the examination, not only did Mr. Wilmoth testify as to his communications with Mr. Galloway and TIG regarding the proposed settlement, but he also turned over privileged file materials. Mr. Fitzsimmons introduced the privileged file materials in the plenary hearing without providing TIG an adequate opportunity to review the materials and moved for their admittance as exhibits. Although TIG was not allowed to participate in the plenary hearing,

TIG's counsel, Mr. Flaherty and Ms. Berger Zerman, nonetheless objected to the introduction of the privileged information. Transcript of Hearing, May 30, 2006, p. 44-49, Index No. 15. Over TIG's objection, the materials were admitted by the Court. Some or all of the materials were protected by the quasi attorney-client privilege, which was not Mr. Wilmoth's nor Mr. Galloway's to waive.

"All communications in an insured's claim file generated on and after the filing date of a third-party's complaint against an insured, are presumptively quasi attorney-client privilege communications." Gaughan, 203 W.Va. at 373, 508 S.E.2d at 90 (1998). "The quasi attorney-client privilege belongs to the insurer, not the insured, and may be waived only by the insurer." Id. at 372, 89. The purpose of quasi attorney-client privilege is to protect an insurer in a "third-party bad faith action where an insured has signed a release of his/her claim file to a third-party litigant[.]" Id. at 373, 90.

The quasi attorney-client privilege was created for this exact situation. TIG maintains a quasi attorney-client privilege to communications between itself, Mr. Galloway, and Mr. Wilmoth as counsel for their insured, Mr. Galloway. Therefore, the Circuit Court erred in not only allowing Mr. Wilmoth to unlawfully waive TIG's quasi attorney-client privilege, but relying on information derived from this privileged information in the Order. All findings of fact conclusions of law derived from the information must therefore be stricken from the Order.

**C. THE CIRCUIT COURT ERRED IN OVERRULING TIG'S OBJECTION TO THE ADMISSION OF HEARSAY TESTIMONY BY MR. WILMOTH IN THE PLENARY HEARING.**

In the plenary hearing, Mr. Wilmoth submitted hearsay testimony regarding a telephone conversation with Mr. Rapponotti at the May 4, 2005 settlement conference. Hearing Transcript, May 30, 2006, at p. 30 – 31, Index No. 15. Counsel for TIG, Mr. Flaherty, objected to this

testimony as hearsay. Id. at p. 49, Index No. 15. Appellees argue that this is not hearsay but a “verbal act,” which is admissible evidence. Appellees’ Brief at p. 36-39. However, the testimony was elicited to prove the truth of the matter asserted – that TIG allegedly consented to the purported settlement despite TIG’s well-documented objections that it did not and would not consent to the purported settlement. Therefore, the testimony was hearsay and should have been excluded as such.

Rule 802 of the West Virginia Rules of Evidence states that “[h]earsay is not admissible except as provided by these rules.” W.Va.R.Evid. 802 (2006). Hearsay is defined as “a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” W.Va.R.Evid. 801(c) (2006). Hearsay is generally considered to be untrustworthy because the out-of-court declarant is not available to be immediately cross-examined concerning the accuracy of the statement. State v. Browning, 199 W.Va. 417, 485 S.E.2d 1 (1997).

Mr. Wilmoth’s testimony squarely falls within the definition of inadmissible hearsay under Rules 801(c) and 802. First, Mr. Wilmoth’s testimony as to what Mr. Rapponotti said in a May 4, 2005 telephone conversation is obviously a statement made by someone other than Mr. Wilmoth. See W.Va.R.Evid. 801(c). Second, Mr. Wilmoth’s testimony was offered into evidence to prove the truth of the matter asserted, which was that TIG agreed to settle the legal malpractice portion of the underlying action on May 4, 2005. Id. And, finally, the hearsay testimony offered by Mr. Wilmoth does not fall within any of the hearsay exceptions. However, the Circuit Court not only allowed this hearsay testimony by overruling TIG’s objections, but issued findings of fact arising from it. Order at p. 6 – 7, Index No. 27; Hearing Transcript, May 30, 2006, at p. 51, Index No. 15. The Circuit Court also admitted the hearsay testimony despite a

pleading filed by TIG responding to the Motion to Compel in which TIG expressly stated, and included an affidavit from Mr. Rapponotti to the point, that Mr. Rapponotti did not consent to the settlement on May 4, 2005. TIG's Response to Motion to Compel, Dec. 5, 2005, at p. 6 – 7, Index No. 9. Accordingly, the Circuit Court erred in overruling all of TIG's objections in the plenary hearing, which included TIG's hearsay objections.

Contrary to the arguments of Appellees, Mr. Wilmoth's testimony does not fall outside the category of hearsay as Mr. Rapponotti's statements were not verbal acts. The verbal act doctrine exempts from hearsay utterances which accompany an act of conduct to which it is desired to give legal effect where the words accompanying the conduct aid in giving the conduct legal significance. This doctrine is not applicable to the present matter where the words themselves, not conduct is the relevant issue. Mr. Wilmoth's testimony constituted hearsay as he testified to Mr. Rapponotti's out of court statements for the truth of the matter asserted. Put simply, Mr. Wilmoth says that Mr. Rapponotti agreed to the provisional settlement and Mr. Rapponotti says he did not. Mr. Wilmoth testified as to Mr. Rapponotti's out of court statements in order to prove that Mr. Rapponotti agreed to the settlement despite Mr. Rapponotti and TIG's well-documented assertions to the contrary. Moreover, TIG was excluded from putting on evidence of its position or even cross examining witnesses under the guise that the actions or inactions of TIG were not at issue, which turned out to be untrue in the ultimate Order. Accordingly, all findings of fact conclusions of law derived from Mr. Rapponotti's statements alleged by Mr. Wilmoth and relied upon by the Court in its Order are hearsay and must be stricken from the Order.

**D. THE CIRCUIT COURT DID ERRONEOUSLY HEAR AND RULE ON THE MOTION FOR INJUNCTIVE RELIEF WITHOUT PROVIDING NOTICE TO TIG.**

Contrary to the assertions of Mr. Galloway in his brief in response to Appellant's Brief, the Circuit Court decided upon Mr. Galloway's alternative Motion for Injunctive Relief in the plenary hearing and made conclusions of law upon the Motion for Injunctive Relief in the Order. Specifically, the Circuit Court ordered that "[a]s a result of the settlement, Galloway's personal assets are not at risk and are completely protected from plaintiffs and TIG." Order at p. 25, Index No. 27. Moreover, as the portion of the plenary hearing transcript quoted in Mr. Galloway's brief notes, counsel for Mr. Galloway, Mr. Selep, confirmed in the hearing that the relief he sought in the Motion for Injunctive Relief was being provided as a result of the evidence elicited in the plenary hearing. However, the Motion for Injunctive Relief was not noticed for hearing at the plenary hearing on May 30, 2006. Therefore, not only was TIG not permitted a hearing on the Motion for Injunctive Relief, but TIG was not given notice of the hearing. As the result of the Circuit Court's Order is to preclude TIG from seeking reimbursement from Mr. Galloway for the settlement, TIG was effectively denied its due process rights.

Due process demands notice. Notice is an issue of crucial importance throughout the adjudication of a contested case. McJunkin Corp. v. W.Va. Human Rights Commission, 179 W.Va. 417, 420, 369 S.E.2d 720, 723 (1988). The purpose of the notice requirement is to make certain that the prospective party in a contested case is aware of the impending proceeding and its substance with sufficient certainty to be in a position to answer and participate. Id. Notice contemplates meaningful notice which affords an opportunity to prepare a defense and to be heard upon the merits. Id. at 421. TIG was neither provided with notice of adjudication on the

Motion for Injunctive Relief, nor provided with the opportunity to be heard upon the merits of that Motion. Accordingly, the Circuit Court erred in granting Mr. Galloway injunctive relief without providing TIG notice of the hearing or the opportunity to be heard.

**V. RELIEF REQUESTED**

Wherefore, the appellant, TIG Insurance Company, respectfully requests this Honorable Court grant its appeal and order the Circuit Court of Hancock County to:

1. Remove any and all reference in the Order alluding that the settlement was between Appellees, Mr. Galloway, and TIG.
2. Remove any and all reference in the Order to TIG's purported consent to the settlement in the findings of fact and conclusions of law. This includes any and all reference to consent made by TIG's personal counsel, counsel hired by TIG to defend Mr. Galloway, and TIG's agents on TIG's behalf.
3. Remove the portion of the Order ordering TIG to pay Appellees the amount of the purported settlement, with interest.
4. Remove the portion of the Order directing TIG to purchase a structured annuity from the settlement proceeds.
5. Remove the portion of the Order prohibiting TIG from seeking judgment against Mr. Galloway's personal assets.
6. Reverse the Circuit Court's overruling of TIG's objections to the admittance of exhibits on the grounds of quasi attorney-client privilege.
7. Remove the portions of the Order making findings of fact and corresponding conclusions of law to the extent that they were begotten from information protected by the quasi attorney-client privilege.
8. Remove the portion of the Order ordering that Mr. Galloway waives all attorney-client privileges he has to any and all documents, records and things maintained by TIG and/or Cambridge and his or their attorneys.
9. Prohibit Appellees from using any privileged material that was produced over the objections of TIG in any subsequent proceeding against TIG unless TIG expressly waives the privilege in that proceeding.
10. Remove portions of the Order based on hearsay testimony regarding the telephone conversation between Mr. Wilmoth and Mr. Rapponotti on May 4, 2005.

**TIG INSURANCE COMPANY,**

By Counsel,

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