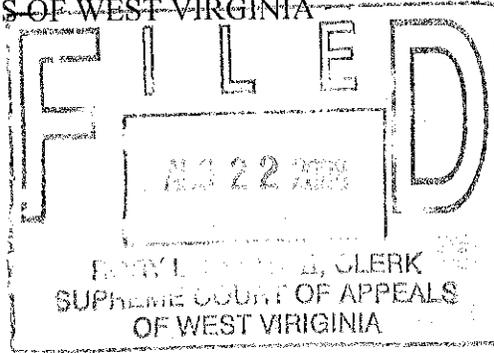


IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

WEST VIRGINIA NATIONAL  
AUTO INSURANCE COMPANY, INC.,

Petitioner,

v.



Upon Original Jurisdiction  
In Prohibition,  
No. \_\_\_\_\_

THE HONORABLE THOMAS A. BEDELL,  
JUDGE OF THE CIRCUIT COURT OF  
HARRISON COUNTY, WEST VIRGINIA  
and JOHN A. YANCHECK [*sic*], ESQUIRE,

Respondents.

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**PETITION FOR WRIT OF PROHIBITION**

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**WEST VIRGINIA NATIONAL AUTO  
INSURANCE COMPANY, INC.,**

By Counsel:

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and JOHN A. YANCHEK [*sic*], ESQUIRE,

Respondents.

**PETITION FOR WRIT OF PROHIBITION**

COMES NOW the Petitioner, West Virginia National Auto Insurance Company, Inc., (hereinafter referred to as "West Virginia National"), by and through its counsel, and petitions this Honorable Court to award a Writ of Prohibition against the Respondents, the Honorable Thomas A. Bedell, in his official capacity as Judge of the Circuit Court of Harrison County, West Virginia, and John A. Yanchek, Esquire (hereinafter referred to as "Yanchek").

**STATEMENT OF JURISDICTION**

1. This Petition for Writ of Prohibition is filed pursuant to Article VIII (8), Section Three (3) of the West Virginia Constitution, granting the Supreme Court of Appeals original jurisdiction in prohibition, and pursuant to West Virginia Code Chapter 53, Article 1, Section 1 (§ 53-1-1). In addition, this Petition is filed with this Honorable Court pursuant to Rule 14(a) of the West Virginia Rules of Appellate Procedure.

2. “The writ of prohibition lies as a matter of right in all cases of usurpation and abuse of power when the court does not have jurisdiction of the subject matter in controversy, or having such jurisdiction, exceeds its legitimate powers.” State ex rel. Lynn v. Eddy, 152 W. Va. 345, 163 S.E.2d 472 (1968); *West Virginia Code Chapter 53, Article 1, Section 1* (§ 53-1-1).

3. “The writ is no longer a matter of sound discretion, but a matter of right; it lies in all proper cases whether there is other remedy or not.” Norfolk & W. Ry. v. Pinnacle Coal Co., 44 W. Va. 574, 576, 30 S.E. 196, 197 (1898).

4. “Traditionally, the writ of prohibition speaks purely to jurisdictional matters.” State ex rel. Williams v. Narick, 164 W. Va. 632, 635, 264 S.E.2d 851, 854 (1980).

5. “In determining whether to entertain and issue the writ of prohibition for cases not involving an absence of jurisdiction but only where it is claimed that the lower tribunal exceeded its legitimate powers, this Court will examine five factors: (1) whether the party seeking the writ has no other adequate means, such as direct appeal, to obtain the desired relief; (2) whether the petitioner will be damaged or prejudiced in a way that is not correctable on appeal; (3) whether the lower tribunal’s order is clearly erroneous as a matter of law; (4) whether the lower tribunal’s order is an oft repeated error or manifests persistent disregard for either procedural or substantive law; and (5) whether the lower tribunal’s order raises new and important problems or issues of law of first impression. These factors are general guidelines that serve as a useful starting point for determining whether a discretionary writ of prohibition should issue. Although all five factors need not be satisfied, it is clear that the third factor, the existence of clear error as a matter of law, should be given substantial weight.” Syl. pt. 4, State ex rel. Hoover v. Berger, 199 W. Va. 12, 483 S.E.2d 12 (1996).

6. “Where prohibition is sought to restrain a trial court from the abuse of its legitimate powers, rather than to challenge its jurisdiction, the appellate court should review each case on its own particular facts to determine whether a remedy by appeal is both available and adequate. . . .” Syl. pt. 2, Woodall v. Laurita, 156 W. Va. 707, 195 S.E.2d 717 (1973).

7. Pursuant to the original jurisdiction of this Court, West Virginia National seeks relief in the form of a Writ of Prohibition as the trial court abused its legitimate powers by entering an Order Granting Defendant Yancheck’s Motion to Dismiss Complaint. “*Order Granting Defendant’s Motion to Dismiss Complaint and Motion to Dismiss Cross Claims Against John A. Yancheck.*”

8. A Writ of Prohibition is appropriate and the only available remedy for West Virginia National for the following reasons:

- a. West Virginia National has no other adequate means, such as direct appeal, to obtain the desired relief;
- b. West Virginia National will be damaged or prejudiced in a way that is not correctable on appeal; and
- c. The lower tribunal’s order is clearly erroneous as a matter of law.

### PARTIES

1. The Petitioner, West Virginia National, is a West Virginia corporation, authorized to transact and engage in the insurance business in the State of West Virginia. West Virginia National is the Plaintiff in the civil action styled: West Virginia National Auto Insurance Company, Inc., Plaintiff v. Gulf Coast Collection Bureau, Inc. and John A. Yancheck [sic], Esquire, Defendants, Civil Action No. 07-C-517-2, Circuit Court of Harrison County, West Virginia.

2. The Respondent, the Honorable Thomas A. Bedell, is one (1) of three (3) elected

Judges in the Fifteenth (15th) Judicial Circuit of Harrison County, West Virginia. Judge Bedell is the Circuit Judge who issued the subject Order on November 16, 2007.

3. The Respondent, Yanchek, is a licensed attorney in the State of Florida and is a named Defendant in the civil action styled: West Virginia National Auto Insurance Company, Inc., Plaintiff v. Gulf Coast Collection Bureau, Inc. and John A. Yancheck [sic], Esquire, Defendants, Civil Action No. 07-C-517-2, Circuit Court of Harrison County, West Virginia.

### **FACTUAL AND PROCEDURAL BACKGROUND**

A detailed Statement of Facts is set forth in the accompanying Memorandum of Law in Support of West Virginia National's Petition for Writ of Prohibition, incorporated herein by reference.

### **ISSUE**

West Virginia National seeks relief in the form of a Writ of Prohibition because the circuit court abused its power, committed clear error, and exceeded its legitimate authority by granting Yanchek's Motion to Dismiss Complaint.

### **PRAYER FOR RELIEF**

WHEREFORE, the Petitioner, West Virginia National, prays for the following relief:

- a. That West Virginia National's Petition for Writ of Prohibition be accepted for filing;
- b. That this Honorable Court issue a rule to show cause against the Respondents directing them to show cause, if they can, as to why a Writ of Prohibition should not be awarded against them;
- c. That all proceedings in the Circuit Court of Harrison County, West Virginia be stayed in the civil action styled: West Virginia National Auto Insurance Company, Inc.,

Plaintiff v. Gulf Coast Collection Bureau, Inc. and John A. Yancheck [sic], Esquire,  
Defendants, Civil Action No. 07-C-517-2, Circuit Court of Harrison County, West  
Virginia pending resolution of the issues raised in this Petition;

- d. That this Honorable Court award a Writ of Prohibition against the Respondents,  
directing the circuit court that personal jurisdiction over Yancheck is appropriate; and
- e. Such other relief as this Honorable Court deems necessary, appropriate, or proper.

Respectfully submitted this 21st day of August, 2008.

**Petitioner, WEST VIRGINIA  
NATIONAL AUTO INSURANCE  
COMPANY, INC., By Counsel:**



Michael D. Crim (WV State Bar #7058)  
Debra Tedeschi Herron (WV State Bar #6501)  
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**CERTIFICATE OF SERVICE**

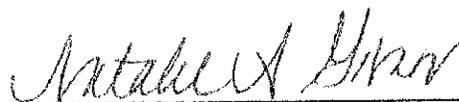
This is to certify that on this 21st day of August, 2008, the undersigned counsel served the foregoing "***PETITION FOR WRIT OF PROHIBITION***" upon counsel of record by depositing a true copy in the United States Mail, postage prepaid, in an envelope addressed as follows:

Stephen R. Brooks, Esquire  
Stacie D. Honaker, Esquire  
Flaherty, Sensabaugh & Bonasso PLLC  
965 Hartman Run Road, Suite 1105  
Morgantown, WV 26505

Honorable Thomas A. Bedell  
Circuit Court of Harrison County  
Harrison County Courthouse  
301 West Main Street  
Clarksburg, WV 26301

Charles G. Johnson, Esquire  
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P. O. Box 150  
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Prosecuting Attorney for Harrison County  
Harrison County Courthouse  
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\_\_\_\_\_