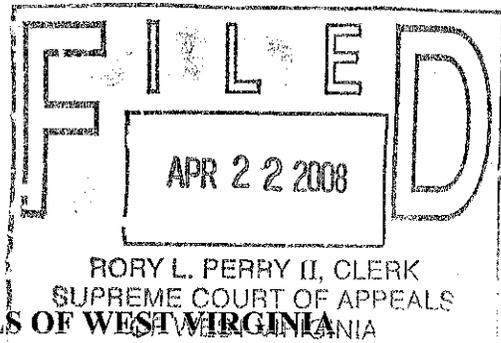


No. 33861



IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

AMERICAN MODERN HOME INSURANCE COMPANY,

Plaintiff,

v.

**JEFF CORRA, COURTNEY D. MCDONOUGH,
MORGAN BROWN, THE ESTATE OF MATTHEW HUMPHREYS,
and THE ESTATE OF JOSHUA B. TUCKER,**

Defendants.

**BRIEF OF DEFENDANT JEFF CORRA IN
SUPPORT OF AN AFFIRMATIVE ANSWER
TO THE CERTIFIED QUESTION**

Submitted by,

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Counsel for Jeff Corra

I. Kind of Proceeding

A certified question has been posed by U.S. District Court Judge Joseph Robert Goodwin of the Southern District of West Virginia, Parkersburg Division. Pending before Judge Goodwin is a declaratory judgment action filed by an insurer contesting coverage under Jeff Corra's homeowner's insurance policy.

Mr. Corra purchased the insurance coverage in question from Plaintiff American Modern Home Insurance Company (AMHI). The policy was purchased in relation to a manufactured home in which Mr. Corra resided during August, 2006.

The relevant policy language follows:

"Insured Persons" means:

- a. You and permanent residents of the residence premises...

"Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions, which results, during the policy period, in:

- a. **bodily injury**; or
- b. **property damage**.

SECTION II - LIABILITY COVERAGE

PERSONAL LIABILITY

If a claim is made or a suit is brought against any **insured person** for damages because of **bodily injury** or **property damage**, caused by an **occurrence**, to which this coverage applies, we will:

1. pay up to our liability limit for the damages for which the **insured person** is legally liable, except for punitive or exemplary damages...
2. provide a defense at our expense by counsel of our choice. We may investigate and settle any claim or suit that **we** decide is appropriate. Our obligation to

defend any claim or suit ends when the amount we pay for damages resulting from the **occurrence** in settlement of a claim(s) or in satisfaction of a judgment(s) equals our liability limit. We have no duty to defend any suit or settle any claims for **bodily injury** or **property damage** not covered under this policy.

SECTION II - EXCLUSIONS

1. Under **PERSONAL LIABILITY** and **MEDICAL PAYMENTS TO OTHERS**, we do not cover **bodily injury** or property damage:
 - a. resulting from intentional acts caused by or at the direction of any **insured person**. This applies whether or not the resulting **bodily injury** or **property damage** was expected or intended. This exclusion applies even if the **insured person** is insane, intoxicated or otherwise impaired if a person without that impairment who committed such an act would otherwise be deemed to have acted with the intent to cause **bodily injury** or **property damage**;
 - b. arising out of any criminal act...

On August 5-6, 2006, Mr. Corra's 20-year-old daughter together with a number of her friends gathered at Mr. Corra's home which was located in an isolated setting near Vienna, West Virginia. That evening alcohol was consumed by persons who were then present at the gathering and in some instances beer was consumed by individuals who were less than 21 years of age. As will be developed more fully under the Statement of Facts, *infra*, later that night a tragic automobile accident occurred which led to the notices of claims against Mr. Corra's homeowner's insurance policy.

AMHI resists coverage on the grounds that Mr. Corra permitted the illegal consumption of alcohol on his premises. AMHI has also denied any obligation to provide a defense to Mr. Corra. He was subsequently indicted, tried and convicted in the Circuit Court of Wood County of four (4) counts of violating West Virginia Code, §60-3-22a(b), knowingly furnishing alcoholic liquor to persons under age 21. That conviction is under appeal which this Court recently agreed to hear, Case No. 33911.

II. Statement of Facts

On the evening of August 5, 2006, Jeff Corra and a friend were burning brush which had been cleared from Mr. Corra's property in anticipation of constructing a new home at the site. With his permission, Mr. Corra's daughter invited some friends over. Visitors to the Corra home that night included Courtney McDonough, then age 20, Morgan Brown, then age 18, and two young men from the Charleston area who were Miss Brown's cousins, Matthew Humphrey and Joshua Tucker. Sadly, Matthew Humphrey and Joshua Tucker died in a car crash which occurred during the morning hours of August 6, 2006 when the vehicle then being driven by Courtney McDonough wrecked in Wood County. It was a single vehicle accident for which Miss McDonough pleaded guilty and received a sentence of incarceration.

During Mr. Corra's trial Miss McDonough testified in part as follows:

"Q: . . . was there a discussion about going to Jeff's house later that evening?

A: Yes.

Q: And who initiated that discussion?

A: Ashley.

Q: What did Ashley say?

A: Jeff had mentioned that he was burning some brush to get rid of and she said that she'd have a few people out later that evening." TT 128.

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"Q: So she basically asked Jeff's permission?

A: I don't know.

Q: Well, how did you take it? You're sitting in the car.

A: I just took it as her saying that she was having people over. I mean, it was her house. I mean . . .

Q: It was his house?

A: I mean, she lived there, too. She didn't live there, but she was there quite often.

Q: First of all, let's be clear. Whose house was it?

A: Jeff's.

Q: And where did Ashley live?

A: She lived with her mother.

Q: She visited her dad sometimes, right?

A: Yes." TT 129.

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"A: When I first arrived, Ashley and Katelyn and Cory were on the porch and Jeff was out by the fire.

Q: What were Katelyn, Cory and Ashley doing?

A: They were just standing on the porch talking, drinking.

Q: What were they drinking?

A: Katelyn and Ashley were drinking Coors Light and Cory was drinking wine." TT 132.

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"Q: Did you, at some point in time, begin to drink at Jeff's house?

A: Yes.

Q: And how long do you think you were there before you started drinking?

A: I got there, and right after I got there, about ten minutes later, Morgan and Josh and Matt showed up. I had a half a beer and we were only there for about fifteen minutes.

Q: Let's slow down for a minute. So while you were there, Morgan, Josh and Matt came, is that right?

A: Right.

Q: Did you have a beer before or after they got there?

A: I was drinking before and while they were there.

Q: What were you drinking?

A: Coors Light.

Q: Where did you get it?

A: From Jeff's fridge.

Q: You went to the fridge yourself?

A: Yes." TT 133-134.

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"Q: Where was Jeff?

A: He was still over by the fire.

Q: At that point in time, did Jeff know you had a beer?

A: I'm not sure." TT 135.

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"Q: Now, let's get into that. What happened when Morgan, Josh and Matt got to the Defendant's house?

A: Morgan, Josh and Matt showed up there with half a bottle of Jager and they were talking about how they had no beer, and so Josh, Matt and I left.

Q: So just you, Josh and Matt left?

A: Yes." TT 136.

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"A: We had talked about getting more beer and I knew Josh had a fake I.D.; and he said that he would just go with me to get Miranda, and on our way to get Miranda, we would stop and get a case of beer.

Q: So there was a discussion about going to get more beer when you got Miranda?

A: Yes.

Q: Did Jeff Corra know that you were going to get more beer?

A: I'm not sure. I don't know where he was at that time." TT 137.

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"Q: Where was Jeff when you got back?

A: He was still out by the fire.

Q: How do you know that?

A: Because right when we got back, that's where Josh and Matt went.

Q: Where was the beer?

A: We put it in Ashley's room.

Q: As soon as you got there?

A: Yes.

Q: Did Josh and Matt take any beer with them to the fire?

A: Yes." TT 145.



“Q: Now, while you were at this party, did the Defendant ever physically hand you a beer?

A: No.

Q: Did he ever personally offer you a beer?

A: No.” TT 160.

On cross examination Miss McDonough testified in part as follows:

“Q: You have no idea when that beer [in Corra’s refrigerator] was bought, do you?

A: No.

Q: And have no idea how long that beer was in the refrigerator, do you?

A: No.

Q: When you went to that refrigerator the first time, you didn’t ask Mr. Corra’s permission to go in there, did you, on that evening?

A: No.

Q: You didn’t ask his permission to get a beer out of the refrigerator, did you, on that evening?

A: No.

Q: And you just helped yourself, right?

A: I --

Q: You just helped yourself to a beer, right?

A: Yes.

Q: He didn’t invite you to help yourself, right?

A: No.

Q: He didn't encourage you to have any beer or alcohol while you were at his residence, correct?

A: No.

Q: He didn't hand you any type of beer or alcoholic beverage, did he?

A: No.

Q: He didn't give you any type of alcoholic beverage or beer, did he?

A: No.

Q: He didn't, at any time, supply you a beer or provide you a beer or alcoholic beverage, did he?

A: No." TT 163-164.

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"Q: No, Mr. -- I think you testified today that you were not sure and could not say whether Jeff knew that you left or not, correct, to go get this other beer?

A: I don't remember." TT 165.

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"Q: Would you agree with me that for most of the evening, he was out there tending that fire?

A: Yes.

Q: Would you agree with me that maybe for eighty or ninety percent of the evening, he was out there tending that fire?

A: Yes." TT 166.

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“Q: Who gave you the money to buy this Budweiser beer?

A: Josh bought it.

Q: And he used a fake I.D. to do it?

A: Yes.

Q: And you knew that he had a fake I.D.?

A: Yes.

Q: Did he do that in your presence in the store, buy the beer with the fake I.D.?

A: I was sitting in the car.

Q: Did he show you his fake I.D.?

A: A few nights before, yes.

Q: And so you knew that he had no legal right to buy that beer. You didn't try to stop him, did you?

A: No.

Q: And then you brought that beer back to the party, is that correct –

A: Yes.” TT 168.

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“ . . . that evening, how many beers would you say that you had?

A: Six or seven.

Q: Six or seven. Did you have anything else to drink?

A: No.

Q: Of the six or seven beers that you had, how many were from the case of Budweiser that was purchased by Josh?

A: Six.

Q: You never saw Mr. Corra give either Mr. Humphreys or Mr. Tucker any beer or alcoholic beverages, did you?

A: No.

Q: Did you know that they had brought with them a bottle of Jagermeister liquor?

A: Yes.

Q: Did you drink any of that?

A: No.

Q: Would it be fair to say that you were intoxicated that evening?

A: Yes." TT 169.

Morgan Brown testified that she drank Jagermeister and beer, TT 58-59, 61. Her cousins Matthew and Joshua were drinking Jagermeister when they arrived in Parkersburg and clearly at times before they arrived at the Corra home, TT 72. She had no permission from Jeff Corra to get beer out of his refrigerator, TT 79. Instead, it was Mr. Corra's daughter who told her about the beer in the refrigerator, TT 82, 83.

The criminal case appeal which is now before this Court raises five grounds in support of reversing Mr. Corra's conviction. Those grounds are that he was charged and convicted under a statute which does not apply to the facts, that the evidence failed to prove an essential element, that Mr. Corra was not shown to have "furnished" alcohol as that term is defined, that a mistrial should have been awarded when Morgan Brown mentioned the fatal accident which contravened the admonition given to her, and that other bases exist for reversal under the plain error doctrine, including the failure to prove venue.

The sides line up generally as follows. AMHI objects to coverage on the grounds that Mr. Corra allowed the illegal consumption of alcohol. The company argues that this isn't an "occurrence" which triggers coverage. On the other hand, the putative plaintiffs who would seek recovery against Mr. Corra contend that coverage exists in that Mr. Corra was negligent in permitting the misuse of his home for his daughter's party, in failing to supervise the activities at his premises, and in failing to use reasonable care to prevent the threatened harm. Not surprisingly, as will be developed below, Mr. Corra offers a perspective which differs from each of the other parties. He does however agree with those who would sue him for damages that AMHI should defend him and supply insurance coverage for these claims.

III. Points, Authorities and Discussion

The Question as Certified

The District Court certified the following:

"The homeowner's policy in effect at the time of the underlying Events provides coverage for an "occurrence," which is defined as 'an accident, including continuous or repeated exposure to substantially the same general harmful conditions, which results, during the policy period in . . . bodily injury or property damage.' Under West Virginia law, does knowingly permitting an underage adult to consume alcoholic beverages on a homeowner's property constitute an 'occurrence' within the meaning of the American Home Insurance Company homeowner's policy at issue in this case?"

Before addressing the certified question, several aspects of this case deserve the Court's attention. The Court should consider the precise nature of the criminal charges against Mr. Corra. Further, the underlying theory of the case and the fact that an appeal is pending are important for purposes of addressing this certified question in that AMHI relies heavily upon the fact of Mr. Corra's conviction to support its position.

The Criminal Charges

Mr. Corra was convicted (4 counts) of violating West Virginia Code, §60-3-22a(b) which provides that:

“Any person who shall knowingly buy for, give to or furnish to anyone under the age of twenty-one to whom they are not related by blood or marriage, any alcoholic liquors from whatever sources, is guilty of a misdemeanor and shall, upon conviction thereof, be fined in an amount not to exceed one hundred dollars or shall be imprisoned in the county jail for a period not to exceed ten days, or both such fine and imprisonment. (Emphasis added).

The indictment contained 9 counts, however 5 counts were either dismissed or Mr. Corra was acquitted of them. The 4 counts of guilty involved Courtney McDonough, Morgan Brown, Emily Bostic and Katelyn Smith. The latter two have nothing to do with the wreck which led to the coverage question now before this Court.

“Alcoholic liquor” is defined as:

“... alcohol, beer, wine and spirits and any liquid or solid capable of being used as a beverage, but shall not include nonintoxicating beer.” West Virginia Code, §60-1-5.

“Nonintoxicating beer” means:

“... all cereal malt beverages or products of the brewing industry commonly referred to as beer, lager beer, ale and all other mixtures and preparations produced by the brewing industry, including malt coolers and containing at least one half of one percent alcohol by volume, but not more than four and two-tenths percent of alcohol by weight, or six percent by volume, whichever is greater, all of which are hereby declared to be nonintoxicating and the word ‘liquor’ as used in chapter sixty of this code shall not be construed to include or embrace nonintoxicating beer nor any of the beverages, products, mixtures or preparations included within this definition.” (Emphasis added). West Virginia Code, §11-16-3(s).

While the matter *sub judice* is not the criminal case appeal, counsel submits that the cases necessarily are intertwined. Essentially, if Mr. Corra is not guilty of a crime, or certainly not any crime for which he was charged, then it follows that at the very least AMHI's argument is diminished. AMHI urges this Court to find that no insurance coverage exists in part because Mr. Corra is collaterally estopped from asserting that he did not act "knowingly," citing this Court's opinion in Baber v. Fortner, 412 S.E.2d 814 (1991), Brief of AMHI pp. 14-15.

In order to understand that Mr. Corra was indicted, charged and convicted erroneously under §60-3-22a(b) one needs only to look at the above definition of "nonintoxicating beer" and the weight and volume figures of Coors Light beer, attached hereto and submitted herewith as obtained from the Coors Company's own website. To reiterate, §60-3-22a(b) which Mr. Corra was convicted of violating, excludes by its terms "nonintoxicating beer." The only relevant trial evidence which could be deemed relevant and applicable to the present case relates to the consumption by Miss McDonough of a portion of a single can of Coors Light beer. Coors Light appears by virtue of the Coors website to be "non-intoxicating beer", therefore it is not embraced within §60-3-22a(b).

The Theory of Criminal Responsibility

In point of fact, the case which the State of West Virginia brought against Mr. Corra is, and always was, a very poor fit as a criminal case. While Mr. Corra will, as he certainly should, deny any civil liability, the State's theory as it was described by the prosecutor to the Circuit Court Judge sounds very much like the case for civil liability and insurance coverage being advanced by the putative plaintiffs.

At a pretrial hearing held on May 9, 2007 this colloquy appears:

THE COURT: So again, one more time, the State's theory of the case is there was beer in Mr. Corra's refrigerator and that he facilitated a party on his premises and built a bonfire. What else do you have?

MR. FRANCISCO: That he knew the ages of all these people, because not only did he know them personally, or most of them, and/or his daughter knew them through school, knew they were all under 21. Not only did he have alcohol on the premises that he allowed people to drink, but he saw other people bringing alcohol to the premises. He continued to allow them to drink. He never tried to stop anyone from drinking. He never told anyone to take their beer away, never told anyone to not drink that, you've had too much. Interacted with the people while they were drinking on his property.

So basically, he facilitated – he provided this atmosphere for these underage people. Yes, they're adults, and I've never argued that either, that they're not adults. The grand jury was aware of their ages, all 18 to 21 years old.

Just by going under the guise of the statute, the terms of the statute, that our theory of the case is he helped basically initiate this gathering, provided the place to have it, provided and let people come, more and more people come to his residence, allowed people to go into his residence and remove beer from his residence, watched people drink, allowed other people to bring other types of alcohol to his residence, never stopped them, never stopped anyone from going to get the alcohol, never stopped anyone from drinking alcohol on his premises, and continually interacted with these people and allowed them to drink. That's the State's theory of the case.

THE COURT: You believe that falls within the definition of furnishing alcohol to somebody between 18 and 21 years of age?

MR. FRANCISCO: That's how it was presented to the grand jury. Pretrial Transcript, 5/9/07, pp. 61-62.

The other parties to this action argue that Mr. Corra failed to properly supervise what was going on at his premises while he was burning brush and that his conduct falls below what would be regarded as the exercise of reasonable care. The State's theory was pretty much the same *i.e.* that he facilitated or provided this atmosphere and never stopped what was going on among his daughter's guests. It is submitted that serious questions concerning intervening negligence, comparative negligence, duty, proximate causation and other related issues about liability will exist, however the arguments over these issues should be subjects for the insurance provider to address on Mr. Corra's behalf.

**Any Doubts About Coverage and the Duty to
Defend Must Be Resolved in Favor of the Insured**

It is a well-established principle that when there is doubt about the existence of a duty on the part of the insured to provide coverage and/or to defend a claim against its insured that doubt must be resolved in favor of the insured, Horace Mann Insurance Co. v. Leeber, 376 S.E.2d 581 (1988); State Bancorp, Inc. v. USF&G Insurance Co., 483 S.E.2d 228 (1997); Wildt, Insurance Claims and Disputes, §4.02 2d edition (1988). The duty is normally tested by whether the allegations against the insured are reasonably susceptible of an interpretation that the claim may be covered by the terms of the insurance policy, Leeber, 376 S.E.2d at 584. Thus, the allegations concerning the claims must be examined.

Since this case arose as one seeking declaratory judgment filed by the insurer there is lacking the traditional plaintiff's complaint to refer to. The Estate of Joshua Tucker did give notice on September 20, 2006, Brief of AMHI Tab B. It is therein claimed that:

“Prior to the crash, Mr. Tucker, Mr. Humphreys and Ms. McDonough, all of whom were under the age of twenty-one (21) years, were social guests on your premises where alcohol was

purportedly consumed by persons under the age of twenty-one (21) years.”

On September 6, 2006 representatives of Morgan Brown sent a more generic claim to Mr. Corra simply advising him that they intended to proceed under Mr. Corra’s homeowner’s policy if he had one, Brief of AMHI Tab C. Later, counsel for Miss Brown answered interrogatories specifying as grounds for liability that Mr. Corra was negligent for “providing the . . . use of his residence for the consumption of alcohol” and that he “did not take reasonable steps to supervise and monitor the activities on his premises,” see attachment to Brief of Morgan Brown.

The Estate of Matthew Humphreys similarly answered interrogatories that Mr. Corra had failed to take reasonable steps to supervise and that he was negligent in permitting and providing assistance to the claimants by allowing the property to be used as a location for a party, Brief of AMHI Tab F.

The insurer argues that these claims fall outside coverage as they do not constitute an “occurrence” under the policy. The insurer relies upon the conviction of the criminal charges as being dispositive on the issue of coverage. On the contrary, the claims which are described by representatives of the potential claimants rely not on accusations of supplying alcohol to minors, rather that Mr. Corra was negligent in permitting this kind of use of his premises on the night in question. The triggering events which are identified by the potential claimants therefore represent “apples to the insurer’s oranges.” Any doubts about coverage should be resolved in Mr. Corra’s favor by finding that coverage exists in light of the claims as described by the claimants.

**A Covered "Occurrence" Under the Insurance
Policy Exists Unless the Policyholder Either Committed an
Intentional Act and Expected or Intended the Resulting Damage**

In previous decisions this Court has considered the question of insurance coverage for acts which may be described as either intentional or accidental. The policies under review generally contained the same or very similar language to the policy at issue in this case.

In State Bancorp, Inc. v. U.S.F.&G. Insurance Co., *supra*, the language of one policy in issue was identical to the language at bar. The claims there made were for breach of contract, the tort of outrage, the tort of civil conspiracy and violation of state banking laws. This Court, relying upon the common dictionary meaning of "accident", held that the claims made constituted allegations of intentional conduct, not accidental conduct. By contrast to an accident, the claims of the plaintiffs were deemed to allege that the insureds were engaged in an intentional, outrageous scheme to gain control of the plaintiffs' property which was not covered by insurance.

In Farmers and Mechanics Mutual Insurance Co. v. Cook, 557 S.E.2d 801 (2001), the claimant alleged that her husband was the victim of a fatal shooting. The shooting was done in self-defense as a matter of law based upon this Court's ruling. However, the Circuit Court ruled that the shooter's husband had schemed to create a scenario which would allow his wife to shoot the other party, thus it was a non-covered intentional act.

In Cook, citing State ex rel. Davidson v. Hoke, 532 S.E.2d 332 (2000), this Court viewed the appropriate question to be whether the policyholder expected or intended the injury, using a subjective standard as viewed through the policyholder's perspective. The Court held that a loss which results from an act of self-defense or defense of another is not expected or intended by the policyholder. Consequently, the shooting was a covered occurrence.

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In W.V Fire & Casualty v. Stanley, 602 S.E.2d 483 (2004), the Court was confronted with a coverage issue involving a policy provision like the one in question herein. The claim there was predicated upon an allegation of sexual abuse and sexual exploitation that had occurred over a nine-year period. A variety of theories of liability were advanced including negligence, infliction of emotional distress, conspiracy, assault and battery, and breach of the duty of *in loco parentis*. This Court found that the causes of action alleged in the complaint were entirely foreign to the covered risks. Sexual abuse was not an “accident” under the insurance policy as it

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More recently, in Columbia Casualty Co. v. Westfield Insurance Co., 617 S.E.2d 797 (2005), the Court found coverage for claims which involved suicides committed by inmates at the Randolph County jail. The inmates’ representatives had sued the county in wrongful death lawsuits. The case turned upon the meanings of “occurrence” and “accident.” Westfield argued that suicide is by definition not an accident. This Court agreed generally that from the inmate’s perspective his suicide is not an accident. However, from the policyholder’s viewpoint, it must be concluded that the policyholder did not have a desire, plan, expectation or intent that death would occur. Again, the question was what did the insured expect or intend?

Assuming arguendo that Mr. Corra engaged in conduct which was negligent, it does not follow under the evidence to date that he had any desire, plan, expectation or intent that death would result to any person who had been at his premises as a guest of his daughter.

**The Ability to Answer the Certified Question
Is Hampered in that Questions of Material Fact Remain Concerning the
Application of Existing Precedent to this Case**

In all due respect to the District Court, the certified question as presently cast fails to provide much flexibility of response. This Court of course has some flexibility in determining

how, and to what extent, it will be answered, Belcher v. Goins, 400 S.E.2d 830 (1990). Further, this Court can reformulate the question to encompass the full breadth of the question to be answered, Aikens v. Debow, 541 S.E.2d 576 (2000); Keplinger v. Virginia Electric and Power Co., 537 S.E.2d 632 (2000). Since fact disputes cannot be resolved by certified question, counsel submits that it is important to consider what, if any, material facts remain unresolved. The answer to the coverage question could well change if the facts are resolved one way or the other. As has been previously noted, the insurer and the claimants appear at times to be considering “apples versus oranges.”

Either or both Mr. Corra and/or his daughter, who may in fact be a covered insured under her father’s homeowner’s policy, acted as a social host on the night in question. As such, under this Court’s decision in Overbaugh v. McCutcheon, 396 S.E.2d 153 (1990), there is generally no liability for an injury to an innocent third party which occurs as the result of the guest’s intoxication. On the other hand, if Mr. Corra is found to have engaged in affirmative conduct for which he should realize that he has created an unreasonable risk of harm to another, he may be held liable, Price v. Halstead, 355 S.E.2d 380 (1987); Overbaugh v. McCutcheon, syl. pt. 1.

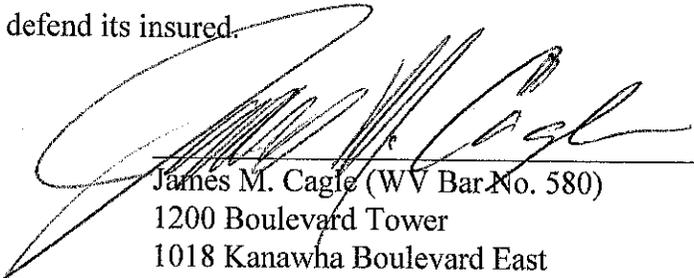
The claimants contend with some vigor that the argument of AMHI about furnishing beer is a mere red herring. As claimants point out, providing beer to others not involved in the wreck is not probative of liability and Miss McDonough had almost none of the Corra beer. Undersigned counsel submits to this Court that the answer to the certified question must take into account that important fact questions remain unresolved. For instance, as noted in the Brief of the Tucker Estate, p. 13, an avowal was made during trial that Mr. Corra offered to allow the guests to stay or he would call a cab if they wanted him to. Is that a recognition, if believed by a jury, which places him within the kind of conduct contemplated by Price v. Halstead? Was the

allegedly negligent or tortious conduct that of his 20 year old daughter and not conduct of Mr. Corra? Is there any evidence or inference that Mr. Corra realized how much Courtney McDonough had to drink and does that even matter because he had no idea that she was driving at the time of the wreck and clearly would have had no way of knowing that she was driving. Causation also is a jury question generally speaking.

The fact that these questions remain unresolved supplies yet another reason to conclude under the circumstances of this case that the policy definition of "occurrence" does indeed embrace the claims which are alleged against Mr. Corra. Otherwise, this is a certified question which this Court need not answer other than perhaps to direct AMHI to provide Mr. Corra with a defense.

IV. Relief Prayed For

Based upon the foregoing, Mr. Corra respectfully requests that this Honorable Court answer affirmatively the question certified to this Court by the U.S. District Court for the Southern District of West Virginia. Alternatively, dismiss the case from the docket with instructions that the insurer must defend its insured.



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Counsel for Jeff Corra

No. 33861

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

AMERICAN MODERN HOME INSURANCE COMPANY,

Plaintiff,

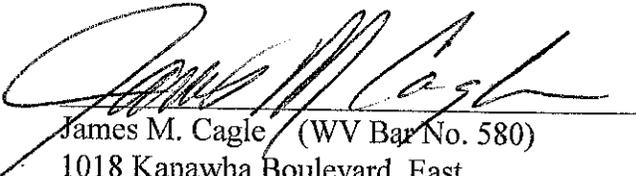
v.

JEFF CORRA, COURTNEY D. MCDONOUGH,
MORGAN BROWN, THE ESTATE OF MATTHEW HUMPHREYS,
and THE ESTATE OF JOSHUA B. TUCKER,

Defendants.

CERTIFICATE OF SERVICE

I, James M. Cagle, counsel for Jeff Cora, hereby certify that I have served, or have caused to be served, a true and exact copy of the foregoing "Brief of Defendant Jeff Corra in Support of an Affirmative Answer to the Certified Question" upon the Plaintiff by regular United States mail to Ancil G. Ramey, Esquire, Michelle E. Piziak, Esquire, Steptoe & Johnson, PLLC, P. O. Box 1588, Charleston, West Virginia 25326-1588; D. Scott Bellomy, Esquire, Bellomy & Turner, L.C., 741 Fifth Avenue, Huntington, West Virginia 25701, William O. Merriman, Jr., Esquire, Bill Merriman, PLLC, 625 Market Street, P. O. Box 167, Parkersburg, West Virginia 26101; Paul S. Perfater, Esquire, Myers and Perfater, 1311 Virginia Street, East, P. O. Box 2631, Charleston, West Virginia 25329-2361, and Steven M. Thorne, Esquire, Cook & Cook, P. O. Box 190, Madison, West Virginia 25130, on this the 22nd day of April, 2008.


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