

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

STATE OF WEST VIRGINIA *ex rel.*
JANE L. CLINE, Insurance Commissioner
of the State of West Virginia,

Petitioner,

v.

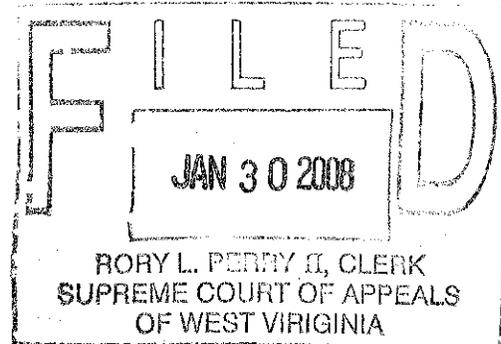
CASE NO. _____

THE HONORABLE ANDREW N. FRYE,
Jr., Judge of the Circuit Court of Grant County, GERRY
A. DAVIS, SR., DANNY KEPLINGER, TIMOTHY
ROHRBAUGH, MONUMENTAL LIFE INSURANCE
COMPANY and WILLIAM BLANKENBECKLER,

Respondents.

PETITION FOR WRIT OF PROHIBITION

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A. DAVIS, SR., DANNY KEPLINGER, TIMOTHY
ROHRBAUGH, MONUMENTAL LIFE INSURANCE
COMPANY and WILLIAM BLAKENBECKLER,

Respondents.

**MEMORANDUM OF PERSONS UPON WHOM RULE TO SHOW
CAUSE SHOULD BE SERVED**

The Honorable Andrew N. Frye, Jr.
Chief Judge, 21st Judicial Circuit
Grant County Courthouse
P.O. Box 446
Petersburg, WV 26847

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Respondents.

PETITION FOR WRIT OF PROHIBITION

Now comes the Petitioner, Jane L. Cline, Insurance Commissioner of the State of West Virginia, (hereinafter referred to as "Insurance Commissioner" or "Petitioner") by counsel, pursuant to West Virginia Constitution Article VIII Section 3 and W. Va. Code § 53-1-1 *et seq.* and Rule 14 of the Rules of Appellate Procedure, for the purpose of obtaining a Writ of Prohibition against the Honorable Andrew N. Frye, Jr. The Petitioner respectfully requests that this Honorable Court prohibit the enforcement of an Order entered August 22, 2007 (Addendum Exhibit A) and an Order entered December 3, 2007 (Addendum Exhibit B) which orders the Petitioner to produce an investigative file in violation of statute. The Respondent Judge's Orders compelling the Petitioner to produce the investigative file are an abuse of power and in excess of his legitimate powers. The rulings made by the Honorable Andrew N. Frye, Jr., contained clear-cut legal errors by requiring disclosure of documents deemed privileged and confidential by statute.

In further support of this Petition the Petitioner submits the attached Memorandum of Law and Addendum of exhibits.

The issuance of a rule to show cause is appropriate because:

- a. The Respondent Judge has committed substantial, clear cut errors of law and exceeded his authority;
- b. The Respondent Judge's Orders unfairly infringed upon the privilege and confidentiality of documents provided by statute and further stands to harm the Petitioner in ways that cannot be corrected by appeal;
- c. The Respondent Judge's error can be resolved independently of any disputed facts; and
- d. The Respondent Judge's Orders will cause irrevocable harm to the Petitioner and her ability to perform her statutory duties.

WHEREFORE, the Petitioner respectfully prays that this Court accepts jurisdiction in this matter, issue a Rule to Show Cause directed to the Respondents, stay further proceedings in the underlying action pending resolution of this matter and prohibit the enforcement of the Circuit Courts Orders of August 22, 2007 and December 3, 2007 as they pertain to compelling the Petitioner to produce her complete file relating to the

Offices of the Insurance Commissioner's investigation of William Blackenbeckler.

Jane L. Cline, Insurance
Commissioner of West Virginia
By Counsel



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Respondents.

**MEMORANDUM OF LAW IN SUPPORT OF PETITION FOR WRIT OF
PROHIBITION**

The Petitioner, by her counsel, submits this Memorandum of Law in Support of her Petition for Writ of Prohibition.

I. PROCEDURAL HISTORY AND STATEMENT OF FACTS

At some point, the Petitioner investigated the actions of William Blankenbeckler who was an insurance producer for Monumental Life Insurance Company until he was terminated for cause by Monumental Life Insurance Company. As a result of the Petitioner's investigation, an Agreed Order was entered by the Petitioner revoking the resident agent license of William Blankenbeckler and ordering him to cease and desist from the transaction of insurance business in the State of West Virginia. Said order was entered on or about January 7, 2005.

Gerry A. Davis, Sr., Danny Kelplinger, Timothy Rohrbaugh, et. al. filed a civil action in the Circuit Court of Grant County against Monumental Life Insurance Company and William Blankenbeckler. The Petitioner was not a party to that cause of action. However, on or about July 23, 2007, at a hearing before the Circuit Court of Grant County concerning discovery issues between the parties of that case, an oral motion was made by the plaintiffs requesting Judge Frye to order the Insurance Commissioner to produce all of her records, including her investigative file, pertaining to William Blankenbeckler. The Petitioner was not present at the hearing when the oral motion was made and, in fact, was never given a notice of the hearing or notice that such a motion was going to be made.

Despite the fact that the Petitioner was not a party to the case in the Circuit Court of Grant County, or ever given notice of the hearing and, therefore, provided an opportunity to protect her interests, Judge Frye entered an order dated August 22, 2007 requiring the Petitioner to produce her investigative file concerning William Blankenbeckler. (See Addendum, Exhibit A)

After receiving the August 22, 2007 order from counsel for Monumental Life Insurance Company, Petitioner filed in the Circuit Court of Grant County a Motion to Intervene and a Motion for Reconsideration of the August 22, 2007 Order. (See Addendum Exhibit C) The Petitioner was permitted to intervene and a hearing was held on Petitioner's motion on or about October 10, 2007. The Petitioner requested that the Honorable Judge Frye reconsider his August 22, 2007 Order because requiring the Petitioner to produce her investigative file would violate W. Va. Code § 33-2-19 which provides that such materials are confidential. Judge Frye entered an Order dated

December 3, 2007 denying the Petitioner's Motion for a Reconsideration and finding that the Insurance Commissioner's file is available for discovery and that "the Insurance Commissioner's argument of privilege is not valid insomuch as the subjects of the investigation are requesting the records." (See Addendum Exhibit B) Despite the fact that the Insurance Commissioner was permitted to intervene in the civil action in the Circuit Court of Grant County for the purposes of her Motion for Reconsideration, the Commissioner was not provided a copy of the December 3, 2007 order until on or about January 15, 2008.

The Respondent Judge's orders of August 22, 2007 and December 3, 2007 are clearly erroneous and contrary to statute and, therefore, forms the basis for the instant petition.

II. ARGUMENT

A. A Petition for Writ of Prohibition is the Proper Remedy.

The Constitution of West Virginia provides that the Supreme Court of Appeals of West Virginia shall have original jurisdiction of proceedings in Prohibition. *W. Va. Const. art. VIII. § 3*. Further, the West Virginia Code states, "the Writ of Prohibition shall lie as a matter of right in all cases of usurpation and abuse of power, when the inferior court has not the jurisdiction of the subject matter in controversy, or, having such jurisdiction, exceeds its legitimate power," W. Va. Code § 53-1-1 (2007)

The Supreme Court of Appeals of West Virginia has stated.

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, Hoover v. Berger, 199 W. Va. 12, 483 S.E. 2d 12 (1996). The Petitioner does not have the option of a direct appeal and the issue raised by the Respondent Judge's Orders is important to the ability of the Petitioner to perform her statutory obligations. This issue has not been addressed by this Honorable Court as the statute in question was amended and became effective June 7, 2007. As will be further shown below, the Respondent Judge's August 22, 2007 and December 3, 2007 orders are clearly erroneous and Petitioner has no other option than to seek a Writ of Prohibition from this Honorable Court.

B. RESPONDENT JUDGE'S ORDERS REQUIRING THE PRODUCTION OF PETITIONERS INVESTIGATIVE FILE ARE CLEARLY ERRONEOUS AS A MATTER OF LAW

The Respondent Judge's Orders requiring the Petitioner to disclose her investigative file pertaining to William Blankenbecker violate the West Virginia Code.

The Code states, in pertinent part,

That pursuant to West Virginia Code §33-2-19, as amended, "(a) Documents, materials or other information in the possession or control of the commissioner that are obtained in an investigation of any suspected violation of any provision of this chapter or chapter twenty-three [§§ 23-1-1 et seq.] of this code are confidential by law and privileged, are not subject to the provisions of chapter twenty-nine-b [§§ 29B-1-1 et seq.] of this code and are not

open to public inspection. The commissioner may use the documents, materials or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's official duties. The commissioner may use the documents, materials or other information if they are required for evidence in criminal proceedings or for other action by the state or federal government and in such context may be discoverable only as ordered by a court of competent jurisdiction exercising its discretion

(b) Neither the commissioner nor any person who receives documents, materials or other information while acting under the authority of the commissioner may be permitted or required to testify in any private civil action concerning any confidential documents, materials or information subject to subsection (a) of this section except as ordered by a court of competent jurisdiction.

W. Va. Code § 33-2-19 (2007)

Consequently, the investigative file materials ordered to be produced by Respondent Judge are confidential by law and privileged and not subject to Chapter 29B of the West Virginia Code which is the Freedom of Information Act and are not subject to public disclosure. Therefore, under the provisions of W. Va. Code § 33-2-19, the Petitioner must protect the confidentiality of her investigative file. It was clear error for the Respondent Judge to force Petitioner to violate said statute and breach the confidentiality of the investigation.

W. Va. Code § 33-2-19 is clear and unambiguous. At the Circuit Court hearing on the Insurance Commissioner's Motion for Reconsideration, an attorney for one of the respondents argued that W. Va. Code § 33-2-19 permitted a Circuit Court to order that the materials be discoverable. However, this is a misinterpretation of W. Va. Code § 33-2-19 which states, in pertinent part, "the Commissioner may use the documents, materials or other information if they are required for evidence in **criminal proceedings** or for other

action by the **state or federal government** and **in such context** may be discoverable only as ordered by a court of competent jurisdiction exercising its discretion.” (Emphasis added) The words “in such context” clearly refers to criminal proceedings or other action by the state or federal government and the ordering of the production of such materials is limited to those circumstances. The case before the Respondent Judge and the Circuit Court of Grant County was not a criminal proceeding or an action by the state or federal government. The action in the Circuit Court of Grant County was a Civil Action between the Respondents. Therefore, the provision allowing a court to order the production of the investigative materials does not apply to the case pending before the Circuit Court of Grant County.

In his December 3, 2007 Order, the Respondent Judge incorrectly states, “The Insurance Commissioner’s argument of privilege is not valid insomuch, as the subjects of the investigation are requesting the records.” (See Addendum Exhibit B) W. Va. Code §33-2-19 does not contain such an exception to the privilege. Respondent Judge does not reference any statute or other legal authority to support ordering the production of the Petitioner’s investigative file. Respondent Judge disregarded W. Va. Code §33-2-19 which is a clear and unambiguous statute.

The West Virginia Supreme Court of Appeals has stated, “where the language of the statute is free from ambiguity, its plain meaning is to be accepted and applied without resort to interpretation.” syl. pt. 2, Crocket v. Andrews, 153 W. Va. 714, 172 S.E.2d 384 (1970) It is clear, according to W. Va. Code § 33-2-19, that the Petitioner’s investigative file is privileged and confidential. Given the plain meaning of the statute, the Respondent

Judge should not have ordered the Petitioner to produce her file materials. This Honorable Court must correct this obvious error.

When reviewing the five (5) factors set forth in the Hoover case, it is clear that a Writ of Prohibition is appropriate in this matter. This Court stated in Hoover that the third factor, the existence of clear error as a matter of law, should be given substantial weight.

This Court has also stated,

In determining whether to grant a rule to show cause in prohibition when a court is not acting in excess of its jurisdiction, this Court will look to the adequacy of other available remedies such as appeal and to the over-all economy of effort and money among litigants, lawyers and courts; however, this Court will use prohibition in this discretionary way to correct only substantial, clear-cut, legal errors plainly in contravention of a clear statutory, constitutional, or common law mandate which may be resolved independently of any disputed facts and only in cases where there is a high probability that the trial will be completely reversed if the error is not corrected in advance. syl. pt. 1, Hinkle v. Black, 164 W. Va. 112, 262 S.E.2d 744 (1979)

syl. pt. 2 George B. W. Kaufman, 199 W. Va. 369, 483 S.E.2d 852 (1997)

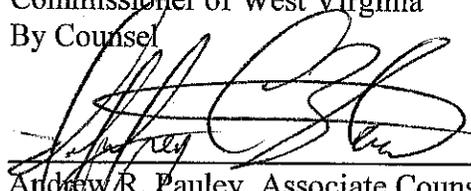
The Respondent Judge's orders in the Circuit Court of Grant County compelling the production of Petitioner's investigative file were clear cut legal errors and plainly in contravention of the statutory mandate. Production of the Petitioner's investigative file would require the Petitioner to violate W. Va. Code §33-2-19. Further, production of the investigative file could make it difficult in the future for the Petitioner to perform her statutory duties because insurance companies will not be able to rely on the confidentiality provision of W. Va. Code §33-2-19. Insurance Companies may be hesitant to provide materials to the Petitioner if Petitioner is forced to provide the materials to other parties in

civil actions. This could have a detrimental impact on the Petitioner's regulatory ability. The statute applicable to this matter is clear and unambiguous and the Respondent Judge failed to follow the law.

III. PRAYER FOR RELIEF

FOR ALL THE FOREGOING REASONS, because the respondent Judges Orders of August 22, 2007 and December 3, 2007 requiring the production of the Petitioner's Investigative file involves substantial, clear cut legal errors in that the Orders violate W. Va. Code §33-2-19, the Petitioner respectfully prays that this Court accept jurisdiction in this matter, issue a rule to show case directed to the Respondents, stay further proceedings in the underlying action pending the resolution of this matter and prohibit the enforcement of the Circuit Court Orders dated August 22, 2007 and December 3, 2007 with respect to the production of the Petitioner's materials.

Jane L. Cline, Insurance
Commissioner of West Virginia
By Counsel



Andrew R. Pauley, Associate Counsel (5953)
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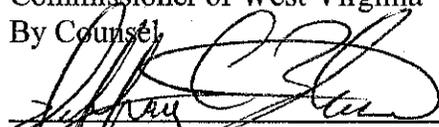
THE HONORABLE ANDREW N. FRYE,
Jr., Judge of the Circuit Court of Grant County, GERRY
A. DAVIS, SR., DANNY KEPLINGER, TIMOTHY
ROHRBAUGH, MONUMENTAL LIFE INSURANCE
COMPANY and WILLIAM BLAKENBECKLER,

Respondents.

ADDENDUM TO WRIT OF PROHIBITION

- Exhibit A Order entered on August 22, 2007.
- Exhibit B Order with Respect to Discovery Motions and Protective
Orders entered on December 3, 2007.
- Exhibit C Motion to Intervene by the Offices of the Insurance
Commissioner of West Virginia and Motion for
Reconsideration of Order Entered August 22, 2007 by the
Honorable Andrew N. Frye, Jr.

Jane L. Cline, Insurance
Commissioner of West Virginia
By Counsel



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BOOK 022 PAGE 770

IN THE CIRCUIT COURT OF GRANT COUNTY, WEST VIRGINIA

GERRY A. DAVIS, SR., et al.
DANNY KEPLINGER, et al.
TIMOTHY ROHRBAUGH, et al.,

Plaintiffs,

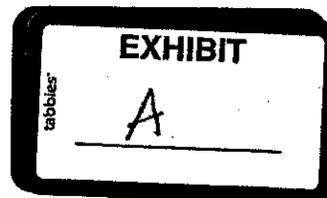
Civil Action No. 04-C-13
Civil Action No. 14-C-91
Civil Action No. 05-C-28

MONUMENTAL LIFE INSURANCE COMPANY,
a non-resident life insurance company doing business
within the State of West Virginia, in its own right and
as successor to Peoples Security Life Insurance
Company and Peoples Life Insurance Company,
non-resident insurance corporations, and
WILLIAM BLANKENBECKLER, individually, and as
an agent of Monumental Life Insurance Company and
Peoples Security Life Insurance Company, and Peoples
Life Insurance Company,

Defendants.

ORDER

On Monday, July 23, 2007, the Plaintiffs, by counsel, and the Defendant, Monumental Life Insurance Company, by counsel, appeared before this Court for hearing on the Defendant's Motion to Vacate Order of Consolidation, for presentation to the Court by the Defendant of information showing that the son of the presiding Judge had been a former employee of the Defendant and asking the Judge to take whatever actions the Judge deemed appropriate in light of that information, and to consider various discovery issues. With respect to the information regarding the Judge's son, the Judge announced he was not aware that his son had worked for Monumental Life Insurance Company or any of its predecessor companies and further announced that Monumental Life



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Insurance Company may file a Motion for Recusal in which event the Court will refer the Motion to the West Virginia Supreme Court of Appeals for determination. Plaintiffs' brought forward an oral motion asking the Court to require the West Virginia Insurance Commissioner to produce all records regarding the Defendant, William Blankenbeckler, and informed the Court that Plaintiffs' ~~counsel's request to the Insurance Commissioner for such records had been refused~~ and that the FOIA request of counsel for Monumental to the Insurance Commissioner had been refused except for production of the Agreed Order referenced herein. The Court does hereby ORDER that the West Virginia Insurance Commissioner shall provide to counsel of record and pro se parties as listed below a full and complete copy of all documents in its files relative to the Insurance Commissioner's Case No. 04-AP-052 "In Re: William Lee Blankenbecker, Jr." and relative to the "Agreed Order" entered in that proceeding by the Insurance Commissioner on January 7, 2005. The Insurance Commissioner is directed to provide all such documents in the files of the Insurance Commissioner, specifically including but not limited to investigatory records, but the Insurance Commissioner is not required to produce records which the Insurance Commissioner is specifically prohibited by statute from producing. For any documents which the Insurance Commissioner contends that the Insurance Commissioner is specifically prohibited by statute from producing in response to this Order, the Insurance Commissioner is hereby ORDERED to produce a list of those documents by name, type, author/recipient, date, and citation to the statute specifically prohibiting production, and file the same with the Court and serve copies upon counsel and pro se parties in this civil action. The Insurance Commissioner is hereby ORDERED to produce the subject documents and the list of withheld documents, if any, within 30 days of the date of entry of this Order. The Court notes that Plaintiffs' counsel represented to the Court that Plaintiffs' counsel informed the pro se Defendant, William

Jan
2/21

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Blankenbeckler, at his deposition, of the date and time of the hearing held on Monday, July 23, 2007, and that Plaintiffs' counsel would be asking the Court to enter an Order to require the Insurance Commissioner to disclose all documents regarding William Blankenbeckler. The Court notes that Mr. Blankenbeckler did not appear in person or by counsel at the said hearing.

The Court directed that counsel for the Defendant, Monumental Life Insurance Company, prepare this Order. The clerk is directed to send an attested copy of this Order to all counsel of record and *pro se* parties.

Entered this 22nd day of August, 2007.

ENTERED AUG 22 2007

Andrew N. Frye, Jr.
Judge Andrew N. Frye, Jr.

COPY
TEST

Betty C. Moorman, Esq.

Prepared by:

[Signature]
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BOOK 022 PAGE 919

IN THE CIRCUIT COURT OF GRANT COUNTY, WEST VIRGINIA

GERRY A DAVIS, SR., et al.,
 DANNY KEPLINGER, et al., and
 TIMOTHY ROHRBAUGH, et al.,
 Plaintiffs,

v.

Case Nos. 04-C-13
 04-C-91
 05-C-28

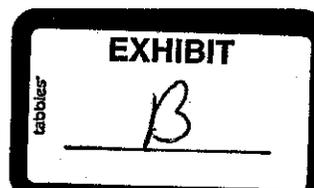
Judge Andrew N. Frye, Jr.

MONUMENTAL LIFE INSURANCE
 COMPANY, a non-resident life insurance
 company doing business within the State of
 West Virginia, in its own right, and as successor
 to Peoples Security Life Insurance Company and
 Peoples Life Insurance Company, non-resident
 insurance corporations, and
 WILLIAM BLANKENBECKLER, individually,
 and as an agent of Monumental Life Insurance
 Company and Peoples Security Life Insurance
 Company, and Peoples Life Insurance Company,
 Defendants.

ORDER WITH RESPECT TO DISCOVERY MOTIONS AND PROTECTIVE ORDERS

On the 10th day of October 2007, this matter came on before the Court, the Honorable Andrew N. Frye, Jr. presiding, upon the following motions: *Motion to Intervene* filed by the WV Insurance Commissioner and a *Motion for Protective Order*, filed by the Plaintiffs. The Plaintiffs were present by their counsel Janet Preston and J. Paul Geary. The Defendant, Monumental Life, was present by its counsel Eric Hulett. The West Virginia Insurance Commissioner Jane Cline was represented by Andrew R. Pauley.

At the outset of this hearing, the Court took up the Motion to Intervene filed by the West Virginia Insurance Commissioner Jane Cline. There was no objection to this motion by any of the parties and accordingly the motion is GRANTED. Whereupon the insurance commissioner counsel requested that this Court not enforce its prior Order granting discovery of the Insurance Commission file pertaining to this matter.



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Upon consideration of the motions previously filed and the arguments of counsel this date, this Court makes the following FINDINGS OF FACT and CONCLUSIONS OF LAW:

1. With respect to the Insurance Commissioner's file, this Court finds that the materials contained therein are available for discovery in this civil suit. Both the Plaintiffs and the Defendant Monumental Life have requested these files and Defendant Blankenbeckler has not objected to the parties obtaining the records from the Insurance Commissioner. The Insurance Commissioner's argument of privilege is not valid inasmuch as the subjects of the investigation are requesting the records. The Commissioner's argument that this will somehow encourage mistrust of the Commission within the insurance industry does not convince this Court particularly given this situation where the insurance company has joined in the request for these records.

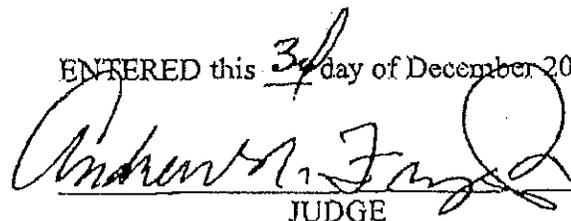
2. With respect to the Plaintiff's Motion for Protective Order, this Court finds that the Defendant Monumental Life is entitled to the discovery it has requested but only insofar as these records are still in the possession of the Plaintiffs.

ACCORDINGLY, it is hereby ORDERED:

1. The West Virginia Insurance Commissioner is hereby ORDERED to forward a copy of her complete file relating to the Blankenbeckler investigation to all counsel of record within 30 days of entry of this Order.
2. The Plaintiff's Motion for Protective Order is hereby DENIED. The Plaintiffs shall forward to the Defendant all materials requested that the Plaintiffs have in their possession.
3. The Circuit Clerk shall provide a copy of this Order to all counsel of record.

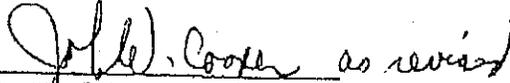
ENTERED DEC 03 2007

ENTERED this 3rd day of December 2007.


JUDGE

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Agreed to by:

 as revised

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Aug 29 2007 09:56am

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Rec. BK 22
Pg 773

IN THE CIRCUIT COURT OF GRANT COUNTY, WEST VIRGINIA

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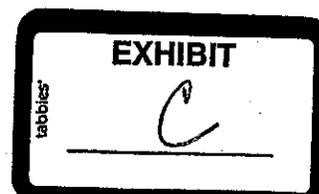
MONUMENTAL LIFE INSURANCE COMPANY, a
Non-resident life insurance company doing business within
The State of West Virginia, in its own right and as
Successor to Peoples Security Life Insurance Company and
Peoples Life Insurance Company, non-resident insurance
Corporations, and WILLIAM BLANKENBECKLER,
Individually, and as an agent of Monumental Life Insurance
Company and Peoples Security Life Insurance Company, and
Peoples Life Insurance Company,

Defendants.

**MOTION TO INTERVENE BY THE OFFICES OF THE INSURANCE
COMMISSIONER OF WEST VIRGINIA AND
MOTION FOR RECONSIDERATION OF ORDER ENTERED AUGUST 22, 2007
BY THE HONORABLE ANDREW N. FRYE, JR.**

WHEREFORE, NOW COMES the Offices of the Insurance Commissioner of
West Virginia, Jane L. Cline, Insurance Commissioner, by and through counsel, Andrew
R. Pauley, Associate Counsel, and respectfully moves this Honorable Court to allow her
intervention in the above referenced proceedings for the LIMITED PURPOSE ONLY of
seeking reconsideration of that certain ORDER of the Court entered on or about August
22, 2007 by the Honorable Andrew N. Frye, Jr., Circuit Judge of Grant County.

Pursuant to West Virginia Rules of Civil Procedure, Rule 24, concerning
intervention, the rule states the following:



(a) Intervention of right.

Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of this State confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

The Commissioner therefore respectfully requests intervention in the above referenced matter because the applicant claims an interest relating to the property which is the subject of an Order of the Court and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest and the applicant's interest is not adequately represented by existing parties.

Whereas, it is the Commissioner's understanding that the following has occurred:

1. That a civil action has been filed against the above referenced parties by the above referenced plaintiffs.
2. That at some point the Offices of the Insurance Commissioner investigated the actions of one of the Defendants, William Blankenbeckler and has an investigative file containing that information.
3. That an oral motion was made on the date of Monday, July 23, 2007 hearing concerning discovery issues in this matter and obtaining the Insurance Commission file.
4. That the Offices of the Insurance Commissioner was not made a party, subpoenaed to the hearing, nor noticed in anyway such that they would be able to protect its interests.

5. That it appears the Plaintiffs' counsel had at some point in the past made a request under the West Virginia Freedom of Information Act to in fact have the information provided to him and the same was not provided.
 6. It does not appear that the Plaintiffs' counsel availed themselves of the appropriate remedy under "FOIA" to in fact retrieve possession of the requested documents under West Virginia Code § 29B-1-5.
 7. That the hearing on July 23, 2007 failed to afford the Offices of the Insurance Commissioner due process of law and did in fact order production of the referenced claim file on or before September 22, 2007.
 8. That pursuant to West Virginia Code §33-2-19, as amended, "(a) Documents, materials or other information in the possession or control of the commissioner that are obtained in an investigation of any suspected violation of any provision of this chapter or chapter twenty-three [§§ 23-1-1 et seq.] of this code are confidential by law and privileged, are not subject to the provisions of chapter twenty-nine-b [§§ 29B-1-1 et seq.] of this code and are not open to public inspection. The commissioner may use the documents, materials or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's official duties. The commissioner may use the documents, materials or other information if they are required for evidence in criminal proceedings or for other action by the state or federal government and in such context may be discoverable only as ordered by a court of competent jurisdiction exercising its discretion.
- (b) Neither the commissioner nor any person who receives documents, materials or other information while acting under the authority of the commissioner may be permitted or

required to testify in any private civil action concerning any confidential documents, materials or information subject to subsection (a) of this section except as ordered by a court of competent jurisdiction.

9. Consequently, the information contained in the prior request and as Ordered to be disclosed is privileged and confidential information.
10. The Order does, however, relieve the Insurance Commissioner of producing those records "specifically prohibited by statute from producing."
11. The Commissioner would respectfully state to the Court that she is prohibited from disclosing anything contained in the investigative file of the requested individual.
12. Consequently, if the Commissioner was Ordered to produce this information she would be breaching confidential privileged investigative information of a sensitive matter.
13. The Commissioner would ask the Court to vacate or set aside those portions of the previous order and require the Plaintiff to make a specific showing to the Court to overcome the privileged information.
14. The Commissioner further would be reluctant to provide a "list of withheld documents" due to the fact that disclosure thereof may vitiate or violate the privilege as it is in fact invoked thereby essentially denying the privilege in the first place.
15. The Commissioner would be concerned that to allow Plaintiff to obtain a confidential regulatory investigative file would set a problematic precedent especially without a required showing of necessity.

16. Nevertheless, the Commissioner in an attempt to fully and adequately respond to the Order of this Court in the event this matter cannot be heard before September 22, 2007, responds to the discovery request with the following,

“The Commissioner believes the entire investigative file is subject to privilege and therefore invokes the same pursuant to West Virginia Code §33-2-19, as amended, unless and until further Order of the Court directs the same and appellate procedure is complete.”

WHEREFORE, the Commissioner respectfully requests reconsideration of the Order previously alluded to herein and for other such relief as the Court deems just and appropriate.

JANE L. CLINE, COMMISSIONER
OFFICES OF THE INSURANCE
COMMISSIONER
STATE OF WEST VIRGINIA
BY COUNSEL



Andrew R. Pauley (W.V. State Bar I.D. 5953)
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Offices of the Insurance Commissioner
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andrew.pauley@wvinsurance.gov

IN THE CIRCUIT COURT OF GRANT COUNTY, WEST VIRGINIA

GERRY A. DAVIS, SR., et al.
DANNY KEPLINGER, et al.
TIMOTHY ROHRBAUGH, et al.,

Plaintiffs,

v.

CIVIL ACTION NO. 04-C-13
CIVIL ACTION NO. 04-C-91
CIVIL ACTION NO. 05-C-28

MONUMENTAL LIFE INSURANCE COMPANY, a
Non-resident life insurance company doing business within
The State of West Virginia, in its own right and as
Successor to Peoples Security Life Insurance Company and
Peoples Life Insurance Company, non-resident insurance
Corporations, and WILLIAM BLANKENBECKLER,
Individually, and as an agent of Monumental Life Insurance
Company and Peoples Security Life Insurance Company, and
Peoples Life Insurance Company,

Defendants.

CERTIFICATE OF SERVICE

I, Andrew R. Pauley, Associate Counsel for the Offices of the Insurance Commissioner of the State of West Virginia, do hereby certify that a true copy of the foregoing MOTION TO INTERVENE BY THE OFFICES OF THE INSURANCE COMMISSIONER OF WEST VIRGINIA AND MOTION FOR RECONSIDERATION OF ORDER ENTERED AUGUST 22, 2007 BY THE HONORABLE ANDREW N. FRYE, JR., and NOTICE OF HEARING was served upon the following by facsimile and by depositing the same in the United States Mail, postage prepaid, on this the 13th day of September, 2007, to the following:

TO: Lucien G. Lewin, Esquire
Eric J. Hullett, Esquire
Steptoe & Johnson
P.O. Box 2629
Martinsburg, WV 25402
Counsel for Monumental Life Insurance Company

John W. Cooper, Esquire
Janet D. Preston
Cooper & Preston, PLLC
P.O. Box 365
Parsons, WV 26287
Counsel for Plaintiffs

James Paul Geary
Geary & Geary L.C.
P.O. Box 218
Petersburg, WV 26847
Counsel for Plaintiffs

William Blankenbeckler
P.O. Box 1165
Petersburg, WV 26847
Pro Se Defendant



Andrew R. Pauley, Associate Counsel (#5953)
Offices of the Insurance Commissioner
of West Virginia
1124 Smith Street
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Charleston, WV 25305
Phone: 304-558-6279 ext. 1402
Fax: 304-558-1908 (fax)
andrew.pauley@wvinsurance.gov

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

STATE OF WEST VIRGINIA *ex rel.*
JANE L. CLINE, Insurance Commissioner
of the State of West Virginia,

Petitioner,

v.

CASE NO. _____

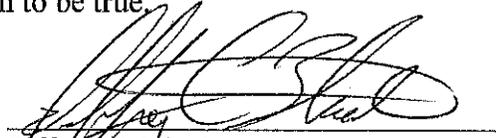
THE HONORABLE ANDREW N. FRYE,
Jr., Judge of the Circuit Court of Grant County, GERRY
A. DAVIS, SR., DANNY KEPLINGER, TIMOTHY
ROHRBAUGH, MONUMENTAL LIFE INSURANCE
COMPANY and WILLIAM BLANKENBECKLER,

Respondents.

VERIFICATION

STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, to-wit:

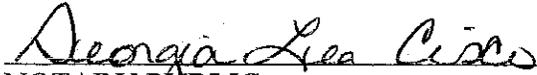
I, Jeffrey C. Black, counsel for the Petitioner, being further duly sworn,
state that the facts and allegations contained in the foregoing Petition for Writ of
Prohibition and Memorandum of Law In Support of Petition for Writ of
Prohibition are true, except insofar as they are therein stated to be upon
information and belief, I believe them to be true.



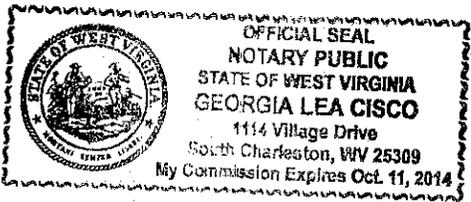
Jeffrey C. Black

Taken, subscribed and sworn to before the under Notary Public this 30th
day January, 2007.

My commission expires 10-11-2014



NOTARY PUBLIC



IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

STATE OF WEST VIRGINIA *ex rel.*
JANE L. CLINE, Insurance Commissioner
of the State of West Virginia,

Petitioner,

v.

CASE NO. _____

THE HONORABLE ANDREW N. FRYE,
Jr., Judge of the Circuit Court of Grant County, GERRY
A. DAVIS, SR., DANNY KEPLINGER, TIMOTHY
ROHRBAUGH, MONUMENTAL LIFE INSURANCE
COMPANY and WILLIAM BLANKENBECKLER,

Respondents.

CERTIFICATE OF SERVICE

I, Jeffrey C. Black, Associate Counsel for the Offices of the Insurance Commissioner of the State of West Virginia, do hereby certify that a true copy of the foregoing Petition for Writ of Prohibition, Memorandum of Law in Support of Petition for Writ of Prohibition, Memorandum of Persons Upon Whom Rule to Show Cause Should be Served, Verification, and Addendum to Writ of Prohibition, was served upon the following by depositing the same in the United States Mail, postage prepaid, on this the 30th day of January, 2008, to the following:

TO: The Honorable Andrew N. Frye, Jr.
Chief Judge, 21st Judicial Circuit
Grant County Courthouse
P.O. Box 446
Petersburg, WV 26847

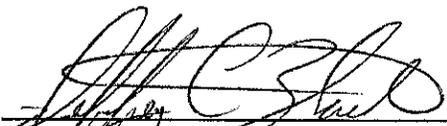
Darrell V. McGraw, Jr.
Attorney General
Room E-26, State Capitol
Charleston, WV 25305

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Counsel for Gerry Davis, Danny Keplinger and Timothy Rohrbaugh

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P.O. Box 1165
Petersburg, WV 26847



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Supervising Attorney/Regulatory Compliance
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