
IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

PUTNAM BANCSHARES, INC., a West Virginia corporation
d/b/a PUTNAM COUNTY BANK and T.C.'s USED CARS, LLC,
a West Virginia limited liability company,

Appellees,

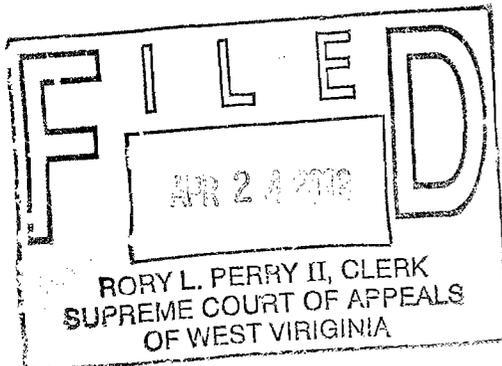
V.

PROGRESSIVE CLASSIC INSURANCE COMPANY,

Appellant.

On Appeal From
The Circuit Court of Putnam County, West Virginia
Hon. O.C. Spaulding, Judge

BRIEF OF THE WEST VIRGINIA INSURANCE FEDERATION
AS *AMICUS CURIAE*



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I. INTRODUCTION

The West Virginia Insurance Federation files this brief as *amicus curiae* because the Circuit Court erred in applying certain statutory cancellation and nonrenewal requirements to the simple expiration of an automobile insurance policy upon its scheduled termination date. By granting summary judgment in favor of the Plaintiffs¹, the lower Court has mistakenly applied cancellation and nonrenewal statutes and case law to a situation that constitutes neither a cancellation nor a nonrenewal.

The Circuit Court further erred in holding that *Dairyland v. Conley*, 218 W. Va. 252, 624 S.E.2d 599 (2005), was controlling in this case, whereas the limited scope of that decision has no bearing whatsoever on the facts at hand. The *Conley* decision applies only to those narrow situations where the customer makes a new application and the insurer issues a new insurance policy upon payment of the premium, but the initial premium payment for the new policy subsequently fails, voiding the policy for lack of consideration. Such is clearly not the situation in this case, where an existing policyholder chose not to make a premium payment to renew the policy for another period and simply allowed the policy to expire on its scheduled termination date.

Finally, the Circuit Court erred in concluding that the mere act by an insurer of sending a renewal notice and proof of insurance cards to a customer in advance of the premium payment due date somehow constitutes the issuance of a new policy, thereby creating an obligation to give the policyholder notice of a cancellation, when in fact the situation at hand does not involve a cancellation of any policy at all. There is no basis in West Virginia statutory or case law for the lower Court's conclusion that merely mailing a declarations page or proof of

¹ For purposes of this Brief, Appellees Putnam Bancharas, Inc., d/b/a Putnam County Bank and T.C.'s Used Cars, LLC, will be referred to as the "Plaintiffs"; and Appellant Progressive Classic Insurance Company will be referred to as the "Defendant".

insurance cards to a customer as part of a renewal offer package prior to payment of a renewal premium in and of itself creates a new insurance contract. According to the lower Court, this simple mailing then subsequently requires notice of a cancellation when the customer either fails or chooses not to accept the company's offer to renew the policy and opts not to pay the renewal premium.

This decision, if upheld, will have a dramatic and chaotic effect on the manner in which insurance companies deal with their policyholders. It will create new duties and new obligations for insurers which are not imposed under existing statutory or case law and will threaten the ability of companies to renew policies and provide proof of insurance to their customers in a prompt and timely manner. It will also reduce the information provided to consumers in advance of any renewal. All of this will adversely affect the types of products offered by insurance companies to their customers here in West Virginia, as well as the prices consumers will pay for such products.

For these reasons and the reasons more fully contained herein, the West Virginia Insurance Federation respectfully urges this Court to reverse the Circuit Court's decision granting summary judgment in favor of the Plaintiffs.

II. STATEMENT OF INTEREST

The West Virginia Insurance Federation ("the Federation") is the state trade association for property and casualty insurance companies doing business in West Virginia. Its members insure approximately eight of every ten automobiles and homes in West Virginia. The Federation is widely regarded as the voice of West Virginia's insurance industry and has served the property and casualty insurance industry in this State for over thirty years. The Federation

has a strong interest in promoting a healthy and competitive insurance market in this State to ensure that insurance is both available and affordable to West Virginia consumers.

The Federation files this brief in order to highlight and underscore the broad adverse impact that the Circuit Court's decision will have on the insurance market and insurance consumers in West Virginia if allowed to stand.

The lower Court's Order erroneously imposed cancellation and nonrenewal requirements onto a situation which was neither a cancellation nor a nonrenewal -- but rather was a simple expiration of a policy at its regularly scheduled termination date. The insured simply either failed or chose not to pay the renewal premium by the payment due date, and the policy accordingly lapsed and expired due to this non-payment. There was no affirmative decision or action taken by the insurance company to "cancel" or "nonrenew" the policy.

The lower Court's reliance on *Dairyland v. Conley* as controlling in this matter is equally misplaced and erroneous. The *Conley* decision was limited to a very narrow fact pattern involving those situations where the insurer actually issues a new policy upon a new application and premium payment, but the initial premium payment for the new policy subsequently fails, voiding the policy for lack of consideration. *Conley* holds that insurers must give at least ten (10) days notice of the cancellation in such instances. This was clearly not the case at hand. The lower Court has erroneously applied the *Conley* standard to a situation which involved a simple expiration of an existing policy due to non-payment of the renewal premium, not the cancellation of a newly issued policy nor a cancellation of any kind.

III. RELEVANT FACTS

The relevant facts in this case are more fully detailed in both the Circuit Court's Order Granting Summary Judgment in Favor of T.C.'s Used Cars, LLC ("T.C.'s Used Cars"), as well as in Progressive Classic Insurance Company's ("Progressive") Petition for Appeal. The basic underlying facts are undisputed. Mr. Terry Daniel purchased a 2004 Chevrolet Silverado from T.C.'s Used Cars in August 2006. Putnam Bancshares, Inc. d/b/a Putnam County Bank ("the Bank") loaned Mr. Daniel funds to purchase the vehicle. As part of the loan transaction, Mr. Daniel executed an Agreement to Provide Insurance, in which he agreed to provide comprehensive and collision insurance coverage on the vehicle, with the Bank listed as the loss payee. Furthermore, T.C.'s Used Cars executed a Commercial Guaranty, which guaranteed repayment to the Bank of the amount it loaned to Mr. Daniel.

On August 23, 2006, Mr. Daniel obtained automobile insurance from Progressive on the 2004 Chevrolet Silverado. Progressive issued a policy (number 16793267-0) to cover the vehicle for a six month period of August 23, 2006 to February 23, 2007. Mr. Daniel made an initial payment on August 23, 2006, and then opted to pay the remaining balance of the premium through a monthly payment plan.

On January 29, 2007, Progressive provided Mr. Daniel with a renewal package. The renewal bill was an offer to renew the current policy for a new six month period of February 23, 2007 through August 23, 2007. This renewal offer also reminded Mr. Daniel that his current policy period was August 23, 2006 through February 23, 2007. The "Renewal Declarations Page" provided to Mr. Daniel on January 29, 2007 clearly warned him that "[t]he coverage, limits and policy period shown apply only if you pay for this policy to renew." The renewal

package also included "proof of insurance" cards to be used in the vehicle if the policy was renewed.

Subsequently, Progressive sent Mr. Daniel a "Renewal Reminder" on February 9, 2007, which advised Mr. Daniel that his current policy "will expire on February 23, 2007 at 12:01 a.m." The reminder further advised Mr. Daniel that he needed to make a payment postmarked no later than February 25, 2007 in order to renew the policy for another six month period of February 23, 2007 to August 23, 2007.

Mr. Daniel did not pay the renewal premium by the February 25, 2007 deadline. Accordingly, the policy expired on February 23, 2007.

On February 27, 2007, Mr. Daniel was involved in an accident while operating the 2004 Chevrolet Silverado. Because his policy had expired four (4) days earlier on February 23, 2007, there was no insurance coverage on the vehicle at the time of this accident. The day after the accident (February 28, 2007), Mr. Daniel paid the minimum amount necessary to renew the lapsed policy. The policy was renewed, but with a lapse in coverage from February 23, 2007 until March 1, 2007.

The Bank submitted a claim to Progressive as the loss payee for the total loss of the 2004 Chevrolet Silverado. Progressive denied the claim because the policy had expired prior to the loss and the policy was not in effect on the date of the accident.

Pursuant to the Commercial Guaranty agreement, T.C.'s Used Cars ultimately paid the Bank \$14,390.43, which represented the balance due on the loan made to Mr. Daniel for the purchase of the vehicle.

The Bank and T.C.'s Used Cars filed suit against Progressive in the Circuit Court of Putnam County, West Virginia on December 5, 2007. The Bank and T.C.'s Used Cars alleged

that Progressive failed to give the Bank, as the loss payee, forty-five days notice of Progressive's "election not to renew" the policy. (Complaint, ¶ 7).

The parties eventually filed cross-motions for summary judgment. By an Order entered on September 19, 2008, the Circuit Court granted Progressive's Motion for Summary Judgment regarding the Bank's lack of standing and dismissed the Bank as a party from this action.

However, the Circuit Court also granted Summary Judgment in favor of T.C.'s Used Cars for the amount of \$14,390.43, plus pre- and post-judgment interest and costs. The lower Court erred by holding that Progressive's offer to renew the policy for a new six month period somehow resulted in the creation of a new policy contract. The Circuit Court further erred in holding that *Dairyland v. Conley* was controlling in this matter, thus requiring a minimum of ten (10) days notice of cancellation -- even though this situation did not involve a cancellation at all.

The Circuit Court erred in granting Summary Judgment in favor of T.C.'s Used Cars. Progressive appeals from the portion of the Circuit Court Order which granted Summary Judgment in favor of T.C.'s Used Cars, but assigns no error to the Circuit Court's dismissal of the Bank from this action.

IV. DISCUSSION

- A. *The Plaintiffs and the Circuit Court have confused an affirmative decision by an insurer to cancel or nonrenew an existing automobile insurance policy with the simple expiration of the policy due to non-payment of the premium.*

In its simplest form, this case involves an offer by an insurance company to renew an existing insurance policy. The offer to renew was not accepted by the insured and, as a result, the policy expired at the scheduled end of its term. This case did not involve a cancellation, in

that the insurance company did not make any decision nor took any action to affirmatively cancel an existing policy during the policy period. Likewise, this case did not involve a nonrenewal, because the insurance company never decided to non-renew the policy. To the contrary, the insurer did offer to renew the policy for another period, so this was clearly not a nonrenewal. This case involved the simple expiration of an existing policy upon its scheduled expiration date. The policyholder was aware of the scheduled expiration and was offered the opportunity to renew the policy for another cycle upon payment of the renewal premium by the specified payment date. Instead, the insured opted not to pay the renewal premium, and as a result the policy lapsed as scheduled.

The expiration of an insurance policy on its scheduled termination at the conclusion of its policy period is neither a cancellation nor a nonrenewal. It is simply an expiration of the policy. "Cancellation must be distinguished from termination of the policy under its own terms since in the latter case, notice is not generally required." *Couch on Insurance* 30.2. "[I]f a policy expires on its own, the insurance company need not give notice of cancellation." *Grable v. Gamers Insurance Exchange*, 341 N.W.2d 147, 129 Mich. App. 370 (1983).

West Virginia Code § 33-6A-4(e) clearly addresses such situations where the insured fails to renew the policy by the due date and the policy expires due to non-payment of premium:

Notwithstanding the provisions of subsection (a) of this section, the insurer shall reinstate any automobile liability or physical damage insurance policy **that has not been renewed due to the insured's failure to pay the renewal premium when due if:**

- (1) None of the other grounds for nonrenewal as set forth in this section exist; and

(2) The insured makes an application for reinstatement within forty-five days of the original expiration date of the policy. If a policy is reinstated as provided for in this paragraph, then the coverage afforded shall not be retroactive to the original expiration date of the policy; *Provided*, That such policy shall be effective on the reinstatement date at the current premium levels offered by the company and shall not be afforded the protections of this section relating to renewal of an outstanding automobile liability or physical damage insurance policy that has been in existence for at least two consecutive years. [Emphasis added.] *W. Va. Code § 33-6A-4(e)*.

This is precisely the same situation which occurred in the case at hand. The existing policy lapsed due to non-payment of the premium due. Mr. Daniel later paid the premium to renew the policy on February 28, 2007, after the policy had already lapsed and after the accident had occurred. Pursuant to *W. Va. Code § 33-6A-4(e)*, the policy was renewed, but with a lapse in coverage from February 23, 2007 to March 1, 2007. There is nothing in this statutory provision that requires any notice of a cancellation or a nonrenewal in such instances, precisely because no such cancellation or nonrenewal has occurred.

If a mere offer to renew a policy resulted in the formation of a brand new insurance policy contract, as the lower Court held, then the provisions of *W. Va. Code § 33-6A-4(e)* would serve no purpose. Instead, every policy would automatically renew itself based simply on the insurance company's offer to renew the prior policy. This is clearly inconsistent with the intent and purpose of *W. Va. Code § 33-6A-4(e)*.

Numerous cases from other jurisdictions have similarly held that notice of a cancellation or nonrenewal is not required to be given in these situations where the policy simply lapses due to non-payment of the premium by the payment due date. *See: Unruh v. Prudential Property & Casualty Insurance Company*, 3 F.Supp.2d 1204 (D. Kan. 1998) ("The decedent's policy lapsed, and there was no contract for insurance coverage between the parties on the date

of the accident."); *Wynn v. Farmers insurance Group*, 296 N.W.2d 197, 98 Mich. App. 93 (1980) (statutory notice provisions "were not applicable to an automobile insurance policy which had expired by virtue of the fact that it had reached the end of its term."); *Wood Chevrolet-Pontiac v. Progressive Casualty Insurance Company*, 83 S.W.3d 445, 79 Ark App. 37 (2002) ("Cancellation must be distinguished from termination of the policy under its own terms since in the latter case, notice is not generally required."); *Moore v. Travelers Indemnity Insurance Company*, 408 A.2d 298 (Del. Super. 1979) (notice provisions do not apply "if the absence of coverage is not the result of a 'cancellation'").

In *Kane v. American Insurance Company*, 725 A.2d 1000, 52 Conn. App. 497 (1999), *affirmed*, 743 A.2d 612, 252 Conn. 113 (2000), the Court held that statutory notice of a cancellation is not required when an offer to renew a policy, including new policy documents and information cards, were sent to the insured but not accepted when the insured failed to make the required payment by the expiration date. Prior to the expiration of the insurance policy in *Kane*, American Insurance Company sent the insured a letter offering to renew the policy for another period, as well as a personal automobile policy summary and declarations page and a policy premium billing statement. The insured failed to pay the required premium before the payment due date and the policy lapsed due to non-payment. After she was later involved in an accident, the insured argued (as in the instant case) that the mailing of the renewal offer package itself constituted the issuance of a new six-month policy, and therefore the insurer was required to provide the statutory cancellation notice. *Id.* at 1001, 52 Conn. App. at 499-500.

The *Kane* Court rejected the argument that mailing a package of renewal documents to a policyholder in advance of a premium payment deadline constituted the issuance of a new policy, thus triggering any statutory obligations to provide notice of a cancellation. The

Court in *Kane* found simply that because the insured had not renewed the policy, there was no policy to cancel:

Kane never sent the defendant a payment, partial or otherwise. Therefore, since Kane's contract of insurance terminated on July 8, 1995, and since she did not accept the defendant's offer of renewal by paying the premium, the defendant was not required to cancel the policy. In other words, because no renewal was in effect, no written notice of cancellation was required. *Id.* at 1002-03, 52 Conn. App. at 502-03.

In the case at hand, Progressive mailed Mr. Daniel an offer to renew his policy on January 29, 2007. The renewal offer, as in the *Kane* case, included a Renewal Declarations Page, a certificate of coverage and insurance coverage cards. Mr. Daniel was clearly advised that his current policy would expire on February 23, 2007 unless he paid the renewal premium. Further, Progressive sent a "Renewal Reminder" on February 9, 2007, again advising Mr. Daniel that his policy would expire on February 23, 2007 unless the renewal premium was paid. The Circuit Court was correct in its finding that the policy expired on February 23, 2007, because Mr. Daniel failed to pay the renewal premium. But the lower Court erred in also holding that the offer to renew the policy somehow created a new insurance contract between the parties. As outlined above, the provisions of W.Va. Code § 33-6A-4(e) recognize that an insured's failure to pay the renewal premium is in fact a failure to accept the offer to renew, which in turn results in the expiration of the policy. While the insured may apply later to renew such policies with a lapse in coverage, there are no statutory requirements to provide any notice in such situations, nor is there any legal basis to conclude that a new contract has been formed.

B. The Circuit Court's reliance on Dairyland v. Conley as controlling law is misplaced and erroneous in that the Conley decision applies only to a narrow fact situation involving the cancellation of a newly-issued insurance policy upon the failure of the consideration paid for the initial premium by a new policyholder.

The lower Court erred in holding that *Dairyland Insurance Company v. Conley*, 624 S.E.2d 599, 218 W. Va. 252 (2005) was the controlling law dispositive of this case. The lower Court mistakenly applied the *Conley* standard to this situation which instead involved an offer to renew an existing policy. The *Conley* standard applies only to a narrow fact pattern where an insurance company issues a new policy and binds coverage immediately upon payment of a new premium, but that consideration subsequently fails due to insufficient funds. The Circuit Court's application of *Conley* to the instant case is incorrect in that *Conley* did not involve an offer to renew an existing policy nor the insured's failure to accept such offer.

The *Conley* case involved an application for a new automobile insurance policy by Ms. Conley, a new customer. Ms. Conley tendered a premium payment to the local agent and coverage was bound immediately via a new policy. However, her initial premium payment subsequently failed due to insufficient funds for the personal check she gave the agent. In the meantime, Ms. Conley was involved in an accident and sought insurance coverage for her loss. The insurer denied coverage due to the failure of the initial premium payment for the new policy and rescinded the policy back to the date of its inception.

Ms. Conley argued that coverage should exist anyway (despite the fact that she never actually paid any premium) because the insurer failed to properly cancel the new policy pursuant to *W. Va. Code* § 33-6A-1, in that the company failed to provide the minimum ten (10) days notice of cancellation. The relevant portion of *W. Va. Code* § 33-6A-1(e)(7) states:

Notwithstanding any of the provisions of this section to the contrary, no insurer may cancel a policy of automobile liability insurance without first giving the insured thirty days notice of its intention to cancel; *Provided*, That cancellation of the insurance policy by the insurer for failure of consideration to be paid by the insured upon initial issuance of the insurance policy is effective upon the expiration of ten days notice of cancellation to the insured. [Emphasis added.]

The West Virginia Supreme Court of Appeals agreed with Ms. Conley, holding that when an "insurance company chooses to issue a new automobile liability policy to a new customer, and there is later a failure of consideration to be paid by the customer in any fashion, *W. Va. Code* § 33-6A-1 requires the insurance company to afford the customer ten days notice before terminating the policy." [Emphasis added]. *Id* at 603-04, 218 W. Va. at 256-57.

It is important to note that in *Conley*, the insurance company bound coverage immediately and in fact issued a new policy. Such is not the factual scenario in the instant case. As clearly explained in the *Conley* decision, the ten day cancellation notice requirement set forth in *W. Va. Code* § 33-6A-1(e)(7) only applies to those instances where the insurance company actually issued a new policy to a new customer, upon payment of a premium, but then the initial payment made for that new policy later fails.

In this case, Progressive did not issue a new policy or bind coverage for a new policy to Mr. Daniel. Instead, Progressive simply offered to renew the existing policy for another six-month period upon payment of the required premium by the specified payment due date. Mr. Daniel opted not to tender such payment by the deadline, and the existing policy lapsed due to the non-payment. This situation is clearly different from the one involved in *Conley*, in which a payment was made and the insurance company did in fact issue a new policy to a new customer in return for such payment and bound coverage immediately.

The only time that Progressive ever issued a policy to Mr. Daniel was on August 23, 2006. The requirements of *W. Va. Code* § 33-6A-1(e)(7) to provide ten days notice of a cancellation were not triggered in this case because thereafter no new policy was ever issued, nor was there any failure of the initial premium payment.

The *Conley* decision never addressed a situation such as the one at hand, where the insurance company made an offer to renew an existing policy but the insured failed to accept such offer. The lower Court was mistaken to rely on *Conley* as controlling law in this matter due to the significant factual differences involved.

C. Public policy dictates that renewal information and proof of insurance cards be provided promptly to policyholders so they can evaluate the offer to renew as well as comply with the requirements of W. Va. Code § 17D-2A-4(a), and providing such materials to customers in advance of the premium payment due date does not in and of itself create a new insurance contract.

The Circuit Court erred in holding that the cancellation notice requirements of *W. Va. Code* § 33-6A-1(e)(7) apply to situations where an insurance company provides a declarations page and proof of insurance cards to a customer as part of a renewal offer package, in advance of any payment of the renewal premium being made to renew such policy. In its Order granting Summary Judgment in favor of T.C.'s Used Cars, the lower Court reached the conclusion, without citing any supporting law, that the mere "act of sending a declarations page, certificate of insurance, and proof of insurance cards creates an obligation to provide ten (10) days written notice of cancellation under the statute." *Summary Judgment Order*, p. 6. However, there is no basis in West Virginia law for such conclusion, nor did the Court cite any authority to support this position.

Insurance companies routinely mail renewal packages to thousands of West Virginia customers every month. These materials are sent in advance of the upcoming expiration date for a current insurance policy. The materials often include a declarations page which details the various types and levels of insurance coverage which can be renewed and the premium to be charged for each coverage. The insurance company sends these materials as an offer to renew the policy for an additional policy period, at the terms, coverage levels and prices set forth therein, provided that payment of the appropriate premium is made before the specified due date. This process allows customers the opportunity to review and evaluate such offers, to comparison shop for other products or with other insurance companies, and to decide whether or not to renew the policy for another period.

These renewal packages also contain "proof of insurance cards" which can be carried by customers in their vehicles as required by West Virginia law. *W. Va. Code* § 17D-2A-4(a) requires that all insurers transacting insurance in this State "shall supply a certificate to the insured...certifying that there is in effect a motor vehicle liability policy upon such motor vehicle." Insurance companies are mandated by West Virginia law to provide such proof of insurance cards to policyholders. These cards are routinely included in advance as part of the renewal offer package. The accompanying materials make it very clear that the cards are valid only upon payment of the required premium by the specified due date deadline.

This is the most efficient manner for insurance companies to provide such cards to their customers. The customer has the cards in hand and ready for immediate use upon the new effective date when the payment is tendered and the policy has been renewed. Thus, there is no delay as would be the case in requiring customers to first submit the payment to the insurance

company, wait for the payment to be processed, and then have the company later send proof of insurance cards after the fact.

In the case at hand, Progressive provided proof of insurance cards to Mr. Daniel as part of the renewal offer package of materials sent to him on January 29, 2007. Without knowing in advance whether or not any customer will pay the premium to renew a policy, this is the most efficient manner for companies to supply such cards to policyholders. If Mr. Daniel had opted to renew the policy and had made the requisite payment prior to the due date of February 25, 2007, the cards would have been effective immediately and he would have had proof of insurance coverage in hand, thus satisfying the requirements of *W. Va. Code* § 17D-2A-4(a).

In the case of *Adamson v. State Farm Mutual Automobile Insurance Company*, 676 So.2d 227 (La. Ct. App. 1996), the Louisiana Court noted a Louisiana state statute similar to *W. Va. Code* § 17D-2A-4 which also required insurers to provide proof of insurance cards and required motorists to carry such cards in their motor vehicles. The Court rejected the argument in *Adamson* that the mere issuance of such cards in advance of a renewal constituted a renewal of the policy itself. The Court in *Adamson* agreed with State Farm's position that "identification cards are provided to the insured to fulfill his obligation under LSA-R.S. 32:863.1, not to acknowledge actual renewal of the policy." *Id* at 233. The Court also noted that "[g]enerally, identification cards are issued in anticipation of renewal and are sent to the insured with the renewal notice or sometime shortly after the notice is sent." *Id*.

As stated above, declarations pages and proof of insurance cards are routinely sent to thousands of automobile insurance customers each and every month throughout West Virginia by hundreds of different insurance companies as part of renewal packages. These

materials provide valuable information to consumers as they evaluate and decide which insurance products to purchase for their families. These materials allow consumers to make informed choices and decisions regarding whether or not to renew a particular insurance policy pursuant to the renewal offer.

If the Circuit Court's ruling below is allowed to stand, and the mailing of such materials to consumers as part of a renewal offer package is now to be viewed as constituting the issuance of an actual policy (despite that fact that no premium may ever be paid), this will cause hundreds of insurance companies across the nation to change their renewal operations and procedures for their West Virginia customers. It will necessitate significant operational and procedural changes to be implemented for all West Virginia automobile insurance policies. It will require extensive programming changes for computer and automated systems which generate such documents. This will result in increased operational costs for those insurance companies doing business in West Virginia, which will be passed on to West Virginia consumers in their premiums.

It will also serve to create a paradox. Insurance companies will no longer provide declarations page information to customers as part of any renewal offer in advance of a premium payment being made for the renewal, for fear that providing such materials will somehow constitute the issuance of a new policy. Companies will no longer provide proof of insurance cards to customers unless and until a premium payment has been received and processed, which will result in delays for consumers and will cause situations where customers won't have such cards in hand in a timely manner, thus violating the requirements of W. Va. Code § 17D-2A-4(a). All of this will ultimately result in delays and frustrations for West Virginia consumers who are trying to evaluate the terms and prices for any renewal in the materials provided.

It is also important to note that proof of insurance cards are usually provided to customers in increments of six month periods. In the case at hand, the issue revolves around whether or not a premium was paid at the outset of that six month period. But, there are other situations where customers pay their premiums on a monthly basis. Sometimes the payment for the first few months is paid and the insurance is in effect at the outset, but then the customer stops paying and the policy is cancelled mid-term due to non-payment. In such instances, the customer still retains physical possession of those proof of insurance cards, which continue to display pre-printed information showing coverage for the full six-month period. These cards are not returned to the insurance company by the customer when the policy is later cancelled. Following the flawed logic of the lower Court's Order, such situations would also necessitate a finding that insurance coverage still exists (despite the non-payment and cancellation of the policy) simply because the customer still retains physical possession of a printed card which purports to show six months of insurance coverage. Again, as noted in the *Adamson* decision, *supra*, mere possession of paper identification cards does not, in and of itself, prove actual renewal of an insurance policy or the existence coverage under a policy.

V. CONCLUSION

The Circuit Court of Putnam County, West Virginia, erred when it held that the insurer's offer to renew Mr. Daniel's policy for the period of February 23, 2007 to August 23, 2007 constituted the issuance of a new insurance policy. The Circuit Court also erred in holding that the *Conley* decision was controlling law in this matter, thereby requiring ten days notice of a cancellation, when in fact the existing policy simply expired due to non-payment of the renewal premium. Finally, in considering the propriety of the lower Court's decision, this Court should

be mindful of the public policy considerations which are implicated for West Virginia's insurance consumers if the lower Court's Order is allowed to stand.

Based on the foregoing, the West Virginia Insurance Federation respectfully requests that, this Court reverse the Circuit Court's decision granting Summary Judgment in favor of the Appellees.

WEST VIRGINIA INSURANCE FEDERATION

BY DINSMORE & SHOHL, LLP

A handwritten signature in black ink, appearing to read "Jill C. Bentz", is written over a horizontal line.

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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

**PUTNAM BANCSHARES, INC., a West Virginia corporation
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a West Virginia limited liability company,**

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V.

PROGRESSIVE CLASSIC INSURANCE COMPANY,

Appellant.

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HON. O.C. SPAULDING, JUDGE**

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of April, 2009, a true and correct copy of the
"BRIEF OF THE WEST VIRGINIA INSURANCE FEDERATION AS *AMICUS CURIAE*"
has been served upon the following counsel by U.S. Mail, postage prepaid, addressed as follows:

Christopher S. Smith
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Charleston, WV 25301

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A handwritten signature in black ink, appearing to read "John M. Canfield". The signature is written in a cursive style with a large initial "J" and "C".

John M. Canfield (WV State Bar No. 4663)