

35525

BEFORE THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

APPEAL NO. ~~09T903~~

CORA PHILLIPS HAIRSTON, et al,

Plaintiffs,

v.

Petition for Review of Certified Questions  
from the Circuit Court of Logan County,  
Civ. Action No. 06-C-238  
(Consolidated with Civil Action Nos. 06-C-  
239, 06-C-240, 06-C241, and 07-C-234)

GENERAL PIPELINE CONSTRUCTION,  
INC., et al.,

Defendant/Third Party Plaintiff

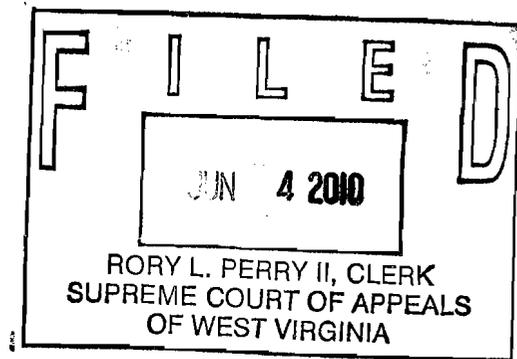
And

GENERAL PIPELINE CONSTRUCTION,  
INC.

v.

MOUNTAIN STATE INSURANCE  
COMPANY,

Third-Party Defendant



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**EQUITABLE PRODUCTION COMPANY'S RESPONSE TO BRIEF OF GENERAL  
PIPELINE CONSTRUCTION, INC. REGARDING CERTIFIED QUESTIONS  
PRESENTED**

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**PRESENTED BY:**

Brian Swiger (WVSB # 5872)  
Rodney W. Stieger (WVSB # 11139)  
Ryan E. Voelker (WVSB # 11159)  
JACKSON KELLY PLLC  
Post Office Box 553  
Charleston, West Virginia 25322  
(304) 340-1000  
*Counsel for Respondent Equitable Production Company*

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## **II. INTRODUCTION**

Equitable Production Company (“Equitable Production”), as a co-defendant in the underlying case and Respondent in the matter before this Court, agrees with the majority of the assertions and authorities included in Petitioner/co-defendant General Pipeline Construction, Inc.’s (“General Pipeline”) *Brief of General Pipeline Construction, Inc. Regarding Certified Questions Presented*. This Response, filed pursuant to West Virginia Code § 58-5-2 (2009) and the West Virginia Rules of Appellate Procedure, only addresses issues that Equitable Production is not in full agreement with General Pipeline and the Circuit Court of Logan County (“Circuit Court”). Specifically, Equitable Productions asserts that 1) the Circuit Court failed to include that the allegedly desecrated grave must be located in a cemetery maintained by public authority or private enterprise in its elements for a common law cause of action for desecration and 2) the Circuit Court incorrectly determined that a cause of action exists in West Virginia for the “indirect desecration” of a grave site located in a cemetery maintained by public authority or private enterprise.

## **III. KIND OF PROCEDURE AND NATURE OF RULING BELOW**

In 2006 and 2007, Respondent/Plaintiffs (“Plaintiffs”) filed multiple complaints alleging, among other claims, that General Pipeline and Equitable Production desecrated grave sites in an area that they deemed to constitute a cemetery.<sup>1</sup> The Plaintiffs’ actions were later consolidated into one action, the underlying case instituting the certified questions before this Court.<sup>2</sup>

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<sup>1</sup> Plaintiffs’ Amended Complaint, October 13, 2006

<sup>2</sup> Order Granting Motion to Consolidate Actions, February 20, 2007 and Consolidation Order, November 7, 2007.

The Plaintiffs claim to be descendants of some of the decedents alleged to be buried in the area in question. The Plaintiffs argue that the area was a “cemetery” and that any graves contained therein were desecrated by operation of a bulldozer in their general vicinity. General Pipeline and Equitable Production contend that the area is not a “cemetery” as defined by West Virginia law.

Since a large majority of the grave sites were unaffected, Plaintiffs contend that the grave sites of their ancestors were “indirectly desecrated” by General Pipeline and Equitable Production. General Pipeline and Equitable Production repeatedly challenged the existence of an indirect desecration cause of action in West Virginia and filed motions and renewed motions for summary judgment.

In response to General Pipeline’s and Equitable Production’s motions for summary judgment and renewed motions for summary judgment, the Circuit Court held that a cause of action for “indirect desecration of a cemetery” exists in West Virginia.<sup>3</sup> The Circuit Court refrained from making further determinations regarding “indirect desecration” and defining “cemetery” in the context of a common law cause of action for desecration, but in the alternative, determined that in the absence of West Virginia statutory and common law precedent, it needed guidance from the Supreme Court of Appeals of West Virginia on several issues concerning desecration claims. The Honorable Roger L. Perry of the Circuit Court of Logan County, in his *Order Certifying Questions to the Supreme Court of Appeals* dated November 16, 2009,

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<sup>3</sup> Judge Perry’s Letter Ruling, December 12, 2007.

submitted certified questions concerning matters of first impression in West Virginia to the Supreme Court of Appeals.

### III. STATEMENT OF FACTS

In the summer of 2004, Equitable Production contracted with General Pipeline to lay a gas pipeline through a large tract of unimproved land located in the Crystal Block Hollow area of Logan County, West Virginia. On August 7, 2004, to facilitate a portion of the project, a General Pipeline employee maneuvered a small bulldozer through thick brush and foliage down a hill to a connector road in order to retrieve a flat-bed truck carrying needed supplies. Unbeknownst to the employee, there were grave sites hidden on the hillside due to the brush and foliage. The employee, General Pipeline, and Equitable Production had no indication that grave sites were present as there was nothing in public records, maps, any visible markings from the employee's vantage point, or enclosures delineating a cemetery. According to the Plaintiffs' own expert, no grave shafts were actually located in the path of the bulldozer.<sup>4</sup>

### IV. CERTIFIED QUESTIONS

The Circuit Court of Logan County, in its *Order Certifying Questions to the Supreme Court of Appeals*, certified the following questions:

**1. Does W.Va. Code § 29-1-8a preempt a common law cause of action for direct or indirect desecration of a grave?**

**Answer of the Lower Court:** Yes, except as to claims for the desecration of graves and related items in a publicly or privately maintained cemetery or of graves less than fifty years old.

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<sup>4</sup> Plaintiffs' expert William D. Updike's August 23, 2007 Report.

**2. What are the elements of a common law action for desecration of a grave, grave site, cemetery or burial ground?**

**Answer of the Lower Court:** The elements of a common law cause of action for the desecration of a grave in a publicly or privately maintained cemetery are:

1. that it is shown that a cemetery, with identifiable boundaries and limits, exists at the place alleged;
2. that it is shown that the area was dedicated to the purpose of providing a place of burial by the owner of the property or that the owner acquiesced in its use for burial;
3. that it is shown that the area was identifiable as a cemetery by its appearance prior to the defendant's entry onto the area or it is shown that the defendant had prior knowledge of the existence of the cemetery;
4. that it is shown that the decedent in question is interred in the area;
5. that it is shown that the decedent in question was interred by license or right;
6. that it is shown that the plaintiff is the next of kin of the decedent in question with the right to assert a claim for desecration;
7. that it is shown that the person charged with the desecration defaced, damaged, or otherwise mistreated the physical area or the contents of the cemetery in a way that a reasonable person knows will outrage the sensibilities of others.

**3. What are the recoverable damages in a common law action for desecration of a grave, grave site, cemetery, or burial ground?**

**Answer of the Lower Court:** Nominal damages at least, are awardable, and compensatory damages may be recovered if actual damage is shown; damages for mental distress may be awarded; and punitive damages may be awarded if a plaintiff can prove that the defendant's conduct was willful, wanton, reckless, or malicious.

**4. Does West Virginia recognize a common law cause of action for indirect desecration of a grave, grave site, cemetery or burial ground? If so, what are the elements of such a cause of action and what are the recoverable damages?**

**Answer of the Lower Court:** A cause of action for the indirect desecration of a grave site located in a publicly or privately maintained cemetery is permitted in West Virginia. The elements of such a cause of action are the same as those identified in the Answer to Question 2, above, plus: It must be shown that the indirect desecration has, in some manner, affected the specific grave site made the subject of the claim in such a manner as to outrage the sensibilities of others.

**5. Who are the “next of kin” who possess the right to recover in a common law cause of action for direct or indirect desecration of a grave?**

**Answer of the Lower Court:** The decedent’s surviving spouse or, if not now living, then the now living person or class of persons of closest and equal degree of kinship in the order provided by West Virginia Code § 42-1-1, *et seq.*

*(Order Certifying Questions to the Supreme Court of Appeals, November 16, 2009).*

Equitable Production seeks to have this Honorable Court fully state the elements of a common law cause of action for the desecration of a grave as addressed below in its response to the Circuit Court’s answer to Certified Question No. 2, refuse to allow an “indirect desecration” claim by reversing the Circuit Court’s ruling regarding Certified Question No. 4, and adopt the rulings regarding Certified Question Nos. 1, 3, and 5. Although Equitable Production agrees with the Circuit Court’s answers to (and General Pipeline’s arguments regarding) Certified Questions 1, 2, 3, and 5, Equitable Production contends that the Circuit Court 1) should have included in its elements for a common law cause of action that the alleged desecrated grave must be located in a cemetery maintained by public authority or private enterprise before a cause of action exists and 2) incorrectly determined that a cause of action for the “indirect desecration” of a grave site located in a publicly or privately maintained cemetery exists in West Virginia. Accordingly, Equitable Production respectfully requests that this Honorable Court adopt the Circuit Court of Logan County’s rulings with regard to Certified Question Nos. 1, 3, and 5, further address Certified Question No. 2, and reverse its ruling on Certified Question No. 4.

**V. DISCUSSION OF LAW**

**A. Standard of Review**

The Supreme Court of Appeal’s review of a Circuit Court’s answer to a certified question is reviewed *de novo*. *Smith v. State Consol. Pub. Ret. Bd.*, 222 W.Va. 345, 664 S.E.2d 686

(2008) citing Syl. Pt. 1, *Gallapoo v. Wal-Mart Stores, Inc.*, 197 W.Va. 172, 475 S.E.2d 172 (1996). This Honorable Court may reformulate a certified question in order to fully address the law which is involved in the question. See Syl. Pt. 3, *Kincaid v. Mangum*, 189 W. Va. 404, 432 S.E.2d 74 (1993).

**B. An alleged desecrated grave must be located in a cemetery maintained by public authority or private enterprise for a common law cause of action of desecration of a grave to exist.**

In Certified Question No. 2, the Circuit Court was asked to list the elements of a common law action for desecration of a grave, grave site, cemetery or burial ground.<sup>5</sup> The Circuit Court, in its answer, stated:

The elements of a common law cause of action for the desecration of a grave in a publicly or privately maintained cemetery are:

1. that it is shown that a cemetery, with identifiable boundaries and limits, exists at the place alleged;
2. that it is shown that the area was dedicated to the purpose of providing a place of burial by the owner of the property or that the owner acquiesced in its use for burial;
3. that it is shown that the area was identifiable as a cemetery by its appearance prior to the defendant's entry onto the area or it is shown that the defendant had prior knowledge of the existence of the cemetery;
4. that it is shown that the decedent in question is interred in the area;
5. that it is shown that the decedent in question was interred by license or right;
6. that it is shown that the plaintiff is the next of kin of the decedent in question with the right to assert a claim for desecration;
7. that it is shown that the person charged with the desecration defaced, damaged, or otherwise mistreated the physical area or the contents of the cemetery in a way that a reasonable person knows will outrage the sensibilities of others.

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<sup>5</sup> This certified question presumably did not include "unmarked graves" as defined by W.Va. Code § 29-1-8a(b)(2).

(*Order Certifying Questions to the Supreme Court of Appeals*). While Equitable Production agrees with all of the Circuit Court’s elements for a common law cause of action for desecration of a grave, it submits that an alleged desecrated grave must be located in a cemetery maintained by public authority or private enterprise for a common law desecration cause of action to exist.

Equitable Production agrees with the Circuit Court’s assertion in its answer to Certified Question No. 1 that “W.Va. Code § 29-1-8a preempts civil actions for desecration of grave sites outside publicly or privately maintained cemeteries . . . .” *Id.* at 6. Thus, the grave site must be located in a cemetery maintained by public authority or private enterprise for a common law cause of action for desecration of a grave or grave site to exist. *See* W.Va. Code § 29-1-8a (2009).

The Supreme Court of Appeals of West Virginia has provided:

A cemetery is a place where dead bodies of human beings are buried; it is a place or area of ground **set apart** for the burial of the dead, **either by public authority or private enterprise**. It includes not only lots for depositing the bodies of the dead, but also such avenues, walks and grounds as may be necessary for its use, or for shrubbery and ornamental purposes.

Syl. Pt. 3, *In re Hillcrest Memorial Gardens, Inc.*, 146 W. Va. 337, 119 S.E.2d 753 (1961) (emphasis added). The Supreme Court of Appeals has not defined “set apart,” but it has explained that any land may be dedicated for cemetery purposes, and no form or ceremony is required. *See Concerned Loved Ones and Lot Owners Assoc. of Beverly Hills Mem’l Gardens v. Pence*, 181 W. Va. 649, 654, 383 S.E.2d 831, 836-37 (1989). It explained that “[t]he intent of the owner of the land to dedicate it for a public cemetery, together with the acceptance and use of the same by the public, or the consent and acquiescence of the owner in the long continued use of his lands for such purpose” is sufficient for the dedication. *Id.*

In a related West Virginia statute governing the sale of part of a cemetery, the Legislature states “[n]o desecration shall be made of any grave or monument, or any of the walks, drives, trees, or shrubbery **within the enclosure** of any burial grounds.” W.Va. Code § 35-5-2 (2009). Thus, it is inferred that a cemetery or other burial ground must be enclosed or have visible designated limits. *See also Sherrard v. Henry*, 88 W. Va. 315, 106 S.E. 705 (1921). The common definition of “enclosed” is “to surround; to shut in; to fence in.” Webster’s Unabridged Dictionary 597 (1992). It is abundantly clear that a cemetery must be distinguishable from the surrounding area. *See England v. Central Pocahontas Coal Co.*, 86 W.Va. 575, 580, 104 S.E. 46 (1920) (“Generally, a cemetery lot in the country is a notable object and has well-defined boundaries and is easily identified.”); *In re Lane*, 51 W. Va. Op. Atty. Gen. 28, 1964 WL 72575 (W.Va. A.G. 1964) (“What creates the cemetery is the act of setting the ground apart for burial of the dead—marking and distinguishing it from adjoining ground as a place of burial); *Castro Romero v. Becken*, 256 F.3d 349, 355 (5th Cir. 2001) (finding that the oral history of the land as a burial ground is not sufficient to distinguish the land as a “cemetery” for purposes of protection by a Texas statute.)

Jurisdictions around the country have stated that a cemetery must be provided the necessary attention and kept in a functioning condition, good appearance, and sacred character in order to retain the security a cemetery requires. *See e.g. Sanford v. Vinal*, 552 N.E.2d 579, 585-86 (Mass. App. 1990) (“[W]here the family has ceased to visit the cemetery and where they have so long neglected to care for it that the ground is no longer recognizable as a cemetery, the family burial ground has been abandoned, and with it the private standing of the descendants to require that those who own the land abstain from using the land for other purposes.”); *Mayes v. Simons*, 8 S.E.2d 73, 75-76 (Ga. 1940) (“[Whereby] neglect and inattention for more than fifty

years the graves had ceased to bear any sign likely to attract attention to their existence...the space...had lost all appearance as a cemetery...and those interested in its use, have failed to keep and preserve it as a resting place for the dead, and have permitted it to be thrown out to the commons, the graves worn away, gravestones and monuments to be destroyed, so that the graves have lost their identity, or if it has been so treated or neglected by the public as to entirely lose its identity as a graveyard, and is no longer known, recognized, and respected as such, then it has been abandoned.”) (citations omitted).

As stated in *In re Hillcrest Memorial Gardens, Inc.*, this Court’s definition of “cemetery” requires that it be maintained by a public authority or private enterprise. Using the plain meaning of the words, “public authority” would refer to any public agency located in the state of West Virginia, or any city or municipality located therein, with the authority to maintain a cemetery as designated by the laws of West Virginia; a “private enterprise” would refer to any organization that is in the business of selling burial plots within a privately owned cemetery and is responsible for the upkeep of such cemetery. The cemetery maintained by public authority or private enterprise must be set apart and easily distinguishable from the surrounding area as noted in *Hillcrest, England, and Lane*.

Thus, in order for Plaintiffs to have valid common law desecration claims, they must prove that their ancestor’s allegedly desecrated grave is located in a cemetery maintained by a public agency with the authority to do so under West Virginia law or a private organization that is in the business of running and maintaining a cemetery. They must also prove that the cemetery has been properly maintained and is set apart and distinguishable from the surrounding area. As such, Equitable Production respectfully requests this Honorable Court to clearly identify all elements for a common law desecration of a grave or grave site cause of action,

including that the grave or grave site must be located in a cemetery maintained by public authority or private enterprise.

**C. A common law cause of action for the indirect desecration of a grave site located in a publicly or privately maintained cemetery does not exist in West Virginia.**

The Circuit Court determined that a cause of action for the “indirect desecration” of a grave site located in a publicly or privately maintained cemetery is permitted in West Virginia. According to the Circuit Court, the elements for “indirect desecration” are the same as those identified in the Circuit Court’s Answer to Certified Question No. 2, above, plus:

It must be shown that the indirect desecration has, in some manner, affected the specific grave site made the subject of the claim in such a manner as to outrage the sensibilities of others.

The Circuit Court’s creation of the cause of action for “indirect desecration,” by its own admission, is not supported by West Virginia precedent and further, is not permitted under the principle of standing. “Standing is defined as a party’s right to make a legal claim or seek judicial enforcement of a duty or right. Ultimately, the question of standing is whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues.” *State v. Brandon B.*, 218 W. Va. 324, 328, 624 S.E.2d 761, 765 (2005). There are three elements which must be present in order for a party to have standing:

1) the party attempting to establish standing must have suffered an “injury-in-fact”—an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent and not conjectural or hypothetical; 2) there must be a causal connection between the injury and the conduct forming the basis of the lawsuit; and 3) it must be likely that the injury will be redressed through a favorable decision of the court.

*Id.*

There is no question that descendants of near relatives in West Virginia have a legally protected interest in marked graves or grave sites located in cemeteries which are maintained by

public authority or private enterprise. See *Bennett v. 3 C Coal Co.*, 180 W. Va. 665, 669, 379 S.E.2d 388, 392 (1989). Moreover, the direct desecration of such graves or grave sites would certainly cause a compensable injury, thus providing them with standing to bring suit. *Id.* However, those rights do not provide the descendants here with standing to assert a claim based on a third party's actions where there was no injury to a grave or grave site, unless that claim is pursuant to another theory of law such as intentional infliction of emotional distress or trespass. Without an injury to the specific grave or grave site, the relatives asserting an "indirect desecration" claim lack the interest needed to have standing.

In its answer to the certified questions, the Circuit Court cited four sources to support its finding that West Virginia recognizes a cause of action for "indirect desecration:" 1) the *Bennett* case; 2) the legislative intent behind the enactment of West Virginia Code § 29-1-8a; 3) *Caufield v. The Fidelity and Casualty Company of New York*, 247 F. Supp. 851 (D.C. La. 1965); and 4) *Humphreys v. Bennett Oil Corporation*, 197 So. 222 (La. 1940). See December 12, 2007 Letter Ruling.

*Bennett* essentially stands for the proposition that a cause of action exists "for the unlawful desecration of a grave site even though no disturbance of the body interred therein can be shown." *Bennett*, 379 S.E.2d at 393. The *Bennett* court supported its holding with numerous decisions from outside jurisdictions all generally holding defendants liable for the disruption, damage, or destruction of graves or grave sites.<sup>6</sup>

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<sup>6</sup> See *Id.* (citing *Nichols v. Woodward Iron Co.*, 103 So.2d 319 (Ala. 1958) (surface of grave was cracked); *Ferguson v. Utilities Elkhorn Coal Co.*, 313 S.W.2d 395 (Ky. 1958) (dumping coal refuse on graves); *Growth Properties I v. Cannon*, 669 S.W.2d 447 (Ark. 1984) (construction of temporary access road over graves); *Dennis v. Keillor*, 306 N.W.2d 324 (Mich. App. 1981) (damage to tombstone); *Perry v. Cullipher*, 318 S.E.2d 354 (N.C. App. 1984) (damage to gravestone).

The Circuit Court correctly noted that *Bennett* created a cause of action where damage was done to some direct component of a particular grave, grave site, tombstone, the earth that makes up the grave, etc. Nevertheless, the Circuit Court believed that *Bennett*, when analyzed in concert with § 29-1-8a and the Louisiana cases, provided a sufficient basis in which to create a new cause of action in West Virginia.

In West Virginia Code § 29-1-8a(a), the legislature stated:

The Legislature finds that there is a real and growing threat to the safety and sanctity of unmarked human graves in West Virginia and the existing laws of the state do not provide equal or adequate protection for all such graves. As evident by the numerous incidents in West Virginia which have resulted in the **deseccration of human remains and vandalism to grave markers**, there is an immediate need to protect the graves of earlier West Virginians from such deseccration. Therefore, the purpose of this article is to assure that all human burials be accorded equal treatment and respect for human dignity without reference to ethnic origins, cultural backgrounds, or religious affiliations.

(emphasis added). The Circuit Court noted that the section above did not create a statutory cause of action for “indirect deseccration.” As highlighted above, the code provision merely mentions the deseccration of “human remains” and the vandalism to “grave markers.” Nonetheless, the Circuit Court felt that this provision supported a new cause of action.

Lastly, the Circuit Court cited two Louisiana cases addressing deseccration. *Caufield* concerned a landowner who hired a contractor to clear out the overgrown portion of his land, which included a cemetery. *Caufield*, 247 F. Supp. at 852. Based on its application of *Humphreys, infra*, the court held that it would have been sufficient for the plaintiffs to prove that any of the graves in the cemetery, or any part of the cemetery, had been deseccrated. *Id.* at 854.

In *Humphreys*, the defendants' activities were far more blatant. The property on which the cemetery sat was "literally converted into an oil field."<sup>7</sup> *Humphreys*, 197 So. at 224. The issue was whether the plaintiffs could recover even though their relatives' graves were not disturbed. *Id.* at 228. The court allowed recovery, holding that the plaintiffs had an interest not only in the specific grave locations, but also "in the cemetery as a whole, and therefore such [a] flagrant violation . . . of the sanctity of any part of this small plot was calculated to cause mental anguish and suffering to those who have relatives buried there." *Id.* (emphasis added).

*Humphreys* was really a claim for intentional infliction of emotional distress. In its recitation of Louisiana law, the *Humphreys* court remarked that Louisiana had repeatedly permitted actions "to recover damages for mental anguish, pain, and suffering caused by the fault of another, and that damages may be assessed without calculating altogether on the pecuniary loss . . . ." *Id.* at 224. Moreover, the court's holding, which permitted the plaintiffs to recover despite the absence of any disturbance to the grave sites themselves, was based on the finding of a "flagrant violation . . . calculated to cause mental anguish . . . ." *Id.* *Humphreys* did not create a new cause of action; rather it recognized a new set of facts in which to apply old law. *See also, Growth Properties I v. Cannon*, 669 S.W.2d 447 (Ark. 1984) (holding a cemetery company liable for the intentional infliction of emotional distress for permitting heavy vehicles to be driven directly over top of the graves of plaintiffs' family members in a cemetery). Because *Caufield* based its analysis entirely on *Humphreys* without observing this distinction, its analysis on this issue should be disregarded.

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<sup>7</sup> Specifically, the defendants constructed on the cemetery: two derricks, a tool-shed, two storage tanks, a mud box, a mud tank, and pipe racks were erected. *Id.* Four engines and boilers, mud pumps, and pipelines for conveying slush from the wells to the pits and from the pits back to the wells were used. Two excavations six feet deep were made for slush pits. *Id.* The pipelines were elevated about four feet above the ground and run over one corner of the Humphreys' grave-lot within eight feet of a tomb, but not over the graves themselves. *Id.*

Accordingly, scenarios like *Humphreys*, where a party acts in an outrageous manner, would permit West Virginia plaintiffs to assert a claim for the intentional infliction of emotional distress. The only other existing claim in West Virginia where cemetery graves or grave sites are not desecrated would be one for trespass, brought by a party with a real property interest in the cemetery.

In consideration of the aforementioned authorities, Equitable Production respectfully requests this Honorable Court to conclude that the Circuit Court's finding that a cause of action for "indirect desecration" exists under West Virginia law was erroneous. Neither *Bennett*, nor the pertinent portions of West Virginia Code § 29-1-8a provide a basis for the court to "develop" a new theory of recovery. Instead, any damage to plaintiffs' interests in cemeteries or their relatives' grave sites must be pursued under recognized theories of law which provide the necessary standing to litigate. Therefore, this Court should reverse the Circuit Court's ruling regarding Certified Question No. 4.

## VI. RELIEF REQUESTED

For the above reasons, Equitable Production contends that the Circuit Court 1) should have determined that an alleged desecrated grave or grave site must be located in a cemetery maintained by public authority or private enterprise before a common law cause of action for desecration of a grave or grave site exists and 2) incorrectly determined that a cause of action for the "indirect desecration" of a grave site located in a publicly or privately maintained cemetery exists in West Virginia. Accordingly, Equitable Production respectfully requests that this Court adopt the Circuit Court of Logan County's rulings with regard to Certified Question Nos. 1, 3, and 5, clearly define the elements of a common law cause of action for the desecration of a grave

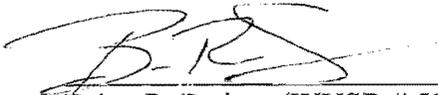
or grave site with regard to Certified Question No. 2, and reverse the Circuit Court's ruling on Certified Question No. 4.

**VII. REQUEST FOR ORAL ARGUMENT**

Equitable Production respectfully requests that the Court permit it to present oral argument in support of this Response to Brief of General Pipeline Construction, Inc. Regarding Certified Questions Presented.

**EQUITABLE PRODUCTION COMPANY**

**By Counsel**



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Brian R. Swiger (WVSB # 5872)  
Rodney W. Stieger (WVSB # 11139)  
Ryan E. Voelker (WVSB # 11159)  
JACKSON KELLY PLLC  
1600 Laidley Tower  
Post Office Box 553  
Charleston, West Virginia 25322  
*Counsel for Equitable Production Company*

BEFORE THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

APPEAL NO. 091903

CORA PHILLIPS HAIRSTON, et al,

Plaintiffs

v.

Petition for Review of Certified Questions  
from the Circuit Court of Logan County,  
Civ. Action No. 06-C-238  
(Consolidated with Civil Action Nos. 06-C-  
239, 06-C-240, 06-C241, and 07-C-234)

GENERAL PIPELINE  
CONSTRUCTION, INC., *et al.*,

Defendant/Third Party Plaintiff

And

GENERAL PIPELINE  
CONSTRUCTION, INC.

v.

MOUNTAIN STATE INSURANCE  
COMPANY,

Third-Party Defendant

**CERTIFICATE OF SERVICE**

I, Brian R. Swiger, counsel for the Petitioner, Equitable Production Company, do hereby certify that a true and exact copy of the attached **Response to Brief of General Pipeline Construction, Inc. Regarding Certified Questions Presented** was served upon counsel as indicated below by United States mail, postage prepaid, this **4<sup>th</sup> day of June, 2010**, addressed as follows:

Kevin W. Thompson, Esquire (WVSB #5062)  
David R. Barney, Jr. (WVSB #7958)  
THOMPSON BARNEY, PLLC  
31 East Second Street  
Williamson, West Virginia 25661  
*Counsel for Plaintiffs*

Kevin A. Nelson, Esquire (WVSB #2715)  
HUDDLESTON BOLEN LLP  
Post Office Box 3786  
Charleston, West Virginia 25337-3786  
*Counsel for Third-Party Defendant*  
*Mountain State Insurance Company*

Daniel R. Schuda, Esquire (WVSB #3300)  
SCHUDA & ASSOCIATES, PLLC  
Post Office Box 3425  
Charleston, West Virginia 25335-3425  
*Counsel for Defendant*  
*General Pipeline Construction, Inc.*



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Brian R. Swiger (WVSB # 5872)  
JACKSON KELLY PLLC  
1600 Laidley Tower  
P.O. Box 553  
Charleston, West Virginia 25322  
(304) 340-1317