

Nos. 051511; 051573; 051668
IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA
At Charleston

LOLA CRIST, widow of MACK O. CRIST,

Petitioner,

v.

**WEST VIRGINIA WORKERS' COMPENSATION
COMMISSION and RANGER CONSTRUCTION
INDUSTRIES, INC.,**

Respondents.

and

KATHY SWEET and DIANA DICKERSON,

Petitioners,

v.

**WEST VIRGINIA WORKERS' COMPENSATION
COMMISSION; GREGORY A. BURTON, EXECUTIVE
DIRECTOR, WORKERS' COMPENSATION COMMISSION
STATE OF WEST VIRGINIA; MEADOW RIVER COAL
COMPANY; and LIGHTNING CONTRACT SERVICES, INC.,**

Respondents.

and

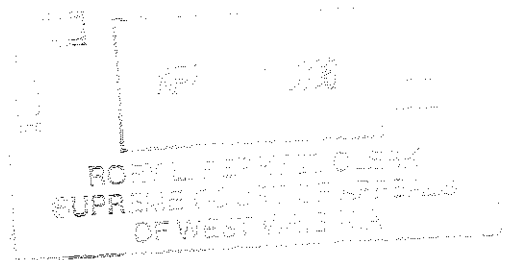
**GEORGETTE CARTE (WIDOW OF
ROBERT CARTE); SHERRY GRUBB
(WIDOW OF WETZEL GRUBB); and
JACKIE JENKINS (WIDOWER OF
PATRICIA JENKINS);**

Petitioners,

v.

**GREGORY A. BURTON, EXECUTIVE DIRECTOR
OF WEST VIRGINIA WORKERS' COMPENSATION
COMMISSION, and WEST VIRGINIA WORKERS'
COMPENSATION COMMISSION,**

Respondents.



**MOTION OF COMMISSION TO DISMISS CONSOLIDATED
PETITIONS FOR WRITS OF MANDAMUS AND TO VACATE
RULES TO SHOW CAUSE**

Previously, these separate petitions for Writs of Mandamus were consolidated by Order of this Court dated October 6, 2005. Thereafter, by order dated March 29, 2006, this Court issued rules to show cause in these consolidated petitions for Writs of Mandamus returnable May 10, 2006.

On this date, the real party in interest, Office of Insurance Commissioner as Administrator of the Old Fund¹, restores and reinstates the dependents' death benefits of each petitioner herein and with such benefits to each dependent petitioner herein to be paid for the life of each such petitioner, or until remarriage, whichever first occurs.


Accordingly, as the aforesaid dependents' death benefits of each of the aforesaid petitioners in the pending petitions are hereby reinstated and restored, for life or until remarriage, none of the petitioners herein can meet this Court's well-known three-part test for issuance of a Writ of Mandamus. See, Syl. Pt. 2, State ex rel. Kucera v. City of Wheeling, 153 W.Va. 538, 170 S.E.2d 367 (1969).

¹ In the petitions and other filings made in this Court, and the orders issued thereon, the respondents have alternatively been referred to as: "West Virginia Workers' Compensation Commission, and/or West Virginia Workers' Compensation Commission and Gregory A. Burton, Executive Director, Workers' Compensation Commission State of West Virginia and/or Gregory A. Burton, Executive Director of West Virginia Workers' Compensation Commission and West Virginia Workers' Compensation Commission and/or Jane Cline, Insurance Commissioner." On January 1, 2006, pursuant to West Virginia Code § 23-2C-1 (2005), et. seq., the Workers' Compensation Commission was abolished. West Virginia Employers' Mutual Insurance Company, d/b/a BrickStreet Mutual Insurance Company, a private employer mutual insurance company, is now the sole provider of workers' compensation insurance in West Virginia for all claims with a date of injury of July 1, 2005 and thereafter. All earlier claims, such as the claims in issue here, remain a State of West Virginia obligation in what is statutorily referred to as the "Old Fund." The Old Fund is administered by the Insurance Commissioner. The Office of Insurance Commissioner in its capacity as Administrator of the Old Fund is the real party-in-interest here. The term "Commission" herein refers to the predecessor Workers' Compensation Commission, successor Insurance Commissioner and Jane Cline, Insurance Commissioner, and this response is that of the "Commission."

In addition to the above, attached hereto as Exhibit 1, and incorporated herein by reference, is a true and accurate copy of the directive of the West Virginia Insurance Commission of this date addressed to Brickstreet Administrative Services, as the third-party administrator of the Office of Insurance Commissioner as administrator of the Old Fund, directing it to restore and reinstate the dependents' death benefits of each of the aforesaid petitioners.

Wherefore, for the reasons set out above, the respondent, Jane Cline, Insurance Commissioner, and Office of Insurance Commissioner as administrator of the Old Fund, respectfully requests the Court to dismiss the petitions for Writs of Mandamus, as aforesaid, and to vacate the rules to show cause previously issued. Counsel for the Commission attempted to contact all counsel for all petitioners prior to filing this motion, but was not successful. However, counsel is authorized to represent to the Court that Robert W. Gillikin, II, counsel for petitioner, Lola Crist, does not object to this motion.

Respectfully submitted,



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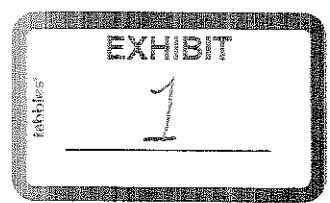
Attorney for Commission



STATE OF WEST VIRGINIA

Offices of the Insurance Commissioner

JOE MANCHIN III
Governor



JANE L. CLINE
Insurance Commissioner

April 17, 2006

Mr. Gregory A. Burton
West Virginia Employers Mutual Insurance Company
d/b/a BrickStreet Mutual Insurance Company
4700 MacCorkle Avenue, S.E.
Charleston, WV 25304

Re: Claims for Dependents' Death Benefits under W. Va. Code § 23-4-10

Dear Mr. Burton:

Today I have directed defense counsel for the Old Fund to file a motion to dismiss the consolidated mandamus proceedings pending before the West Virginia Supreme Court of Appeals relating to claims for dependents' death benefits. The motion to dismiss is based upon the decision to restore and reinstate the death benefits of each dependent petitioner in those proceedings, with benefits to be paid for the life of each petitioner, or until remarriage, whichever first occurs.

By this letter I also direct BrickStreet Administrative Services, as third party administrator of the Old Fund, to restore and reinstate all dependents' death benefits that have been terminated pursuant to policy 2.02 of the former Workers' Compensation Commission, and to cease the application of this policy to all claims for dependents' death benefits against the Old Fund.

In addition, BrickStreet Administrative Services is hereby directed to issue payment for all benefits that would have been payable to any dependent claimant but were not paid due to the application of policy 2.02 of the former Workers' Compensation Commission.

Thank you for your prompt attention to this matter.

Sincerely,


Jane L. Cline
Insurance Commissioner

JLC/csp



CERTIFICATE OF SERVICE

I, David L. Stuart, Attorney for the Commission, do hereby certify that a true and accurate copy of the foregoing "Motion of Commission to Dismiss Consolidated Petitions for Writs of Mandamus and to Vacate Rules to Show Cause" was served upon all parties of record by depositing said copy in the United States mail with first-class postage prepaid on this 17th day of April, 2006.

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