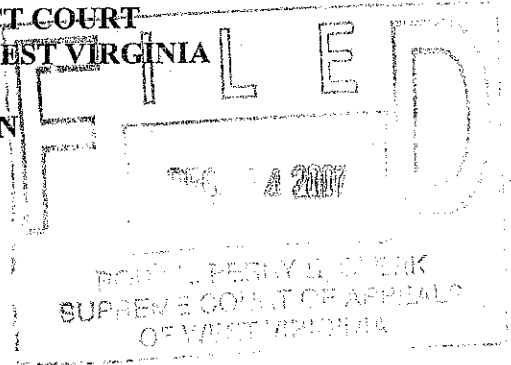


33861

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

PARKERSBURG DIVISION



AMERICAN MODERN HOME
INSURANCE COMPANY,

Plaintiff,

v.

CIVIL ACTION NO. 6:06-cv-01015

JEFF CORRA, et al.,

Defendants.

**ORDER OF CERTIFICATION TO THE
SUPREME COURT OF APPEALS OF WEST VIRGINIA**

This court respectfully requests that the Supreme Court of Appeals of West Virginia exercise its certification jurisdiction pursuant to W.Va. Code §§ 51-1A-1 to 51-1A-13, and answer the question of law set forth below. The question is critical to the disposition of the above-captioned case pending in this court, and it appears that there is no controlling decision by the Supreme Court of Appeals of West Virginia.

1. Question of Law to be Answered

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

“occurrence” within the meaning of the American Modern Home Insurance Company homeowner’s policy at issue in this case?

2. Facts Relevant to the Controversy

A. Procedural History

This case arises from a alcohol related automobile accident which occurred after four underage individuals, Morgan Brown, Joshua Tucker, Matthew Humphreys and Courtney McDonough, left a party at defendant Jeff Corra’s home. As a result of the accident, passenger Morgan Brown was injured and passengers Joshua Tucker and Matthew Humphreys were killed. In September 2006, Mr. Brown and the estates of Tucker and Humphreys notified Mr. Corra that they intended to bring claims under Mr. Corra’s homeowner’s insurance policy for damages arising out of the accident. In these claims, Mr. Brown and the estates of Tucker and Humphreys alleged that on the evening of the accident, the driver of the vehicle, Ms. McDonough, who was 19 years old at the time, consumed alcohol as a social guest on Mr. Corra’s property. Mr. Corra subsequently notified his homeowner’s insurance company, American Modern Home Insurance Company (“AMHIC”) of the claim.

AMHIC then filed an action in the United States District Court for the Southern District of West Virginia against Mr. Corra, Ms. McDonough, Mr. Brown, the estates of Tucker and Humphreys, seeking a declaratory judgment that the injuries to Brown, Tucker and Humphreys are not covered by the homeowner’s insurance policy and that AMHIC has no duty to defend or indemnify Mr. Corra against these claims. AMHIC filed a motion for summary judgment arguing, *inter alia*, that the accident causing the death and injury to the defendants is not an occurrence under the terms and conditions of Mr. Corra’s homeowner’s policy.

B. Facts Viewed in the Light Most Favorable to the Non-Movant.

Mr. Corra purchased homeowner's insurance through AMHIC for the period of February 16, 2006, through February 16, 2007. In the late hours of August 5 and early morning hours of August 6, 2006, Morgan Brown, Joshua Tucker, Matthew Humphreys, Courtney McDonough and others arrived at Mr. Corra's trailer home at the invitation of Mr. Corra's daughter, Ashli. Once there, Ms. McDonough consumed a half can of beer from Mr. Corra's refrigerator. (Tr. at 133.)¹ Ms. McDonough then left the gathering with others to purchase more alcohol with Mr. Tucker's false identification. (Tr. at 136.) After procuring their own beer, Ms. McDonough and the others returned to Mr. Corra's home where Ms. McDonough consumed approximately six or seven beers. (Tr. at 146-49.)

After drinking the beer, Ms. McDonough left to go to a convenience station with Morgan Brown, Joshua Tucker and Matthew Humphreys. On the return trip from the convenience store, Ms. McDonough lost control of her automobile. Her vehicle left the road where it crashed, killing Humphreys and Tucker, and severely injuring Ms. Brown. Ms. McDonough pleaded guilty to two counts of driving while under the influence of alcohol causing death and one count of driving while under the influence of alcohol causing bodily injury. Mr. Corra was convicted of four counts of knowingly providing alcohol to underage persons, one count of which related to the half beer that Ms. McDonough had taken from Mr. Corra's refrigerator.

3. Acknowledgment

¹ I will hereafter refer to the Trial Transcript in *State of West Virginia v. Jeff Corra*, conducted on July 10 and 11, 2007 in the Wood County Circuit Court as (Tr. at ___), which can be found in various attachments to the memoranda supporting and opposing the motion for summary judgment.

Pursuant to W.Va. Code § 51-1A-6, this court recognizes that the Supreme Court of Appeals of West Virginia may reformulate the certified question presented.

4. Names and Addresses of Counsel of Record

A. Counsel for the Plaintiff, American Modern Home Ins. Co.

Michelle E. Piziak
STEPTOE & JOHNSON
P. O. Box 1588
Charleston, WV 25326-1588
Ph: 304-353-8000
Fax: 304-353-8180
Email: Michelle.Piziak@steptoe-johnson.com

B. Counsel for the Defendant - Jeff Corra

George J. Cosenza
P. O. Box 4
Parkersburg, WV 26102-0004
Ph: 304-485-0990
Fax: 304/485-1090
Email: cosenza@eurekanet.com

C. Counsel for the Defendant - Morgan Brown

Steven M. Thorne
COOK & COOK
P. O. Box 190
Madison, WV 25310-0190
Ph: 304-369-0110
Fax: 369-6800
Email: sthorne@cookandcook.com

D. Counsel for the Defendant - The Estate of Matthew Humphreys

Eric M. Wilson
MYERS & PERFATER

P. O. Box 2631
Charleston, WV 25329-2631
Ph: 304-345-2202
Fax: 304/344-8784
Email: emw.esq@gmail.com

Paul S. Perfater
MYERS & PERFATER
P. O. Box 2631
Charleston, WV 25329-2631
Ph: 304-345-2202
Fax: 304/344-8784
Email: paul@perfaterlawoffices.com

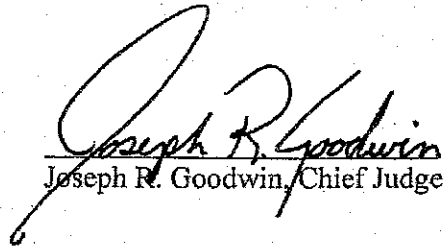
E. Counsel for the Defendants - The Estate of Joshua Tucker, and Jeffrey B. Tucker, Executor of the Estate of Joshua Tucker

D. Scott Bellomy
BELLOMY & TURNER
741 5th Avenue
Huntington, WV 25701
Ph: 304-697-7200
Fax: 304/697-4102
Email: bandt1@wvdsl.net

David J. Lockwood
LOCKWOOD & LOCKWOOD
741 5th Avenue
Huntington, WV 25701
Ph: 304-697-7200
Fax: 304/697-4102

The court **DIRECTS** the Clerk to send a copy of this Order to the Clerk of the Supreme Court of Appeals of West Virginia, counsel of record and any unrepresented party.

ENTER: November 28, 2007


Joseph R. Goodwin, Chief Judge