

No. _____

IN THE
SUPREME COURT
OF THE UNITED STATES

Jael Watts,
Petitioner,
v.

Michael K. Allen
7551 Great Swan Court
Alexandria, VA 22306

And

USAA Casualty Insurance Company
A/K/A USAA General Indemnity
Company A/K/A USAA Insurance
Agency, Inc.
9800 Fredricksburg Road
San Antonio, TX 78288

Respondents
ON PETITION FOR WRIT OF CERTIORARI
TO THE VIRGINIA SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Virginia Supreme Court's dismissal of the Petitioner's appeal, without reaching the merits of the case, violates the Petitioner's fundamental rights to: (A) due process, and (B) equal protection of law, as guaranteed by the Fourteenth Amendment.
2. Whether the Virginia Supreme Court's decision to uphold an insurer's tort immunity violates the Petitioner's Fourteenth Amendment fundamental rights to: (A) due process, and (B) equal protection of law.
3. Whether the Virginia Supreme Court's decision to uphold an insurer's tort immunity violates the Petitioner's right to a jury trial under the Seventh Amendment.

PARTIES TO THE PROCEEDINGS

The Petitioner is Jael Watts. The Respondents are Michael K. Allen and USAA Casualty Insurance Company A/K/A USAA General Indemnity Company A/K/A USAA Insurance Agency, Inc.

Rule 29.4(c) Statement: Pursuant to Rule 29.4(c) of the Rules of this Court, the Petitioner hereby states that 28 U.S.C. 2403(b) may be applicable because the constitutionality of a law of the state of Virginia is drawn into question and the State is not a party to this action. Petitioner hereby certifies that she is serving three (3) copies of this Petition on the Attorney General of the State of Virginia.

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OPINIONS BELOW

The Order and Opinion of the Virginia Supreme Court is unreported and reprinted in the appendix at A-1.

The Virginia Supreme Court Order affirmed the April 12, 2017 Order of the Alexandria Virginia Circuit Court.

The orders of the Alexandria Virginia Circuit Court are unreported and reprinted in the Appendix at A-2.

JURISDICTION

The Order of the Virginia Supreme Court affirming the April 12, 2017 Order of the Alexandria Virginia Circuit Court was entered on February 28, 2018. The jurisdiction of this Court is invoked under 28 U.S.C. 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Section of the Fourteenth Amendment to the Constitution of the United States of America is set out in the Appendix at A-3.

The Seventh Amendment to the Constitution of the United States of America is set out in the Appendix at A-4.

Public Act 8.01-5(B) of the General Assembly of Virginia Code 1950, § 8-96; 1954, c. 333; 1977, c. 617 is set out in the Appendix at A-5.

Article III, Sections One and Two of the United States Constitution are set out in the Appendix at A-6.

Public Act 8.01-670(g)(3) of the General Assembly of Virginia Code 1950, § 8-96; 1954, c. 333; 1977, c. 617 is set out in the Appendix at A-7.

STATEMENT OF THE CASE

On January 23, 2015, the Petitioner stopped at a non-functioning traffic signal and then proceeded traveling East into the intersection of Duke and Washington Streets in Alexandria, Virginia.

After entering the intersection, and crossing two lanes of oncoming traffic, the vehicle operated by the Petitioner was struck on the passenger front side by a vehicle traveling North on Washington Street, which was operated by the Respondent, Michael Allen.

The Petitioner submitted a claim to the Respondent, USAA, Michael Allen's vehicle liability insurer, on February 26, 2015, for monetary damages, stemming from damage to the vehicle operated by the Appellant, which were sustained during the collision.

The Petitioner's claim for reimbursement for vehicle damage, which damages had been fully paid by the Petitioner at the time the claim was submitted, were denied by the insurer, USAA.

At the time that it denied the Petitioner's claim, the Respondent, USAA, possessed multiple forms of conclusive evidence that the Respondent, Michael Allen, was the sole cause of the vehicular crash, and resulting damage to the Petitioner, including: (1) witness statements, (2) the verbal admission of fault by the Respondent, Mr. Allen, and (3) the damage profile of the vehicle operated by Mr. Allen, which established the head on collision of Mr. Allen's vehicle with the front passenger side of the vehicle operated by the Petitioner..

Despite knowledge of its own liability, and in contravention of its legal duty to voluntarily resolve a meritorious damage claim, the Respondent, USAA, nonetheless wrongfully denied the Petitioner's claim.

On January 19, 2017, the Appellant instituted separate tort claims in Alexandria Circuit Court against Michael Allen and USAA. The Appellant's tort claim alleged joint and several liability between USAA and Michael Allen for the damage sustained by the Appellant.

Based on tort theories of negligence and recklessness, the Appellant's complaint alleged that Michael Allen was the sole cause of the collision, in that he failed to

stop at the non-functioning traffic signal, drove at an excessive rate of speed, and failed to maneuver his vehicle to avoid the collision.

Similarly, the Appellant's complaint alleged that the Respondent, USAA, also acted with negligence by wrongfully failing to settle the claim, despite clear evidence of its liability, as well as that of its insured.

On April 12, 2017, in response to the demurrer of the Respondent, Michael Allen, and over the Petitioner's objection during oral argument, the 18th District Court dismissed Respondent USAA from the Appellant's suit based on the immunity from suit supposedly conferred to insurers by Virginia Code provision 8.01-5(B).

On July 11, 2017, the Petitioner submitted a Petition for Appeal to the Virginia Supreme Court, requesting its review of the April 12, 2017 Order of the Virginia District Court. The Petitioner's Petition for Appeal timely raised constitutional objections to the Order of the Alexandria, Virginia District Court. The Petitioner's Virginia Supreme Court Petition for Appeal is reprinted in the Appendix at A-8.

The 18th District Court's Order was affirmed by the Virginia Supreme Court on February 28, 2018. The Virginia Supreme Court did not address any of the Petitioner's constitutional claims.

Rather, the Virginia Supreme Court held that, because the judgment of the 18th District Court, which severed Respondent, USAA, from the proceedings, only entered judgment for USAA, but did not resolve the Petitioner's claims against the Respondent, Michael Allen, the District Court's order was not appealable.

REASONS FOR GRANTING THE WRIT

A. The Virginia Supreme Court's dismissal of the Petitioner's appeal, without reaching the merits of the case, violates the Petitioner's fundamental rights to: (1) due process, and (2) equal protection of law, as guaranteed by the Fourteenth Amendment.

1) The Virginia Supreme Court Party Dismissal Negates the Due Process Guarantee of Meaningful Access to the Courts

Title 8.01-670(g)(3) of the Virginia Code, as construed by the Virginia Supreme Court forecloses Constitutional Due Process of the Petitioner's state court claims.

A cause of action resulting from an injury constitutes a vested property right that may not be deprived by the state or federal government without due process of law. Gibbes v. Zimmerman, 290 U.S. 326 (1933).

Due Process, furthermore, requires that state court litigants be provided reasonable and meaningful access to the courts. Boddie v. Connecticut, 401 U.S. 371 (1971).

Although it is well settled that no right to appellate review exists when there has been a full and fair trial on the merits, this Court has not examined whether such a right exists when a litigant's district court right to trial has also been excluded by state action. District of Columbia v. Clawans, 300 U.S. 617, 627 (1937); McKane v. Durston, 153 U.S. 684, 687-688 (1894).

In the instant case, the Petitioner filed an action in tort against the Respondent, USAA. The Respondent, USAA, was alleged by the Petitioner to have wrongfully denied the Petitioner's claim for damages sustained in a motor vehicle wreck caused by USAA's insured, Respondent, Michael Allen.

Through its promulgation of an insurance contract with Mr. Allen, USAA voluntarily agreed to assume a duty of care with respect to third parties injured by the negligent operation of a motor vehicle by its insured. Specifically, USAA assumed the duty to voluntarily settle meritorious claims for damages.

By ignoring evidence, including the direct admission of fault by its insured, for the injuries sustained by the Petitioner, the Respondent, USAA is in negligent dereliction of its duty of care to the Petitioner.

With neither opportunity for a hearing on the merits, nor jury trial, the Virginia district court dismissed the Respondent, USAA from the Petitioner's complaint.

This destruction of the Petitioner's Due Process rights was subsequently affirmed by the Virginia Supreme Court, when it declined to consider the Petitioner's appeal, on the grounds that the Virginia district court decision dismissing USAA as a defendant was not a final judgment within the meaning of the applicable state statute.

Thus, the Petitioner's circumstance would appear to be a case of first impression in any American jurisdiction.

The Petitioner has located no evidence that the dismissal of a Petitioner's appeal to the state venue of last resort has previously passed Constitutional muster when: (1) all of the Petitioner's substantive claims, as well as (2) every Constitutional objection raised by the Petitioner have been completely excluded from consideration by state courts at both the district and appellate levels.

The instant matter presents an attractive and useful vehicle for this Court to clarify important, yet undecided, questions of federal Constitutional law, including a

litigant's entitlement to state appellate review of a district court's decision to wholly deny the Petitioner's right of action in tort.

Indeed, the Petitioner's right to have the harm suffered, as a result of the negligence of the Respondent, USAA, considered by a tribunal has been permanently and arbitrarily foreclosed, since there remains no course of action to pursue. Furthermore, the Petitioner has suffered monetary harm in excess of \$30,000, a significant amount.

This Honorable Court should intercede when the action of a state denies Due Process to, and has a final and irreparable effect on, a citizen.

For the aforesaid reasons, this Writ of Certiorari should be granted to protect the full rights guaranteed every citizen by the Constitution.

2) The Virginia Supreme Court Party Dismissal Invalidates the Equal Protection Clause Assurance of Opportunity for Hearing.

Title 8.01-670(g)(3) of the Virginia Code, as construed by the Virginia Supreme Court, displaces Fourteenth Amendment Equal Protection assurances.

Although Title 8.01 is not facially invalid, the Virginia Supreme Court's unconstitutional rendering of this state law provision stands inapposite to this Court's precedent requiring state appeals processes to afford like access to venues of appellate review for all litigants. Rinaldi v. Yeager, 384 U.S. 305, 310 (1966).

Facially nondiscriminatory state statutes have before been set aside by this Court, when they are applied so as to violate equal protection guarantees. Furman v. Georgia, 408 U.S. 238, 257 (1972); Yick Wo v. Hopkins, 118 U.S. 356, 373-374 (1886).

Furthermore, this Court has repeatedly invalidated discriminatory state action, which unduly burdens appellate access to the courts for some litigants more than others. Lindsey v. Normet, 405 U.S. 56 (1972); Griffin v. Illinois, 351 U.S. 12 (1956); Lane v. Brown, 377 U.S. 477 (1963). May v. City of Chicago, 404 U.S. 189 (1971); Dowd v. Cook, 340 U.S. 206 (1951).

In Lindsey, this Court nullified a state statute requiring litigants in forcible entry and wrongful detainer actions to post a double bond as a prerequisite to perfecting an appeal.

Because the double bond requirement burdened the potential appeals of affected litigants, this Court found the state's distinction between those required to post the double bond, and others not so required, to be arbitrary and, therefore, unconstitutional. Id. At 79.

Likewise, in Dowd, the Appellant was prevented from filing a timely habeas corpus petition by the action of the prison officials where the Appellant was incarcerated. In setting aside the state appellate dismissal of the Appellant's untimely appeal, this Court noted that the Fourteenth Amendment precludes [a state] from ... depriving [an Appellant] of the type of appeal generally afforded... [those similarly situated]." Id. At 210.

The instant matter concerns the Virginia Courts' discriminatory interpretation of the Virginia Code. Title 8.01 of the Virginia Code provides that final civil judgments may be appealed. VA Code Ann. § 8.01-670(g)(3).

The Virginia Supreme Court has repeatedly confirmed its stance that a sustained trial Court motion or demurrer, severing a party to litigation from further involvement in the matter is immediately appealable as a final judgment when the

interests of the severed party are distinct from those whose interests remain active in the Virginia trial court. Bowles v. Richmond, 147 Va. 720, 129 S.E. 489 (1925). Hinchley v. Ogden, 226 Va. 234, 307 S.E.2d 891 (1983). Thompson ex. rel. Thompson v. Skate America, 261 Va. 121, 540 S.E. 2d 123 (2001).

In Bowles, the Virginia Supreme Court noted that, when, on the demurrer of one of the Respondents, the Appellant's claim was dismissed by the trial Court as to that Respondent, the judgment was final as to the dismissed Respondent.

Therefore, although the claim continued in the trial Court with respect to the remaining Respondent, based on a distinct theory of liability, the Supreme Court could also immediately consider the appeal. Bowles, 147 Va. At 490.

Similarly, in Hinchley, a Virginia trial Court granted a Respondent's motion to dismiss based on its claim of sovereign immunity.

Virginia Supreme Court review of the Appellant's appeal from the dismissal order was granted even though the Appellant's matter with respect to the remaining Respondents continued concurrently in the trial Court, since the alleged conduct and liability of each Respondent was separate. Hinchley, 307 S.E.2d at 892.

The identical conclusion was also reached in Thompson. There, the Virginia Supreme Court granted an interlocutory appeal following the dismissal of two Respondents by the trial Court.

The Thompson Court reasoned that the Supreme Court could consider the appeal before the disposition of the entire matter by the trial Court, since discrete claims were made against each Respondent, and the appeal could not affect the determination of the remaining issues being concurrently considered by the trial Court. Thompson, 540 S.E. 2d at 127.

In the instant matter, Title 8.01 of the Virginia Code, as applied by the Virginia Supreme Court, unconstitutionally impinges the Petitioner's Equal Protection rights, foreclosing her access to appellate review.

Dismissal of the Petitioner's appeal, on the grounds that the order appealed from was not a final judgment within the meaning of Title 8.01, is not warranted in light of established Virginia precedent.

In Virginia, a sustained trial Court motion or demurrer, which dismisses some but not all civil defendants, is a final judgment, if the interests of the severed party are distinct from those whose interests remain active in the trial court.

The Petitioner's Virginia Supreme Court appeal requested review of the Virginia trial Court's April 12, 2017 order, which sustained the demurrer of Respondent Michael Allen, dismissing the Respondent, USAA, from the Petitioner's complaint before trial.

For the following reasons, the Appellant's Virginia Supreme Court petition appealed a final judgment of the Virginia district court, allowing for concurrent Virginia Supreme and district Court review: (1) the Appellant's pleadings alleged different conduct, and different theories of liability for Respondents Allen and USAA, and (2) the Appellant's Virginia Supreme Court appeal could not affect the Virginia trial court's determination regarding the liability of the remaining Respondent, Michael Allen, even if the order of the trial Court dismissing the Respondent USAA were overturned by the Virginia Supreme Court, since each Defendant had inflicted separate injuries upon the Petitioner.

In sum, the Virginia Supreme Court's decision to dismiss the Petitioner's appeal is a divergence from established Virginia precedent.

Through formulating a new definition of what constitutes a "final judgment" within the meaning of Title 8.01, which is applicable to the Appellant alone, the Virginia Supreme Court makes an arbitrary distinction.

Accordingly, to permit an appeal of a particular order based upon a particular claim in certain cases, and deny another Petitioner the right to appeal a similar order based upon the identical claim, constitutes a deprivation of the latter litigant's constitutionally protected rights to equal protection of the law.

This discriminatory treatment affords the Petitioner no access to state review, appellate or otherwise, on the merits, and forecloses the Appellant's last remaining state course of action against the Respondent, USAA.

As the Petitioner's substantive claims for justice with respect to USAA were heard by neither the Virginia district, nor Virginia Supreme, Courts, the action of this Honorable Court remains the Petitioner's only opportunity to have her claims considered.

Therefore, the Petitioner respectfully requests that this Court declare Title 8.01-670(g)(3) of the Virginia Code, as construed by the Virginia Supreme Court, to be an unconstitutional denial of equal protection of the law.

The noted Virginia Code provision, as interpreted by the Virginia Supreme Court, allows for the arbitrary and capricious denial of appellate review, in contravention of equal protection mandates. The Petitioner respectfully requests that this case be remanded to the Virginia Supreme Court, with directions that it set aside the April 12, 2017 order of the trial court, which severed the Respondent, USAA, from the Petitioner's complaint.

B. The Virginia Supreme Court's application of insurer tort immunity denies the Petitioner access to the Courts in violation of the Fourteenth Amendment.

1) The Virginia Supreme Court, Through Conferring Tort Immunity to USAA, has Deprived the Petitioner of Due Process Access to the Courts.

The United States Constitution forbids the government's deprivation of a person's life, liberty, or property without due process of law. U.S. Const. Amend XIV.

Furthermore, procedural due process disallows the government's arbitrary deprivation of a protected citizen interest, by guaranteeing that there is a meaningful opportunity to be heard by a tribunal when a binding order is made affecting a person's rights to liberty or property. Mullane v. Central Hanover Trust Co., 339 U.S. 306, 314 (1950) quoting Grannis v. Ordean, 234 U.S. 385, 394 (1914).

In determining whether a Due Process violation has occurred, this Court has applied a two part test. The Court first examines whether a protected interest exists. Logan v. Zimmerman Brush Co., 455 U.S. 428 (1982). In Logan, this Court conceded that "...an individual entitlement grounded in state law..." is a species of property, "...which cannot be [violated] except 'for cause,'..." Id. at 430.

Upon determining that a property interest exists, this Court has next determined what process is due. In establishing whether process is sufficient to curtail a property right, this Court has examined the following factors: (1) the importance of the private interest, (2) the length or finality of the deprivation, (3) the likelihood of government error, and (4) the magnitude of the government interest. Logan At 434.

Lastly, this Court has held that if Due Process protections apply to a citizen's property, states must afford the citizen an opportunity for hearing.

Although a state may balance private versus government interests in determining the timing and nature of the hearing, the opportunity for hearing itself does not depend on a balance and must be granted. Board of Regents of State Colleges v. Roth, 408 U.S. 564, 570-571 (1972).

In the instant case, the April 12, 2017 order of the Alexandria Virginia Circuit Court, which dismissed the insurer Respondent, USAA, from the Petitioner's complaint without affording the Appellant a Constitutionally- mandated hearing, or the opportunity to present evidence, was affirmed by the Virginia Supreme Court on February 28, 2018.

Title 8.01 of the Virginia Code, which states that insurers may not be made a party to a civil action simply because the insurer has issued liability insurance, was utilized by the Trial Court to justify the dismissal. VA Code § 8.01-5(B).

Here, the Petitioner's grievance emanates from the Respondent insurer, USAA's, wrongful denial of the Petitioner's claim for damages sustained in an automobile crash caused by the Respondent's insured, Michael Allen. Since the Petitioner's

claims against USAA are based in tort, an entitlement “grounded in state law...” under Logan, the Petitioner has a protected property interest. Logan at 430.

In determining whether the Petitioner’s interest may be nullified by a state, as dictated by the Logan precedent, this Court should examine: (1) the importance of the private interest, (2) the length or finality of the deprivation, (3) the likelihood of government error, and (4) the magnitude of the government interest. Logan At 434.

In the instant matter, the Petitioner has suffered a substantial financial loss as a result of the Respondent, USAA’s negligence. USAA, through its contractual promise to insure Michael Allen, assumed a duty to act with reasonable care respecting the interests of any person aggrieved by Mr. Allen’s negligent operation of his vehicle.

USAA’s duty of care necessitates its voluntarily resolution of claims where evidence demonstrates that its insured’s negligent operation of a motor vehicle caused the damage sustained by a third party.

Despite evidence from multiple sources, including the admission of fault of USAA’s insured himself, USAA’s duty of care remains unfulfilled.

Therefore, the Petitioner's suit is the only means by which the pecuniary losses that the Petitioner has sustained, totaling more than \$30,000, owing to USAA's negligence, may be compensated.

Likewise, the deprivation suffered by the Petitioner is final. The Petitioner has no means of recovering the financial losses that she has sustained as a result of the Respondent's failure to discharge its duty of care; and, dismissal of the Respondent from the Petitioner's suit means that the Respondent will not be held accountable for its wrongful denial of the Petitioner's claim.

Conversely, the interest of the state of Virginia in this matter is either insubstantial or wholly lacking any reasonable basis. The risk that the state will continue to erroneously terminate meritorious claims, by severing insurer tortfeasors from litigation is high.

If USAA's negligence had been the cause of the Petitioner's harm in any context other than a motor vehicle accident, the Petitioner's claim could proceed.

Similarly, harm caused by the carelessness of any other type of defendant, except an insurer, in the circumstance of a motor vehicle wreck is actionable. Although the Petitioner continues to suffer loss as a result of the arbitrary distinctions drawn by the Virginia Courts, the Petitioner has neither control over the identity of the tortfeasor who is the cause of the Petitioner's losses, nor the context in which the loss was sustained.

Additionally, the decision of the Virginia Courts to abrogate the Petitioner's Due Process rights is based on an unsound interpretation of Virginia law.

Title 8.01 of the Virginia Code was utilized by the Virginia District Court to justify the severance of the Respondent, USAA from the Petitioner's suit. VA Code § 8.01-5(B).

However, the plain language of Title 8.01 of the Virginia Code does not prohibit the joinder of insurers. Rather, Title 8.01 merely states that insurers may not be made a party to a civil action simply because the insurer has issued liability insurance.

Thus, in instances where an insurer is made party to a suit because of its own negligence, Title 8.01 is no bar to the insurer's joinder as a defendant.

Therefore, the Virginia Court's application of tort immunity to the Respondent insurer, USAA, based on Title 8.01: (1) is based on an erroneous reading of the statute, and (2) wrongfully distorts the plain language meaning of Title 8.01, in direct contravention of the U.S. Constitutional prohibition against the exercise of legislative powers by the judiciary.

Thus, under Logan, the tort claim asserted by the Petitioner is a protected property interest based in Virginia law, which the state of Virginia should not be permitted to nullify without the opportunity for hearing. Logan At 434.

The Petitioner's loss, exceeding \$30,000, is sizable. If the nullification of this interest is allowed by this Honorable Court to stand, the petitioner's loss is also permanent.

Furthermore, the decision of the Virginia Court's to divest the Petitioner of her Due Process rights, by granting tort immunity to the Respondent, USAA, is based on an erroneous interpretation of Virginia law. Finally, the government interest in divesting the Petitioner of her rights is negligible by comparison to the Petitioner's interest.

For these reasons, the Petitioner requests that this Court grant this Writ of Certiorari to remedy this fundamental denial of the Petitioner's rights under the Due Process clause.

2) The Virginia Supreme Court, Through Conferring Tort Immunity to UAA, has Denied the Petitioner the Equal Protection Guaranteed by the Constitution.

All persons are entitled to the equal protection of the laws, as provided by United States Constitution. U.S. Const. Amend XIV.

Furthermore, equal protection of the laws forbids "...judicial disparities before the law." Fay v. New York, 332 U.S. 261, 285 (1947).

The Virginia Courts have unconstitutionally devised a rule that arbitrarily confers immunity from judgment to insurers.

Through exempting insurers from liability for the tortious harm that they cause, Virginia has denied the Petitioner access to the courts in contravention of the Equal Protection clause.

Fundamental rights, which are those guaranteed by the United States Constitution, have been protected by this Court through its application of the strict scrutiny test. Under this test, governmental action that burdens such rights cannot pass Constitutional muster unless it is the least burdensome means available for achieving the desired governmental objective. Dunn v. Blumstein, 405 U.S. 330, 92 S. Ct. 995 (1972). Harper v. Virginia Board of Elections, 383 U.S. 663, 670 (1966).

As part of strict scrutiny, this Court has weighed the "... individual interests affected by the classification [against] ... the governmental interests asserted in support of the classification." Dunn, 408 U.S. at 335.

This balancing consideration has been guided by this Court's awareness that equal protection requires "... the uniform treatment of persons standing in the same relation to the governmental action questioned or challenged." Reynolds v. Sims, 377 U.S. 533, 565 (1964).

Indeed, equal protection "... forbids the granting of ... relief to one man and the denying of it to another under like circumstances and in the same territorial jurisdiction." Truax v. Corrigan, 257 U.S. 312, 334 (1921).

In Truax, this Court overturned the action of the Arizona Supreme Court, which dismissed a Petitioner's complaint. The Petitioner, Truax, sued his former employees in state court to enjoin their continued attack against his business, as the former employees were alleged to have regularly induced the Petitioner's customers to purchase elsewhere. Truax At 312.

The Arizona Supreme Court justified its dismissal of the Petitioner's complaint by reference to an Arizona statute that limited the circumstances in which an employer could win an injunction against former employees. Id.

However, this Court invalidated the statute, and overturned the decision of the Arizona Supreme Court, noting that the state statute ran afoul of the Equal Protection guarantees of the Constitution, by limiting the instances in which a former employer could win an injunction, without placing similar limitations on the same action when initiated by the employee. Id.

In the instant case, the Petitioner's fundamental right to adjudication of the harm caused by the Respondent, USAA, has been completely and permanently denied by the Virginia Court's application of tort immunity to this insurer.

Title 8.01 of the Virginia Code provides that insurers may not be made a party to a civil action solely because the insurer has issued liability insurance. VA Code § 8.01-5(B).

However, the Virginia District Court's April 12, 2017 order, subsequently affirmed by the Virginia Supreme Court, enlarged the plain language of the Virginia statute, so as to insulate the insurer from all liability for its own wrongful conduct.

Since the Virginia Courts' interpretation of Code provision 8.01-5(B) affords the insurer immunity from suit in tort, a privilege not shared by other tortfeasors, the trial Court's ruling runs afoul of Equal Protection mandates.

The Virginia Code, as applied by the Virginia Courts, also arbitrarily makes the same tortious conduct actionable in every instance, except a motor vehicle wreck. This distinction is applied without reason, or likelihood of advancing a permissible Virginia state aim.

Furthermore, since the distinction applied by the trial Court benefits the insurer, while eliminating the Appellant's Constitutionally protected, fundamental right to

jury trial, the distinction is unconstitutional unless it represents the least burdensome mechanism of achieving a permissible governmental objective.

Virginia Code Title 8.01's purpose is to define which parties are necessary to the court's just resolution of the case. Title 8.01 prevents the joinder of parties who lack a stake in the suit, and therefore, do not contribute to its adjudication.

Appropriately, the power of the Virginia judiciary to sever parties from a suit derives from the requirement of Article III of the United States Constitution, which provides that the exercise of judicial power depends upon the existence of a case or controversy.

However, the objective of Title 8.01 is not served in the instant circumstance. Since the petitioner alleges that the insurer, USAA's own conduct was itself tortious, an active controversy exists directly between the Respondent, USAA, and the Petitioner, which the Virginia Courts' actions have prevented from being justly adjudicated.

Indeed, removing the Respondent, USAA, as a defendant directly hinders, rather than supports, the purpose of Title 8.01. USAA's removal withdraws the party most

necessary to the just resolution of the Petitioner's tort claim: the tortfeasor, USAA. Accordingly, as the action of the Virginia Courts obstructs, rather than advances, the aim of Title 8.01, the Courts' action is an unconstitutional infringement of the Petitioner's Equal Protection rights.

In sum, by applying tort immunity to the Respondent, USAA, the Virginia Supreme Courts have divested the Petitioner of her Constitutionally protected right to Equal Protection of the law. The Virginia Supreme Courts' holdings make arbitrary distinctions between tort claims against insurers within and outside the context of a motor vehicle wreck – making the latter actionable, and the former not.

The Virginia Supreme Courts' judgments further unreasonably distinguish between tortfeasor-insurers and other classes of tortfeasors – immunizing insurers, while leaving other tortfeasors subject to suit.

Finally, the Virginia Supreme Court's judgment in this case thwarts, rather than promotes, the permissible government objectives sought by Title 8.01 of the Virginia Code, by preventing the joinder of parties essential to just adjudication of any claim against an insurer for its own negligence.

For the foregoing reasons, the Petitioner prays that this Court will intervene to uphold and enforce the equal protection guarantees of the United States Constitution.

C. The Virginia Supreme Court's application of insurer tort immunity invalidates the Petitioner's Seventh Amendment right to a jury trial.

By applying tort immunity to the Respondent, USAA, the Virginia Courts have divested the Petitioner of her right to have questions of fact related to her claims against USAA determined by jury.

The Seventh Amendment protects the rights of civil litigants to jury trial. A three pronged test applies to the determination of whether this Constitutional guarantee applies, including consideration of the: (1) established custom of the courts before the merger of law and equity, (2) remedy sought to be obtained, and (3) practical abilities and limitations of juries. Ross v. Bernhard, 396 U.S. 531, 538 (1970).

In Tull, this Court noted that, as a jury trial was customary for suits brought at law, but not those brought at equity, it is appropriate to compare the controversy being examined with "... actions brought in the courts of England prior to the

merger of the courts of law and equity. Tull v. United States, 95 L.Ed.2d 365, 375 (1987).

This Court has held repeatedly that actions in tort to recover monetary damages qualify for jury trial under the Seventh Amendment. Lorillard v. Pons, 434 U.S. 575, 583 (1978); Dairy Queen, Inc. v. Wood, 369 U.S. 469, 477 (1962); Whitehead v. Shattuck, 138 U.S. 146, 151 (1891).

Furthermore, this Court has noted that actions in tort are among those for which civil juries are best suited. Schulz v. Pennsylvania Railroad Co., 350 U.S. 523, 525-526 (1956).

In the instant case, a jury trial is appropriate. The Petitioner seeks civil penalties against the tortious conduct of the Respondents, a matter that would have been brought at law before the Seventh Amendment was enacted.

Furthermore, under the precedent established by this Court in cases, such as Lorillard and Dairy Queen, the instant matter, which seeks to recover monetary damages sustained as a result of the Respondents' negligence, would qualify for jury trial.

Finally, this Court has already noted that civil juries are suited to decide factual questions in tort claims.

In sum, questions of fact pertaining to the Petitioner's claims should, by right, be decided by a jury, since: (1) the Petitioner's claims are akin to those formerly decided at law rather than equity, (2) the Petitioner seeks to recover monetary losses, and requests no equitable relief, and (3) the factual questions posed by the Petitioner's claims are capable of resolution by jury.

The Order of the Virginia District Court, affirmed by the Virginia Supreme Court, severed Respondent, USAA, as a defendant, thereby immunizing the Respondent, USAA's tortious conduct from civil accountability.

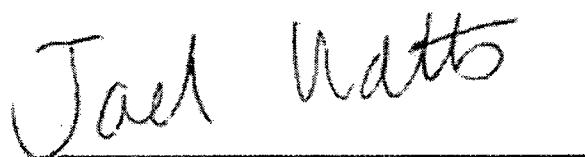
Additionally, the actions of the Virginia Courts divested the Petitioner of her Seventh Amendment right to have questions of fact inherent to her claim against the Respondent, USAA, decided by a jury.

For these reasons, this Court should grant this Writ of Certiorari and restore the Petitioner's jury trial right in Virginia court.

CONCLUSION

The decision of the Virginia Supreme Court to uphold the Virginia District Court's dismissal of Respondent, USAA, from the Petitioner's suit deprived the Petitioner of her rights under the Fourteenth and Seventh Amendments. Not only did the decisions of the Virginia Courts invalidate the Due Process and Equal Protection guarantees of the United States Constitution, but the decisions also nullify the assurance that civil findings of fact be made by a jury.

For all the foregoing reasons, the Petitioner respectfully requests that this Honorable Court grant the Petition for Writ of Certiorari and reverse the decision of the Virginia Supreme Court.

A handwritten signature in black ink, appearing to read "Jael Watts", is written over a solid horizontal line.

Jael Watts, Petitioner

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