

## WEST VIRGINIA CODE: §39-3-5

### **§39-3-5. Loss of original papers in any cause or appellate court record; effect of papers supplied.**

If, in any cause, the original papers therein, or any of them, or the record for or in an appellate court, or any paper filed or connected with such record, be lost, the court wherein the case is, or in which, but for such loss, it would or ought to be, may docket the same, and, on affidavit of such loss, the cause may be proceeded in, heard and determined, upon an authenticated copy of what is lost, or proof of the contents thereof; or if the cause be in an appellate court, upon a new record made up from the records and papers of the court below, and certified by the proper officer; or, in case the record and papers, or any part thereof, be lost or destroyed, the court below may, upon application of either party, upon reasonable notice to the opposite party, supply such record or part thereof, from the best evidence before it, either documentary or parol, which may be used in the court of appeals for the same purposes that the original might be. The court may, however, at the instance of either party, or in its discretion, require new pleadings to be made up in whole or in part; and the plaintiff, instead of proceeding as hereinbefore provided for, may commence and prosecute a new suit for the same matter; and such new suit may, if the former suit was in due time, be brought within one year after such loss, notwithstanding the expiration of the time within which suit must otherwise have been brought. If a cause has been decided and the original papers therein have been lost, the court by which the cause was decided, on affidavit of such loss, by some person interested therein and who was a party in such suit, may redocket such cause, and upon motion of such affiant, and after reasonable notice to all parties interested in such cause, shall supply such lost papers or parts thereof by authenticated copies of the same or proof of the contents thereof, and the papers thus supplied shall have the same effect as the papers for which they are substituted would have had.