

No. 31592 – Horace Mann Insurance Company v. Charles W. Adkins, Jr., individually and as Administrator of the Estate of Joseph Cory Adkins, deceased, and Sandra K. Adkins

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OF WEST VIRGINIA

Maynard, Chief Justice, dissenting:

I would affirm the ruling of the circuit court that Horace Mann was not obligated to pay UIM benefits to Mr. Adkins because he did not, in settling his underlying claim, exhaust the available limits of liability coverage.

This Court has held that “[w]here provisions in an insurance policy are plain and unambiguous and where such provisions are not contrary to a statute, regulation, or public policy, the provisions will be applied and not construed.” Syllabus, *Tynes v. Supreme Life Ins. Company of America*, 158 W.Va. 188, 209 S.E.2d 567 (1974). The majority opinion acknowledges that “the exhaustion clause incorporated by Horace Mann into the Adkins’ policies of insurance appears to be facially capable of but one construction: that all applicable policies of liability coverage must be exhausted before an insured may recover UIM benefits thereunder.” I would have ended my analysis there and upheld the policy language. Unlike the majority opinion, I simply do not believe this language violates public policy, and I see no need to adopt a new-fangled and confusing legal doctrine to get around the policy’s plain language.

Accordingly, I respectfully dissent.