No. 25539 -- Paul Mitchell, as executor of the Estate of Mary Mitchell v. Anthony George Broadnax, AND Naomi S. Mitchell and Geraldine O'Dell v. Anthony Broadnax

Starcher, Chief Justice, dissenting:

The real issue in this case, one discussed nowhere in the majority's opinion or in *Imgrund v. Yarborough*, 199 W.Va. 187, 483 S.E.2d 533 (1997), is whether an insurance company can riddle uninsured motorist coverage with so many exceptions that it becomes illusory. Applying *Imgrund* without thought in this case, the majority opinion has once again given insurance companies the green light to rake in premiums from unwitting insurance consumers who buy insurance to protect themselves and their families from uninsured motorists -- and at the same time, allowed the insurance companies to keep that money through the use of bizarre, irrational exclusions in their insurance policies. Exclusions, mind you, that totally violate the plain terms of West Virginia's uninsured motorist insurance laws.

Mary Mitchell was an elderly lady who shared her home with her daughter, Naomi. Mary and Naomi jointly owned a 1989 Pontiac which they insured through Kentucky Central Insurance Company. Mary also owned a 1981 Buick in her own right. As part of the insurance policy on the Buick, she bought and paid for $300,000 in uninsured motorist coverage from appellee Anthem Casualty Insurance Company.

While riding home from church with Naomi in the jointly-owned Pontiac, Mary Mitchell was smashed head-on by everyone's worst driving nightmare -- an unlicensed drunk driver, driving what was essentially a stolen car. And not your average

drunk driver, either. This one tried to drive away from the scene. A bystander pulled the keys from the ignition of the drunk driver's car, and tossed them to Naomi -- and the drunk proceeded to beat Naomi to get the keys back. All the while, Mary Mitchell lay in the passenger seat, unable to move because of a broken hip that would later take her life.

Mary Mitchell bought and paid for $300,000 in coverage, to protect her and her family from horrific situations exactly like this. Anthem Casualty Insurance Company, however, had a surprise for Mary Mitchell's family.

First, it refused coverage because it claimed the drunk driver was insured. Then it refused coverage because it claimed the Kentucky Central Insurance Company policy on the car Mary Mitchell was riding in was "primary." Then, as a last resort, it totally refused coverage because Mary Mitchell was a joint owner of the car she was riding in when she was smashed by the drunk driver.

Then, Anthem decided it would go ahead and pay Mary Mitchell's estate $20,000 -- based upon our decision in *Imgrund* -- but it would go ahead and keep the remaining $280,000, ostensibly because that's what Mary Mitchell agreed it could do.

The majority opinion embodies some fantasy notion that Mary Mitchell sat down across the conference table from an Anthem insurance agent and spent a few days dickering over what terms were going to be in the uninsured motorist "contract." And after extensive negotiations, the Anthem agent announced that, for an "appropriately adjusted premium," Mary Mitchell could buy uninsured motorist coverage that would cover her anywhere in the free world EXCEPT when she was in, on or upon a vehicle

that she or a family member owned but didn't insure under the Anthem policy. The policy also wouldn't cover her if she was hit by such a vehicle. It didn't matter to Anthem whether that other vehicle was insured or not; what mattered was that Anthem got a monopoly from Mary Mitchell so that every car she owned, and every car her family members owned, was insured by Anthem, under the same, not separate, policies. In this fantasy world, Mary Mitchell, after consultation with her team of lawyers, announced her acceptance of the exclusion in the uninsured motorist policy in return for the "adjusted" premiums.

This is all, of course, garbage. Mary Mitchell didn't have a clue what was in her policy; she probably never got a copy until after she paid her first premium. Even more likely, she (actually, her estate) never got a copy until after this lawsuit was filed.

And I guarantee you that Mary Mitchell never had a clue what the "appropriately adjusted premiums" were for her uninsured motorist coverage. There is absolutely no evidence of an adjustment in the record. I'm sure someone at Anthem could produce an affidavit, long after the fact, to show how much her premiums were adjusted. But it would take an army of actuaries and accountants to figure whether that premium adjustment was "appropriate."

And in the end, while the insurance company shareholders are laughing their way to the bank, teams of lawyers and bean counters are back at the home office, huddling over the current uninsured motorist policy, trying to figure out what new exclusions can be included in future policies. Thanks to the majority's opinion in this

case and in *Imgrund*, an insurance company can include whatever ridiculous exclusions it wants to include in an uninsured motorist insurance policy, regardless of what West Virginia law says -- and there's nothing anyone can do about it, because there's someone at the insurance company's home office who will fill out an affidavit saying the premiums for the policy were "appropriately adjusted" to reflect the ridiculous exclusion.

The spoken issue that we were asked to examine in this case was an "owned but not insured" exclusion in an uninsured motorist policy in light of the requirements of our uninsured motorist insurance statute, *W.Va. Code*, 33-6-31 [1995]. An "owned but not insured" exclusion in an automobile insurance policy attempts to eliminate uninsured motorist coverage when an insured person is injured by an uninsured driver while the insured is riding inside a vehicle that the insured person owns, but does not insure under the particular automobile insurance policy.

The majority in this case concluded, as it did in *Imgrund*, that an "owned but not insured" exclusion cannot operate to eliminate uninsured motorist coverage below the "mandatory limits" set by *W.Va. Code*, 17D-4-2 and 33-6-31(b), or $20,000 in bodily injury coverage per person. However, above those "mandatory limits," the majority held the appellee insurance company could incorporate into its policy exclusions that would eliminate the appellant's right to $280,000 in coverage that Mary Mitchell paid for and thought she would get if she was ever injured by an uninsured motorist.

I was in the majority of *Imgrund*, and in 1997 believed the Court's reasoning based on the facts of *Imgrund* to be sound. However, having re-read the

language of the uninsured motorist statute, particularly parts of the statute that were not discussed in *Imgrund*, I now believe I was wrong in *Imgrund* and respectfully dissent in the instant case. It is clear to me that "owned but not insured" exclusions in an uninsured motorist policy are totally invalid under West Virginia law -- and just as clear that *Imgrund* should be overruled.[1]

First, uninsured motorist coverage is personal; it follows the *named* insured and his or her family wherever they may go. It is not "vehicle" oriented, and a great majority of states have held that "owned but not insured" exclusions are void under those states' laws because it limits coverage based on the location of the insured. The "owned but not insured" exclusion in this case attempts to limit coverage based on the location of the "insured" -- she was inside of a vehicle she partially owned but did not insure through Anthem -- and the exclusion should have been held to be void and unenforceable by the very terms of our own uninsured motorist insurance laws.

Second, this Court has repeatedly held that insurance companies are statutorily required, in every single automobile insurance policy that they sell, to offer the insurance consumer the ability to purchase uninsured and underinsured motorist coverage with limits up to or equal to the limits of liability coverage bought by the consumer. It makes no sense to say that the insurance company is required by law to offer particular levels of coverage -- but then say the insurance company can riddle that coverage with so

[1]Similar reasoning applies to the underinsured motorist statute -- hence, *Deel v. Sweeney*, 181 W.Va. 460, 383 S.E.2d 92 (1989) should also be overruled.

many exclusions that the coverage is illusory. The exclusion at issue in this case attempts to limit coverage to less than the amount which an insurance company is required to offer under West Virginia law, and should have been declared void and unenforceable.

Third, the majority in this case and in *Imgrund* concluded that the "owned but not insured" exclusion is valid and enforceable because of *W.Va. Code*, 33-6-31(k), a statute which, when read out of context, suggests that an insurance company can include in a policy any "exclusions as may be consistent with the premiums charged." This statute has been thoroughly misconstrued in the majority opinion, and has absolutely no application to liability, uninsured, and underinsured motorist coverage -- and because the statute forms the basis for *Imgrund*, a correct construction of the statute forms the basis for overruling *Imgrund*.

Furthermore, there is no evidence in this case to indicate that Mary Mitchell's insurance premiums were adjusted in any way to be consistent with the "owned but not insured" exclusion, nor any evidence to show that Mary Mitchell bargained for lower premiums in return for the insurance company's inclusion of the exclusion. Even assuming *W.Va. Code*, 33-6-31(k) has some bearing on this case, the insurance company failed to meet its burden of proving the premiums paid by Mary Mitchell were appropriately adjusted to reflect the exclusion, and that that adjustment was conveyed to Mary Mitchell. Hence, again, the exclusion is void and unenforceable.

A.

*Uninsured Motorist Coverage is "Person-Oriented"*

West Virginia law requires every insurance company, in every automobile insurance policy, to include uninsured motorist coverage. Uninsured motorist coverage is not designed to protect the automobile -- it is specifically designed to protect responsible insurance consumers and their families.

*W.Va. Code*, 33-6-31(b) requires every insurance policy to contain coverage "to pay *the insured* all sums which he shall be legally entitled to recover as damages from the owner or operator of an uninsured motor vehicle[.]" (Emphasis added.)

The term "insured" is defined by *W.Va. Code*, 33-6-31(c) in the following manner (with emphasis added):

> As used in this section, . . . the term "insured" shall mean the named insured and, while resident of the same household, the spouse of any such named insured and relatives of either, while *in a motor vehicle or otherwise*, and any person, except a bailee for hire, who uses, with the consent, expressed or implied, of the named insured, the motor vehicle to which the policy applies or the personal representative of any of the above[.]

Our statute therefore mandates uninsured motorist coverage for:

1. The person named in the declarations page[2] while in a motor vehicle or otherwise;

[2]*W.Va. Code*, 33-6-31(c) defines a "named insured" in the following fashion:

> As used in this section, . . . the term "named insured" shall mean the person named as such in the declarations of the policy or contract and shall also include such person's spouse

2. Such person's spouse if a resident of the same household while in a motor vehicle or otherwise;

3. Relatives of the named insured or spouse resident in the same household while in a motor vehicle or otherwise;

4. Any other person (except a bailee for hire) who uses the insured vehicle with the consent of the named insured; or

5. The personal representative of any of the above.

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if a resident of the same household[.]

This statute was ignored by the majority opinion in *Imgrund*; hence, the outcome of *Imgrund* is totally out of whack with West Virginia law. The appellee/insured in *Imgrund* was a motorcycle driver living in his parents' household. When the appellee was struck by an uninsured motorist while riding his motorcycle, he tried to collect benefits from his parents' uninsured motorist policy. Because the motorcycle was owned by the appellee, but not insured under his parents' policy, the parent's insurance company argued there should be no coverage, citing to an "owned but not insured" exclusion. We upheld the exclusion on appeal, and denied the appellee any recovery under his parents' policy.[3]

The result in *Imgrund* was driven by the fact that the appellee did not pay for coverage under his parents' uninsured motorist policy. We held in *Imgrund* that

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[3]In *Imgrund*, we noted that the appellee/insured had already recovered $20,000 in proceeds from an uninsured motorist policy covering his motorcycle. We concluded that because Imgrund had recovered the $20,000 he was statutorily entitled to recover, he could not collect additional amounts under his parents' policy.

This conclusion is dead wrong. First, *W.Va. Code*, 33-6-31(b) tells insurance companies what coverage they must include in each separate insurance policy; its requirements do *not* apply to insurance consumers. Hence, even if the "owned but not insured" exclusion is valid and enforceable above the mandatory minimum limits under West Virginia law, Imgrund should have been able to collect $20,000 from his parents' policy because, by law, his parents' insurance company was required to provide the minimum limits of uninsured motorist coverage to each "insured" -- and as a resident relative of his parents' house, Imgrund meets the statutory definition of "insured."

Furthermore, *W.Va. Code*, 33-6-31(b) requires every automobile insurance policy to contain uninsured motorist coverage that is available "without setoff against the insured's policy or any other policy." Again, *Imgrund* holds that because Imgrund received $20,000 from his motorcycle insurance policy, that amount acts as a setoff to prevent recovery from his parents' insurance policy. This position plainly violates the insurance code.

because the appellee did not opt to buy additional coverage under his motorcycle policy, "Imgrund cannot now claim that he is entitled to benefit from the prudence of his parents." 199 W.Va. at 195, 483 S.E.2d at 541.

This basis for our decision in *Imgrund* totally ignores *W.Va. Code*, 33-6-31(b) and (c). The Legislature intended for every automobile insurance policy sold in West Virginia to include uninsured motorist protection for the relatives of a named insured who live in the named insured's home. In other words, the Legislature intended to protect children such as Imgrund who live at home with their parents and brothers and sisters. Because Imgrund's parents *were* prudent, they bought plenty of insurance coverage ($100,000 worth) for themselves and their children, just as they were allowed to do by West Virginia law. The majority opinion in *Imgrund* denied Imgrund's parents the benefit of their bargain, and the benefit of coverage that, prior to the release of this Court's opinion in *Imgrund*, they could have reasonably expected under a simple reading of *W.Va. Code*, 33-6-31(b) and (c).

Another faulty conclusion we reached in *Imgrund* was our statement that the purpose of *W.Va. Code*, 33-6-31(b) "is to require motorists to have in force and effect *uninsured* motorist coverage for each motor vehicle he or she owns." 199 W.Va. at 195, 483 S.E.2d at 541. This is just wrong. The uninsured motorist statutes are not intended to bolster the profits of an insurance company, and facilitate the sale of additional automobile insurance policies. *W.Va. Code*, 33-6-31(c), by its own terms, requires the insurance company to provide uninsured motorist coverage, not for each motor vehicle

owned by the named insured, but instead for the "named insured," his or her resident spouse, and the relatives of either who reside in their household, while "in a motor vehicle or otherwise."[4]

[4] Professor Widiss, in his treatise on uninsured and underinsured motorist coverage, has also criticized the argument that the "owned but not insured" exclusion is designed to encourage the acquisition of uninsured motorist insurance on each vehicle owned by a motorist. He stated:

> . . . the exclusion serves both the industry's interest in promoting the sale of insurance and the public interest in having owners acquire liability insurance for all vehicles. Although these are laudable objectives, it is doubtful whether the exclusion has much impact in fulfilling them because most purchasers are probably unaware of the exclusion and its impact on the uninsured motorist coverage. Therefore, it is unlikely that the exclusion actually promotes the acquisition of liability insurance. In addition, most exclusions apply to all vehicles owned by family members who reside in the same household, regardless of whether the vehicles are covered by another insurance policy. Thus, it seems unlikely that promoting the acquisition of liability insurance for all vehicles owned by family members who reside in the same household is an important reason for the inclusion of this exclusion in the uninsured motorist coverage.

1 Alan I. Widiss, *Uninsured and Underinsured Motorist Coverage* § 4.19 at 157-58 (2d Rev. Ed. 1999).

The fallacy of the Court's statement in *Imgrund*, that *W.Va. Code*, 33-6-31(b) is intended to "require motorists to have in force and effect *uninsured* motorist coverage for each motor vehicle he or she owns," is also made apparent by the facts in this case: Mary Mitchell had full liability and uninsured motorist coverage on both the Pontiac jointly owned with her daughter Naomi, and the Buick that she solely owned. If the Legislature intended for Mary Mitchell to purchase uninsured motorist coverage on each car she owned, then that goal was achieved. *Imgrund* acts to deny her coverage, not because she did not insure the Pontiac, because she bought her insurance coverage for the two vehicles from two separate insurance companies rather than one. In a sense, then, *Imgrund* encourages anti-competitive behavior by insurance companies in the insurance marketplace.

The Legislature's intent to connect uninsured motorist coverage to the person and not the insured vehicle is indicated by the terms used in *W.Va. Code*, 33-6-31(c). The statute states that the named insured, his or her resident spouse, and relatives of either who reside in their household, are to be covered by an uninsured motorist policy while riding in "a" motor vehicle, not "an insured" motor vehicle.[5] Conversely, the Legislature connected coverage for "any [other] person" specifically to the insured motor vehicle -- stating that coverage applies to "any person . . . who uses, with the consent, expressed or implied, of the named insured, the motor vehicle to which the policy applies." The Legislature could have tied uninsured motorist coverage in all

[5]The term "motor vehicle" can be problematic, as is illustrated by a case from Alaska. In *Hillman v. Nationwide Mutual Fire Ins. Co.*, 758 P.2d 1248 (Alaska 1988), an 11-year-old girl was killed by an uninsured driver while she was riding on a three-wheeled ATV. The ATV could not be insured under the Hillman's automobile insurance policy because it did not meet the policy's definition of a "motor vehicle" -- it was not a "vehicle designed to be driven on public roads." The insurance company, however, refused coverage because the girl was killed while riding on a motor vehicle that was "owned but not insured" under the Hillman family's automobile insurance policy. The Alaska Supreme Court concluded, based upon Alaska's uninsured motorist insurance law, that:

> All that the statutory coverage requires is that the person injured be insured and that he or she be entitled to recover damages from the operator of the uninsured motor vehicle arising out of the use of the uninsured motor vehicle. Those conditions are met in this case. Statutory coverage bears no relationship to the occupancy of any particular motor vehicle by the person insured. For the policy to impose as a coverage limitation a requirement that the person insured not be occupying an owned uninsured vehicle plainly conflicts with the mandated coverage[.]

The court went on to hold the "owned but not insured" exclusion was unenforceable.

instances to the vehicle insured under the automobile policy; it did not, and instead chose to tie coverage to the named insured, his or her spouse, and their relatives residing in their household, whether in a motor vehicle -- any motor vehicle -- or otherwise.

Most courts examining similar language in their uninsured motorist statutes have concluded that their legislatures intended, by focusing uninsured motorist coverage on the "insured" rather than the "insured vehicle," to make uninsured motorist coverage "person oriented" rather than "vehicle oriented." The coverage therefore attaches to the insured person, wherever located, not the insured vehicle.[6]

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[6]Numerous courts have held that "owned but not insured" exclusions are void and unenforceable on the ground that uninsured motorist coverage is "person oriented" rather than "vehicle oriented." *See, e.g., State Farm Auto. Ins. Co. v. Reaves*, 292 Ala. 218, 292 So.2d 95 (1974) (owned but not insured exclusion was invalid because statute "mandates uninsured motorist coverage for 'persons insured thereunder' in the policy"); *Calvert v. Farmers Ins. Co. of Arizona*, 144 Ariz. 291, 697 P.2d 684 (1985) (relying on a "majority" of 26 jurisdictions that rejected "other vehicle" exclusions, court concluded that uninsured motorist statute established public policy "that every insured is entitled to recover damages he or she would have been able to recover if the uninsured had maintained a policy of liability insurance in a solvent company."); *Harvey v. Travelers Indem. Co.*,188 Conn. 245, 449 A.2d 157 (1982) *partially superseded by statute as stated in Travelers Ins. Co. v. Kulla*, 216 Conn. 390, 579 A.2d 525 (1990) (exclusion was void as against public policy because the coverage required by the uninsured motorist statute is "person oriented" rather than "vehicle oriented."); *Bass v. State Farm Mut. Auto. Ins. Co.*, 128 Ga.App. 285, 196 S.E.2d 485, *aff'd in part, rev'd in part on other grounds*, 231 Ga. 269, 201 S.E.2d 444 (1973) (in underinsured motorist coverage, "the named insured is covered wherever he is, whether in that car, another car or no car;" exclusion of coverage for "occupying . . . a vehicle owned by the named insured . . . if such vehicle is not an insured automobile" was void as contrary to the uninsured motorist statute); *Squire v. Economy Fire & Cas. Co.*, 69 Ill.2d 167, 370 N.E.2d 1044 (1977) (to the extent the exclusion makes coverage dependent upon insured being in a vehicle listed in the policy, it is void; the uninsured motorist statute requires coverage regardless of the vehicle being driven); *Farmers Ins. Co., Inc. v. Gilbert*, 14 Kan.App.2d 395, 791 P.2d 742, *aff'd* 247 Kan. 589, 802 P.2d 556 (1990) (uninsured motorist coverage protects a named insured

"no matter where the named insured may be at the time of injury;" KSA 40-284 [1981] specifically authorizes an exclusion of uninsured motorist coverage "arising out of the use of another owned vehicle only if the other owned vehicle is uninsured;" a broad exclusion of coverage is unenforceable); *Chaffin v. Kentucky Farm Bureau Ins. Co.*, 789 S.W.2d 754 (Ken. 1990) (uninsured motorist coverage is mandated by statute and has a "personal nature;" coverage cannot be made illusory by exclusions, so exclusion is contrary to public policy and void); *Bradley v. Mid-Century Ins. Co.*, 409 Mich. 1, 294 N.W.2d 141 (1980) (uninsured motorist "coverage is portable;" "owned vehicle exclusion" declared invalid); *Jacobson v. Implement Dealer Mut. Ins. Co.*, 196 Mont. 542, 640 P.2d 908 (1982) (statute requires all automobile insurance policies contain uninsured motorist coverage; citing to cases making coverage "person oriented," court held exclusion void because it reduces the scope of coverage required by statute, and is contrary to public policy); *Martin v. Midwestern Group Ins. Co.*, 70 Ohio St.3d 478, 639 N.E.2d 438 (1994) ("other owned vehicle" exclusion was unenforceable; uninsured motorist statute mandates coverage to protect persons, not vehicles); *Monteith v. Jefferson Ins. Co. of New York*, 159 Vt. 378, 618 A.2d 488 (1992) ("the essence of UM/UIM coverage under § 941 is its portability. The statute does not allow insurers to condition coverage on the location of the insured nor the insured's status as a motorist, a passenger in a private or public vehicle, or as a pedestrian.").

*See also*, 1 Alan I. Widiss, *Uninsured and Underinsured Motorist Insurance* § 4.2, at 60-61 (2d Ed. 1992) ("Persons who are either named insureds or family members residing with a named insured . . . are afforded relatively comprehensive protection by the provisions used in most uninsured motorist insurance coverages." As insureds they "are protected when they are operating or are passengers in a motor vehicle, as well as when they are engaged in any other activity such as walking, riding a bicycle, driving a hay wagon, or even sitting on a front porch.")

The majority of states, applying statutory language similar to *W.Va. Code*, 33-6-31(b) and (c), have concluded that uninsured motorist coverage is intended to protect insurance consumers and their families, and not the insured vehicle. "The coverage is portable: The insured and family members are covered not only when occupying the covered vehicle, but also when in another automobile, and when on foot, on a bicycle or even sitting on a porch." *Bradley v. Mid-Century Ins. Co.*, 409 Mich. 1, 24, 294 N.W.2d 141, 145 (1980). As the Michigan Supreme Court stated in *Bradley*:

> The status of the named insured and his relatives as persons insured against negligent uninsured motorists is not altered by there being other family vehicles having no uninsured motorist coverage. They acquire their insured status when coverage is purchased for any household vehicle. Thereafter, they are insured no matter where they are injured. They are insured when injured in an owned vehicle named in the policy, in an owned vehicle not named in the policy, in an unowned vehicle, on a motorcycle, on a bicycle, whether afoot or on horseback or even on a pogo stick.

409 Mich. at 38, 294 N.W.2d at 152.

I would therefore hold that *W.Va. Code*, 33-6-31(b) [1995] requires an insurance company, in any automobile insurance policy, to provide uninsured motorist coverage that will pay the "insured" all sums which he or she shall be legally entitled to recover as damages from the owner or operator of an uninsured motor vehicle. Uninsured motorist coverage protects the "insured" person, as defined in *W.Va. Code*, 33-6-31(c), who is injured by an uninsured motorist, no matter where the insured person

may be at the time of injury. Because *Imgrund v. Yarborough*, 199 W.Va. 187, 483 S.E.2d 533 (1997) conflicts with this statutory principle, it should be overruled.[7]

B.

*An Insurance Company Must Offer Uninsured and Underinsured Motorist Coverage in Amounts Up To and Equal to the Limits of Liability Coverage -- Without Conditions, Limitations, or Exclusions*

The second statutory clause that was not discussed in *Imgrund* is that portion of *W.Va. Code*, 33-6-31(b) which *requires* an insurance company to offer uninsured motorist coverage in excess of the statutory mandatory minimum. *W.Va. Code*, 33-6-31(b) states, in pertinent part, that within an automobile insurance policy an insurance company:

> . . . shall provide an option to the insured with appropriately adjusted premiums to pay the insured all sums which he shall legally be entitled to recover as damages from the owner or operator of an uninsured or underinsured motor vehicle up to an amount not less than limits of bodily injury liability insurance and property damage liability insurance purchased by the insured without setoff against the insured's policy or any other policy.

[7]Under *W.Va. Code*, 33-6-31(b) and (c), a family member of the "named insured" (*i.e.*, the person named on the policy's declarations page) who resides in the same household as the named insured would, if injured due to the negligence of an uninsured driver, be entitled to coverage under the named insured's uninsured motorist policy, without regard to their location at the time of injury. The requirements of *W.Va. Code*, 33-6-31(b) and (c) apply to each separate "policy or contract" for insurance, not the person insured by the policy. Hence, plaintiff-below Naomi Mitchell, as a resident relative of Mary Mitchell's household, would be entitled to uninsured motorist coverage under Mary Mitchell's uninsured motorist policy -- regardless of whether she collected any benefits from any other uninsured motorist policy.

We have repeatedly construed this language to mean that an insurance company is required to offer an insurance consumer the right to purchase an amount of uninsured motorist coverage equal to the level of liability coverage. This is a mandatory requirement -- it is not an option on the part of the insurance company.

In *Bias v. Nationwide Mut. Ins. Co.*, 179 W.Va. 125, 365 S.E.2d 789 (1987), we interpreted this clause in *W.Va. Code*, 33-6-31(b) to mean that an ability to purchase a higher limit of uninsured motorist coverage "*shall* be offered [to the consumer], and this [statutory] language must be afforded a mandatory connotation." 179 W.Va. at 127, 365 S.E.2d at 791. The insurance company must offer the coverage; the insurance consumer then has the option to purchase that coverage. We went on to hold, at Syllabus Point 1, that

> Where an offer of optional coverage is required by statute, the insurer has the burden of proving that an effective offer was made, and that any rejection of said offer by the insured was knowing and informed.

In *Riffle v. State Farm Mut. Auto Ins. Co.*, 186 W.Va. 54, 410 S.E.2d 413 (1991), we made clear that if an insurance company fails to make an effective offer of the level of un- or underinsured motorist coverage required by *W.Va. Code*, 33-6-31(b), then under *Bias* that level of insurance will be read into the policy.[8] As we stated in Syllabus

[8]In the wake of *Bias*, the Legislature has provided insurance companies with the form which must be used to make a proper offer of uninsured and underinsured motorist coverage. *See W.Va. Code*, 33-6-31(d) (1995). *See also*, *Westfield Ins. Co. v. Bell*, 203 W.Va. 305, 507 S.E.2d 406 (1998) (*per curiam*).

Point 2, "when an insurer fails to prove an effective offer and a knowing and intelligent waiver by the insured, the insurer must provide the minimum coverage required to be offered under the statute." We held in *Riffle* that, in the absence of a proper offer, the minimum amount of uninsured and underinsured motorist coverage that an insurance company will be required to provide under the statute is "'an amount not less than the limits of bodily injury liability insurance and property damage liability insurance.'" 186 W.Va. at ___, 410 S.E.2d at 414.

Our cases applying *Bias* have repeatedly interpreted *W.Va. Code,* 33-6-31(b) as imposing a mandatory requirement that an insurance company offer a consumer uninsured motorist coverage in an amount equal to the level of liability coverage purchased. If the insurance company fails to make a proper offer, then uninsured motorist coverage in an amount equal to the level of liability coverage is presumed, as a matter of law, to be included in the policy.

This line of cases, however, is contradicted by our holding in *Imgrund*. *Imgrund, sub silentio,* suggests that an insurance company's offer of uninsured and underinsured motorist coverage above the statutory mandatory minimum is purely optional -- and therefore, the amount of coverage can be limited by exclusions. *Imgrund,* 199 W.Va. at 193, 483 S.E.2d at 539.

Thus, there is a contradiction between our interpretation of *W.Va. Code*, 33-6-31(b) in *Bias* and its progeny, and its interpretation in *Imgrund*. *Bias* holds that an insurance company must offer a certain amount of uninsured motorist coverage -- if the

insurance company fails to make a commercially reasonable offer of coverage, then uninsured motorist coverage in an amount equal to the amount of liability coverage is automatically read into the policy. *Imgrund* tells insurance companies they can meet their statutory obligation by offering uninsured motorist coverage with limits equal to the level of liability coverage -- but can condition and limit that coverage by including numerous exceptions, so long as the insurance consumer is only asked to pay "appropriately adjusted premiums."

This contradiction undermines the Legislature's goal of fully protecting responsible citizens and their families from irresponsible, uninsured motorists. "[T]he preeminent public policy of this state in uninsured and underinsured motorist cases is that the injured person be *fully compensated* for his or her *damages* not compensated by a negligent tortfeasor, up to the limits of the uninsured or underinsured motorist coverage." *State Auto. Mut. Ins. Co. v. Youler*, 183 W.Va. 556, 564, 396 S.E.2d 737, 745 (1990). The Legislature could not have intended to require an insurance company to offer uninsured motorist coverage, and then allowed the insurance company to void that coverage through the use of exclusions.

In other words, the appealing logic of *Imgrund* withers in the full light of *W.Va. Code*, 33-6-31(b).

I would therefore hold that when a consumer purchases an automobile insurance policy, under *W.Va. Code*, 33-6-31(b) [1995], the insurance company is required to offer the consumer the ability to purchase uninsured motorist coverage in an

amount up to the level of bodily injury liability insurance and property damage liability insurance purchased by the consumer. Any attempt to limit the amount of uninsured motorist coverage purchased by the consumer pursuant to *W.Va. Code*, 33-6-31(b) is therefore void as against public policy. Because *Imgrund* conflicts with this statutory principle, it should be overruled.

C.
*W.Va. Code, 33-6-31(k) Has No Application to Liability, Uninsured or Underinsured Motorist Coverage*

The majority opinion in this case, and in *Imgrund,* contends that *W.Va. Code*, 33-6-31(b) only requires an insurance company to offer the mandatory minimum limit of uninsured motorist coverage set by *W.Va. Code*, 17D-4-2, or $20,000 bodily injury protection per person, $40,000 bodily injury protection per occurrence, and $10,000 in property damage protection. The majority opinion leaves the impression that any amounts offered above that mandatory minimum limit is offered at the grace and beneficence of the insurance company -- and that *W.Va. Code*, 33-6-31(k) specifically authorizes the insurance company to include any exclusions that it wants in that optional coverage.

*W.Va. Code*, 33-6-31(k) states:

> Nothing contained herein shall prevent any insurer from also offering benefits and limits other than those prescribed herein, nor shall this section be construed as preventing any

> insurer from incorporating in such terms, conditions and exclusions as may be consistent with the premium charged.

*W.Va. Code*, 33-6-31(k) is not a model of statutory drafting. The statute was enacted by the Legislature in 1979,[9] as part of a complete revision of the compulsory insurance laws. However, there is no hint of what the Legislature meant by the statute. *See* 1979 *Acts of the Legislature*, Chapter 61. But in attempting to interpret the statute, it must be read in its entirety, and not as a string of separate clauses.

> In the construction of a legislative enactment, the intention of the legislature is to be determined, not from any single part, provision, section, sentence, phrase or word, but rather from a general consideration of the act or statute in its entirety.

Syllabus Point 1, *Parkins v. Londeree*, 146 W.Va. 1051, 124 S.E.2d 471 (1962).

*W.Va. Code*, 33-6-31 prescribes the basic terms for automobile liability insurance, uninsured motorist coverage, and underinsured motorist coverage. The first clause of *W.Va. Code*, 33-6-31(k) states that nothing in *W.Va. Code*, 33-6-31, as a whole, prevents an insurance company from offering "benefits and limits other than those

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[9]*W.Va. Code*, 33-6-31(k) was adopted by the Legislature in 1979. In 1982, *W.Va. Code*, 33-6-31(b) was amended by the Legislature to impose upon an insurance company the aforementioned duty to offer uninsured motorist coverage with limits up to or equal to the limit of liability coverage purchased by the consumer. Again, it seems nonsensical for the Legislature to write a statute in 1982 that requires an insurance company to offer coverage, but allow that coverage to be undermined by a 1979 statute concerning exclusions. This supports the position taken in the text that the Legislature never intended for *W.Va. Code*, 33-6-31(k) to have any application to liability, un- and under-insured motorist coverages.

prescribed herein[.]" This means that an insurance company can offer other types of benefits and coverage in an automobile insurance policy different from liability, uninsured motorist, and underinsured motorist coverage -- such as comprehensive coverage, collision coverage, towing coverage, alien abduction insurance, or whatever.

The second clause of *W.Va. Code*, 33-6-31(k) must be read together with the first clause; it cannot be read separately, as the majority opinion did in *Imgrund*. The second clause states that if an insurance company offers these "other" coverages, then the insurance company also has the right to include as part of that "other" coverage "such terms, conditions and exclusions as may be consistent with the premium charged." The terms, conditions and exclusions can be placed on the "other" coverages -- not on liability, un- or underinsured motorist coverages.

I find absolutely nothing in *W.Va. Code*, 33-6-31(k) to suggest that the Legislature intended to allow insurance companies to limit the mandatory liability, uninsured and underinsured motorist coverage required by *W.Va. Code*, 33-6-31. Furthermore, we are required by principles of statutory construction to interpret *W.Va. Code*, 33-6-31(k) in a manner favorable to the insurance consumer. "The uninsured motorist statute, West Virginia Code Sec. 33-6-31 (Supp. 1986), is remedial in nature and, therefore, must be construed liberally in order to effect its purpose." Syllabus Point 7, *Perkins v. Doe*, 177 W.Va. 84, 350 S.E.2d 711 (1986).

Yet the majority opinion in this case and in *Imgrund*[10] stretches and

tortures *W.Va. Code*, 33-6-31 to allow insurance companies to eliminate these mandatory coverages through the use of exclusions -- and does so to the detriment of insurance consumers. By stretching *W.Va. Code*, 33-6-31(k) from applying only to optional coverages to applying also to mandatory liability, un- and underinsured motorist coverages, the majority suggests that insurance companies can give coverage with one hand and take it away with the other. Applying *Imgrund* in its literal sense, an insurance company can offer insurance consumers $300,000 in uninsured motorist coverage -- but then say that, as to $280,000 in that coverage, coverage is excluded if the consumer is injured by an uninsured motorist on any day between Monday and Saturday, or coverage is excluded if the uninsured motorist was driving an American made car, or coverage is excluded if the insured consumer happens to be riding in an automobile she jointly owns with another person, but which is fully insured by another insurance company, and so on. As long as the insurance company has asked the consumer to pay "appropriately adjusted premiums,"[11] it appears the insurance company can include any ridiculous exclusion that it wants to include in its policy.[12]

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[10]And, in the context of an "owned but not insured" exclusion in an *under*insured motorist policy, *Deel v. Sweeney*, 181 W.Va. 460, 383 S.E.2d 92 (1989).

[11]I recognize that insurance companies have to justify their "appropriately adjusted premiums" by presenting evidence to the West Virginia insurance commissioner. But it is the insurance company that holds all of the cards; there is nothing to say an insurance company won't cook the books to increase its profits, and there is very little an insurance consumer can do to dispute the insurance company's evidence.

[12]I can find no other state that has stretched such a vague statute to mean that an insurance company is statutorily authorized to include an "owned but not insured"

exclusion in an uninsured motorist policy. States that find the exclusion to be statutorily authorized rely upon statutes that specifically, clearly, and unquestionably state that uninsured motorist coverage may be excluded if the insured is injured while occupying a vehicle owned but not insured under the subject policy. *See*, *e.g.*, *California Ins. Code* § 111580.2; *New Hampshire Ins. Group v. Harbach*, 439 So.2d 1383 (Fla. 1983); *IDS Property Cas. Ins. Co. v. Kalberer*, 661 N.E.2d 991 (Ind.Ct.App. 1996); *Farmers Ins. Co. v. Gilbert*, 14 Kan.App.2d 395, 791 P.2d 742, *aff'd*, 247 Kan. 589, 802 P.2d 556 (1990) (*KSA* 40-284 [1981] authorizes an exclusion of uninsured motorist coverage "arising out of the use of another owned vehicle only if the other owned vehicle is uninsured."); *Sandoz v. State Farm Mut. Auto. Ins. Co.*, 620 So.2d 441 (La. 1993); *Powell v. State Farm Mut. Auto. Ins. Co.*, 86 Md.App. 98, 585 A.2d 468 (1991); *Windrim v. Nationwide Ins. Co.*, 537 Pa. 129, 64 A.2d 1154 (1993); *Dockins v. Balboa Ins. Co.*, 764 S.W.2d 529 (Tenn. 1989).

The *Imgrund* majority's fundamental breach of the statutory construction principles that are set forth in *Perkins v. Doe* has not yet been brought to the Court's attention. When it is brought before the Court, I hope the Court realizes the loophole it has created by its misinterpretation of *W.Va. Code*, 33-6-31(k), and places a proper interpretation on the statute.[13]

Just for argument's sake, however, let us assume that the Legislature did intend for *W.Va. Code*, 33-6-31(k) to apply to uninsured motorist coverage, and did

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[13]The insurance company in *Imgrund* argued, and this Court accepted, that this Court has repeatedly held that an insurance company is only required to provide the statutory mandatory minimum amount of certain types of coverage -- and above that minimum limit of coverage, exclusions can operate to deny the insurance consumer any coverage. This assertion misapplies our prior case law, and ignores the nature of uninsured motorist coverage.

In *Dotts v. Taressa J.A.*, 182 W.Va. 586, 390 S.E.2d 568 (1990), we examined *liability* coverage required by *W.Va. Code*, 17D-4-2, and held that an insurance company was required to provide the aforementioned minimum $20,000/$40,000/$10,000 limits of liability coverage. We held an exclusion for intentional acts was void up to these limits, but could be applied to exclude coverage above these limits. However, unlike *W.Va. Code*, 33-6-31(b) and uninsured motorist coverage, there is nothing in *W.Va. Code*, 17D-4-2 that requires an insurance company to offer liability coverage in an amount greater than the minimum limits. Also, *W.Va. Code*, 33-6-31(k) is nowhere mentioned in *Dotts*.

In *Jones v. Motorists Mut. Ins. Co.*, the insurance consumer tried to exclude her teenage son from coverage under her automobile *liability* policy. The teenage son then wrecked the car and damaged the property of third parties. We held that because *W.Va. Code*, 17D-4-2 requires the minimum limits of liability coverage to protect third parties, the exclusion of drivers from the minimum limits of liability coverage is prohibited. Above those minimum limits, however, *W.Va. Code*, 33-6-31(a) specifically allows the insurance company to deny coverage for "any persons specifically excluded by any restrictive endorsement attached to the policy." *Jones*, therefore, is substantially different from the instant case, because a "named driver exclusion" is specifically authorized by statute. In the case of uninsured motorist coverage, there is no statute specifically authorizing an "owned but not insured" exclusion.

intend to allow an insurance company to limit that coverage through exclusions subject to "appropriately adjusted premiums." The evidence in this case is that Mary Mitchell paid Anthem Casualty Insurance Company $72 every 6 months for $300,000 per person, $300,000 per occurrence in uninsured and underinsured motorists bodily injury coverage. She also paid $14 every 6 months for $300,000 in property damage coverage. That's it; there is no other evidence regarding whether these premiums were "appropriately adjusted" to reflect the "owned but not insured" exclusion.

We have repeatedly taken the position in our case law that "[i]nsurance contracts are notoriously complex . . . and border on the status of contracts of adhesion. Under this view the insured and insurer do not stand in *pari causa*, and therefore, the insured's assent to the agreement lacks completeness in relation to that of the insurer." *Bell v. State Farm Mut. Auto Ins. Co.*, 157 W.Va. 623, 628-29, 207 S.E.2d 147, 150-151 (1974) (citations omitted). As we said in *National Mut. Ins. Co. v. McMahon & Sons, Inc.*, 177 W.Va. 734, 741-42 n. 6, 356 S.E.2d 488, 495-96 n. 6 (1987)*:*

> These policies are contracts of adhesion, offered on a take-it-or-leave-it basis, often sight unseen until the premium is paid and accepted, full of complicated, almost mystical, language. "It is generally recognized the insured will not read the detailed, cross-referenced, standardized, mass-produced insurance form, nor understand it if he does." *C & J Fertilizer, Inc. v. Allied Mutual Insurance Co.*, 227 N.W.2d 169, 174 (Ia.1975); *accord*, 3 *Corbin on Contracts* § 559 (1960); Keeton, [*Insurance Law Rights at Variance with Policy Provisions*,] 83 Harv.L.Rev. [961] at 968 [1970]. The majority rule is that the insured is not presumed to know the contents of an adhesion-type insurance policy delivered to

> him, 7 *Williston on Contracts* § 906 B (1963), and we hereby adopt the majority view.

This Court does not seriously expect that an insurance consumer will carefully read and understand an insurance policy. In fact, most consumers never even see the policy until after the premiums are paid, and therefore cannot be tightly bound by the terms of an exclusion that was never communicated to the consumer at the time the policy was purchased. For example, the court in *Rempel v. Nationwide Life Ins. Co., Inc.*, 471 Pa. 404, ___, 370 A.2d 366, 368 (1977) recognized that:

> [T]he consumer's signature is not required on the policy. In fact, it is received weeks, or perhaps longer, after the signing of the application. The significant decision by the consumer is not made when the policy is received. The receipt of the policy is the acceptance of the offer previously made. It is at the time that the offer is being made by the consumer -- when the application is being signed -- that the consumer is making the decision to "buy" or "not to buy" the insurance. By the time the written policy is received, it has lost its importance to the insured.

In *Reliance Ins. Co. v. Moessner*, 121 F.3d 895, 905 (3d Cir. 1997) the court similarly stated that:

> The control exercised by insurers is especially problematic when the insured . . . does not receive the actual insurance policy until after offering to buy insurance and paying the first premium. . . . [W]hen the insured does not know or have reason to know of the existence of an unfavorable provision, then the insured lacks the ability to negotiate a more

> favorable insurance policy, and [the insured's] sophistication or putative bargaining power is meaningless.[14]

Because of this, if an insurance company intends to rely upon an exclusion that was stuck into an automobile insurance policy with "appropriately adjusted premiums," there must be some evidence that the exclusion was brought to the attention of the insurance consumer. In other words, the exclusion must be noted on the declarations page or some other document, with the statement that the insurance company has reduced the consumer's premiums to reflect the reduction in coverage.

The insurance company cannot simply say, "Here's the premium. We've adjusted it to reflect the exclusion. Trust us!" The insurance company similarly cannot introduce an affidavit from an attorney at the home office who says the same thing. The only way the insurance consumer could challenge such an unsupported statement is by

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[14]*See also, Atwater Creamery Co. v. Western Nat'l Mut. Ins. Co.*, 366 N.W.2d 271, 277 (Minn. 1985) ("[I]n the majority of cases, a lay person lacks the necessary skills to read and understand insurance policies, which are typically long, set out in very small type and written from a legalistic or insurance expert's perspective."); *C&J Fertilizer, Inc. v. Allied Mut. Ins. Co.*, 227 N.W.2d 169, 174 (Iowa 1975) ("It is generally recognized the insured will not read the detailed, cross-referenced, standardized, mass-produced insurance form, nor understand it is he does."); J. Calamari, *Duty to Read: A Changing Concept*, 43 Fordham L.Rev. 341 (1974) ("[I]n the current era of mass marketing, a party may reasonably believe that he is not expected to read a standardized document and would be met with impatience if he did. In such circumstances an imputation that he assents to all of the terms in the document is dubious law. An assertion that he is bound by them would place a premium upon an artful draftsman who is able to put asunder what the salesman and the customer have joined together."); *Restatement of Contracts (Second)* § 207 (noting that standard-form agreements are seldom read). *See also, Davis v. M.L.G. Corp.*, 712 P.2d 985, 992 (Colo. 1986) ("[T]he detailed provisions of standardized contracts are seldom read by consumers.").

hiring dozens of actuaries and accountants to spend a few hundred thousand dollars plowing through mounds of insurance company premium data, all to determine if the insurance company "appropriately" reduced its premium by a few dollars.

"With respect to insurance contracts, the doctrine of reasonable expectations is that the objectively reasonable expectations of applicants and intended beneficiaries regarding the terms of insurance contracts will be honored even though painstaking study of the policy provisions would have negated those expectations." Syllabus Point 8, *National Mut. Ins. Co. v. McMahon & Sons, Inc.*, 177 W.Va. 734, 356 S.E.2d 488 (1987). There is nothing in the record to indicate that Anthem Casualty Insurance Company specifically told Mary Mitchell of the existence of the "owned but not insured" exclusion, and nothing to show it told her it "appropriately adjusted [its] premiums" to reflect that exclusion. Therefore, even if a painstaking study of the policy might have revealed the exclusion to Mary Mitchell, she reasonably expected she paid premiums for full coverage under the policy -- and therefore, the exclusion is void and unenforceable.

D.
*Conclusion*

Provisions in an insurance policy that are more restrictive than statutory requirements are void and ineffective as against public policy. *See* Syllabus Point 2, *Universal Underwriters Ins. Co. v. Taylor*, 185 W.Va. 606, 408 S.E.2d 358 (1991);

Syllabus Point 2, *Johnson v. Continental Casualty Co.*, 157 W.Va. 572, 201 S.E.2d 292 (1973). As to uninsured motorist coverage, we have specifically held:

> The Uninsured Motorist Law, Chapter 33, Article 6, Section 31, Code of West Virginia, 1931, as amended, governs the relationship between an insured and insurer and provisions within a motor vehicle insurance policy which conflict with the requirements of the statute, either by adding to or taking away from its requirements are void and ineffective.

Syllabus Point 1, *Bell v. State Farm Mut. Auto. Ins. Co.*, 157 W.Va. 623, 207 S.E.2d 147 (1974). In other words, "[s]tatutory provisions mandated by the Uninsured Motorist Law, W. Va. Code § 33-6-31 [1988] may not be altered by insurance policy exclusions." Syllabus Point 1, *Deel v. Sweeney*, 181 W.Va. 460, 383 S.E.2d 92 (1989).

When the language of an insurance policy is contrary to statute and therefore void, the policy should be construed to contain the coverage required by West Virginia law. *W.Va. Code*, 33-6-17 [1957] mandates that:

> Any insurance policy, rider, or endorsement hereafter issued and otherwise valid which contains any condition or provision not in compliance with the requirements of this chapter, shall not be thereby rendered invalid but shall be construed and applied in accordance with such conditions and provisions as would have applied had such policy, rider, or endorsement been in full compliance with this chapter.

Because the language of Anthem's uninsured motorist insurance policy does not comport with the broad terms of *W.Va. Code*, 33-6-31, the policy language is void and the policy must be construed to contain the coverage provided for by statute.

The exclusion attempts to focus uninsured motorist coverage, not on the insurance consumer, but on the insured vehicle. *W.Va. Code*, 33-6-31(b) requires Anthem to provide uninsured motorist coverage to the "insured," wherever the insured may be when injured by an uninsured motorist; the Anthem exclusion, however, improperly limits coverage based on the insured's location: it precludes coverage when the insured is injured while riding in a vehicle owned by the insured but not insured under the Anthem policy.

If Mary Mitchell had been injured by Broadnax while she was riding in a car she did not partially own, while walking down the road, or while sitting on the front porch of her house, then she would be covered by the Anthem policy. Even under Anthem's theory, if Mary Mitchell had turned to her daughter moments before the accident and given her daughter a gift of her 50% share of the Pontiac, then she would be covered by the Anthem policy. *W.Va. Code*, 33-6-31(b) requires coverage of Mary Mitchell in all these circumstances -- but it also requires coverage when she was injured while riding in a vehicle that she partially owned. The coverage that Mary Mitchell purchased from Anthem was personal to Mary Mitchell -- it traveled with her, not with her car.

Furthermore, Mary Mitchell had purchased $300,000 in liability coverage on her 1981 Buick. Anthem properly offered her $300,000 in uninsured motorist coverage, as it was required to do under *Bias v. Nationwide Mut. Ins. Co.* and *W.Va. Code*, 33-6-31(b), and Mary Mitchell bought that coverage. Anthem should not have

been allowed to limit the coverage it was statutorily required to provide through the "owned but not insured" exclusion. To do so violates the long-standing public policy of this State that responsible insurance consumers and their families, who have purchased or are otherwise covered by uninsured motorist coverage, be fully compensated for any damages caused by a negligent, uninsured tortfeasor.[15]

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[15]Numerous other states, in addition to those listed in footnote 6, have similarly concluded that the "owned but not insured" exclusion is unenforceable, because the exclusion violates a legislative policy to provide full uninsured motorist coverage to responsible insurance consumers. As Professor Widiss states in his treatise:

> Courts in a majority of the jurisdictions that have considered enforceability of the other owned vehicle/household family member exclusion have held that unless a coverage restriction is specifically authorized by the state's uninsured motorist legislation, the exclusion and comparable coverage limitations are against public policy and are, therefore, void.

1 Alan I. Widiss, *Uninsured and Underinsured Motorist Insurance*, §4.19 at 180-181 (Rev. 2d Ed. 1999). As in West Virginia, few states specifically authorize the exclusion. *See, e.g., Hillman v. Nationwide Mut. Fire Ins. Co.*, 758 P.2d 1248 (Alaska 1988) (ATV struck by uninsured truck was a motor vehicle covered by policy; exclusion of owned but noninsured vehicles prohibited by uninsured motorist statute); *Frank v. Horizon Assurance Co.*, 553 A.2d 1199 (Del.Supr. 1989); *Kau v. State Farm Mut. Auto Ins. Co.*, 58 Hawaii 49, 564 P.2d 443 (1977) (*per curiam*); *Nygaard v. State Farm Mut. Auto. Ins. Co.*, 301 Minn. 10, 221 N.W.2d 151 (1974); *Lowery v. State Farm Mut. Auto. Ins. Co.*, 285 So.2d 767 (Miss. 1973) (court follows the "great weight of authority" and holds exclusion violates public policy); *State Farm Mut. Auto. Ins. Co. v. Hinkel*, 87 Nev. 478, 488 P.2d 1151 (1971); *Beek v. Ohio Cas. Ins. Co.*, 73 N.J. 185, 373 A.2d 654 (1977); *Chavez v. State Farm Mut. Auto. Ins. Co.*, 87 N.M. 327, 533 P.2d 100 (1975); *Cothren v. Emcasco Ins. Co.*, 555 P.2d 1037 (Okla. 1976); *Hogan v. Home Ins. Co.*, 260 S.C. 157, 194 S.E.2d 890 (1973); *Allstate Ins. Co. v. Meeks*, 207 Va. 897, 153 S.E.2d 222 (1967) (court looked to the definitions of "insured" and concluded coverage extended to owned but not insured vehicle). *See also*, Janet B. Jones, *Uninsured Motorist Coverage: Validity of Exclusion of Injuries Sustained by Insured While Occupying "Owned" Vehicle Not Insured by Policy*, 30 A.L.R.4th 172 (1981); Shannon M. McDonough, *Note: Exclusions for Owned But Not Insured in Uninsured Motorist Provisions -- What Are States Really Driving At In Their Decisions?*, 43 Drake.L.Rev. 917 (1995).

Lastly, the majority is just wrong in its interpretation of *W.Va. Code*, 33-6-31(k). That *Code* section applies to various and sundry coverages other than liability, un- and under-insured motorist coverages.

Because *Imgrund* conflicts with each of these statutory principles, it should be overruled. Because the majority opinion repeats these errors, I must respectfully disagree with the majority's conclusion. I believe that Mary Mitchell's estate should be allowed to recover the full proceeds of the policy that she paid for. I therefore respectfully dissent.

I am authorized to state that Justice McGraw joins in this dissenting opinion.