No. 31971 – *Tom Collins v. Karen Heaster, as Administratrix for the Estate of David Heaster, and John Doe*

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Albright, Chief Justice, dissenting:

Because I think the majority has made new law that is purely and simply bad public policy, I must respectfully dissent. The facts of this case indicate that a John Doe moved the insured's vehicle from the so-called "zone of danger." No one disputes that the vehicle was in sufficient proximity to the fire such that it was reasonable to conclude that the automobile could have been subjected to the flames of the house fire were it not moved. Yet, the majority somehow concludes that a Good Samaritan who decided to move the vehicle out of the "zone of danger" did not have the implied consent of the vehicle's owner to move such vehicle under the meaning of this state's omnibus statute. *See* W.Va. Code §33-6-31(a) (requiring that all motor vehicle insurance policies contain provision insuring named insured and all persons "responsible for the use of or using the motor vehicle with the consent, expressed or implied, of the named insured or his or her spouse against liability for death or bodily injury").

As a matter of public policy, it makes sense to interpret the omnibus clause language concerning implied consent that is at issue in this case in such a fashion that the owner's consent is implied in a situation where a Good Samaritan undertakes to move an

insured's vehicle out of the "zone of danger" due to a raging fire. Had the vehicle at issue in this case actually caught on fire, the level of danger presented at the scene would have been exponentially increased due to the potential for the vehicle's fuel tank to explode and the extent of damages suffered by those present at the scene would have been greatly enhanced. Consequently, discouraging a concerned citizen from performing an act that has as its goal the limiting of additional property loss makes no sense given the objectives of the omnibus coverage. *See Universal Underwriters Ins. Co. v. Taylor,* 185 W.Va. 606, 611, 408 S.E.2d 358, 363 (1991) (recognizing that legislative objective that underlies statutorily-required omnibus clause is to "maximize insurance coverage for the greater protection of the public").

Just as I disagree with the result reached by the majority with regard to the issue of implied consent, I similarly disagree that the insurance proceeds available for injuries caused by a John Doe in a motor vehicle accident should be limited to the uninsured benefits available under the injured person's uninsured motorist coverage. This result only serves to punish an innocent victim for the unintended actions of a John Doe citizen whose actions were unquestionably laudable in purpose. The injured party should be permitted to recover damages under the coverages provided by the insured's automobile policy in consonance with the policy objective of "'assuring that all persons wrongfully injured have financially responsible persons to look to for damages.'" *See Taylor,* 185 W.Va. at 612, 408

S.E.2d at 364 (quoting *Odolecki v. Hartford Accident & Indem. Co.*, 264 A.2d 38, 42 (N.J. 1970)).

For the foregoing reasons, I respectfully dissent.