INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

WV National Auto Insurance Company,

Defendant Below, Petitioner

vs.

No. 23-ICA-101
(Appeal from a final order
of the Circuit Court of Logan
County (20-C-98))

Danny J. Dobbins and Jackie L. Dobbins,

Plaintiffs Below, Respondents.

Petitioner's Reply Brief

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REPLY TO RESPONDENTS' RESPONSE TO ARGUMENT

In an effort to excuse their noncompliance with West Virginia Code §33-6-31(e)(1), Respondents rely heavily upon the West Virginia Supreme Court of Appeal's pronouncement that West Virginia Code Section 33-6-31 "is remedial in nature and, therefore, must be construed liberally in order to effect its purpose." Syl. Pt. 7, *in part, Perkins v. Doe*, 177 W.Va. 84, 350 S.E.2d 711 (1986); *Mitchell v. Broadnax*, 208 W.Va. 36, 537 S.E.2d 882 (2000). WV National has never denied the West Virginia Supreme Court of Appeal's finding regarding the liberal construction of West Virginia Code §33-6-31. In fact, it specifically acknowledged it in detail on pages 19 and 20 of its Brief. Notably, however, Respondents in their Brief and the Circuit Court below have failed to acknowledge that notwithstanding this liberal construction of West Virginia Code Section 33-6-31, the West Virginia Supreme Court of Appeals has also recognized the legitimacy and applicability of the notice provisions set forth in West Virginia Code Section 33-6-31. *Lusk v. Doe*, 175 W. Va. 775, 338 S.E.2d 375 (W. Va. 1985). The West Virginia Supreme Court of Appeals has only ever recognized the tolling of the 24-hour reporting requirement of the statute in one instance, where a victim of a hit and run is physically unable to report the occurrence of an accident. To toll this provision otherwise, especially under the fact and circumstances of this case, would eviscerate the protections against fraud and investigating agencies opportunity to investigate, charge, and possibly remove from the highway negligent, careless, and reckless motorists. Further, it would result in unequal treatment of similarly situated citizens.

I. THE CIRCUIT COURT COMMITTED PLAIN ERROR WHEN IT TOLLED THE NOTICE REQUIREMENT OF WEST VIRGINIA CODE §33-6-31(e), RELIEVING RESPONDENTS OF THE STATUTE'S UNAMBIGUOUS REPORTING REQUIREMENTS.

Liberally construing the statute does not permit the reading out of the statute the provisions of the statute that, however inconveniently, preclude an insured's claim for uninsured benefits. While the West Virginia Supreme Court of Appeal's policy may be to construe W.Va. Code §33-6-31 liberally, the legislature defined the limits of that liberal construction, and, the West Virginia Supreme Court has plainly and consistently imposed said limits. *See generally, Lusk.* To interpret W. Va. Code §33-6-31 as Respondents suggest would render the reporting requirement worthless, despite the fact that individuals like Respondents have available to them the same resources as individuals whose 24-hour period does not expire on a Saturday, Sunday or legal holiday.

Respondents' ability to take out of context and misconstrue the points made by WV National in its Brief in an effort to defend the plainly wrong decision of the Circuit Court is very significant. WV National does not suggest that the pending litigation is a criminal case as Respondents allege. Without question, however, the allegations contained in Respondents' Complaint set forth a crime. Indeed, had the individual whom Respondents allege fled the scene on the day in question been located, he or she would have likely been charged with at least one Count of Leaving the Scene of a Crash, violating West Virginia Code § 17C-4-1 and/or -2.

As noted in WV National's Brief, in this regard, the Circuit Court ignored the legislature's clear purpose and intent behind this reporting requirement, disregarding the legislature's clear recognition of the urgency with which hit-and-run incidents must be investigated, if the incident itself is to be (1) confirmed and (2) any opportunity to locate and hold accountable the criminal perpetrator is to be preserved. The prompt 24 hour reporting

requirement for a hit-and-run incident set forth in West Virginia Code §33-6-31(e)(1) enables police to determine if such an incident did in fact occur, *i.e.,* is not a fraudulent claim – from interviews with people in the neighborhood, possible location and review of video that may exist, and the presence of debris, fluids, and tire marks at the alleged scene. It also increases the likelihood of apprehension of the offender, thus facilitating inquiry as to whether the hit-and-run vehicle was in fact an uninsured vehicle, and allowing the insurer to enforce its subrogation rights against a negligent uninsured hit-and-run motorist. In *Lusk,* the West Virginia Supreme Court of Appeals recognized the urgency associated with reporting hit-and-run incidents, explaining in Syl. Pt. 2 of *Lusk, supra,* that the initial twenty-four hour period prescribed by statute is that period "**immediately** following such accident."

Summoning city, county and state authorities, more particularly, police officers, sheriffs or deputies and troopers, to the scene of an accident or making a report to city, county or state authorities is not an act that requires consideration of the day of the week or whether the particular day is a legal holiday. Emergency service personnel do not close for Saturdays, Sundays, legal holidays or even inclement weather. There are always (365 days per year) law enforcement officers on duty, regardless of the agency with which they are affiliated, allowing individuals to report crimes like the hit-and-run allegedly committed in this litigation. The Legislature has acknowledged this by enacting a separate code section to govern police officers' payment and/or compensatory leave for working holidays. *See* West Virginia Code §8-14-2a. Police officers, like firefighters and EMTs, are accessible 24 hours a day, seven days a week, 365 days per year. Society has deemed their accessibility so paramount to the continued orderly and peaceful operation of our nation that they are uniformly accessible nearly anywhere one is

located by merely dialing 911. With one call, all three – police officers, firefighters and EMTs – can be summoned to a single scene of an incident.

Under these circumstances, West Virginia Code §2-2-1 was not intended to and does not toll the 24-hour reporting period set forth in West Virginia Code §33-6-31. In fact, application of West Virginia Code §2-2-1 to a hit and run accident only serves to frustrate, if not eliminate the goals behind West Virginia Code §33-6-31(e)(1). One need not wait for a non-Saturday, Sunday or legal holiday day to report a crime, which is exactly what Respondents allege occurred here. Crime can be reported on any day of the week, at any time, and, as a society, we encourage expeditious reporting of crime to prevent further acts and to hold those responsible accountable. While the Complaint initiated by Respondents giving rise to this Appeal is not a criminal complaint, it, nevertheless, alleges that a crime was, in fact, committed. Crime can be and should be reported any day of the week, regardless of weekends and holidays.

Essentially, all Respondents really argue in their brief is how an application of West Virginia Code §2-2-1 would operate, if applied to West Virginia Code §33-6-31(e)(1). Respondents never actually address any of the arguments advanced by WV National as to why West Virginia Code §2-2-1 and 2-2-2 are inapplicable to West Virginia Code §33-6-31(e)(1) and the Circuit Court plainly erred. Respondents and the Circuit Court both mistakenly conclude that WV National argues that because Respondents failed to call 911, then Respondents' claim is barred by West Virginia Code §33-6-31. This is not WV National's argument. Again, WV National makes reference to 911 to illustrate the ease with which one can summons the aid of law enforcement in this State 24 hours a day, seven days a week, 365 days a year. WV National makes reference to 911 to illustrate that West Virginia Code §2-2-1 was not intended to and does not toll the 24-hour reporting period set forth in West Virginia Code §33-6-31. Furthermore, 911

is not the only way in which to report the occurrence of a crime. In fact, law enforcement agencies typically afford the public 24-hour non-emergency numbers by which the authorities may be called to report crimes, suspected crimes and/or to provide information relative to an active investigation. Moreover, law enforcement officers serve the public and can be approached directly while on duty. There are so many ways to report a hit and run accident. The point is this, Respondents have never articulated why West Virginia Code §2-2-1 is applicable to West Virginia Code §33-6-31(e)(1), especially where both West Virginia Code §§2-2-1 and 2-2-2 govern "official acts" or "court proceedings" and define days upon which such official acts or court/official judicial business can be conducted and/or required of someone. The reporting of an accident to authorities and/or summoning of the authorities to an accident scene is not an "official act" or a "court proceeding" as meant by either West Virginia Code §§2-2-1 or 2-2-2 that can be accomplished only on non-Saturday, non-Sunday and non-Holiday business days.

The Respondents interpretation of *Lusk* does not support the Circuit Court's improper application of West Virginia Code §2-2-1 to West Virginia Code §33-6-31(e)(1) Again, in *Lusk, supra*, the Court explained that the notice requirement set forth in subsection (e) of West Virginia Code Section 33-6-31 is enforceable, noting only that "[b]y the clear language of this provision, the twenty-four hour notice period is tolled as to insureds 'physically unable to report the occurrence of such accident ... .'" *Id.* at 381. While the policy may be to construe West Virginia Code §33-6-31 liberally, the legislature defined the limits of that liberal construction, and, the West Virginia Supreme Court has plainly and consistently imposed said limits, finding only physical impossibility tolls the running of the 24-hour reporting period. *See generally, Lusk.* Otherwise, the 24-hour period prescribed in West Virginia Code § 33-6-31 is that period "**immediately** following such accident." *Lusk,* at Syl. Pt. 2.

In that case, the question was whether "the requirement of notice to authorities by 'the insured' contained in subsection (e)(i) should be construed to the effect that the failure of one named insured, not directly involved in the accident, to timely report such accident prevents recovery under the policy by another insured physically unable to report the accident until sometime after the initial 24-hour period." *Lusk,* 175 W.Va. 775, 338 S.E.2d at 381. The Court concluded "that the legislature intended that the rights of recovery of each insured, named or otherwise, are not to be prejudiced by the failure of another to give timely notice." The Court concluded that Mrs. Lusk's (who was hospitalized for eight days following the accident) rights to uninsured motorist coverage benefits could not be prejudiced by the failure of Mr. Lusk, her husband, to report the accident. *Id.* The Court explained that by the clear language of the provision, the twenty-four hour notice period is tolled as to insureds "physically unable to report the occurrence of such accident." *Id.* "Although another person, whether it be another named or additional insured, or a friend, relative or witness to the accident, may report the accident on behalf of a physically injured insured, their failure to do so cannot prejudice those unable to make such report within the initial twenty-four hour period immediately following such accident." *Id.* In other words, the Court never questioned the 24-hour reporting requirement. Instead, the Court questioned what was meant by "the insured."

Pursuant to the logic in *Lusk,* it is inexplicable how one could conclude that "the facts of this case are more compelling than the facts of *Lusk.*" Mr. Dobbins (the insured in the present case that would be similarly situated to Ms. Lusk) has admitted that, unlike Ms. Lusk, he was physically and emotionally able to report the incident to anyone he wanted to immediately following the incident. App. at 0083, at 74-77. Mrs. Dobbins further confirmed both her and Mr. Dobbins' fitness such that they could have immediately reported the incident following its

occurrence had they chosen to do so. App. at 0086-0087; 0089, at 21-23; 42. Summary judgment was improper as to Mrs. Lusk's claims because the Court concluded that "the provision reasonably requires that once a victim of a 'hit and run' is physically able to report the accident, that victim has twenty-four hours to make the report unless someone in his or her behalf acts within the same extended time period." *Lusk,* 175 W.Va. 775, 338 S.E.2d at 381. The Court held that "summary judgment was precluded as to her claims by the disputed issues of material fact pertaining to whether notice was actually sent to DMV, and whether Mrs. Lusk was physically able to give notice earlier." *Id.* In *Lusk*, the accident occurred on Thursday, March 25, 1982. *Id.* 175 W.Va. 775, 338 S.E.2d at 377. Approximately three days later, on Sunday, March 28, 1982, Mr. Lusk visited Mrs. Lusk in the hospital and based upon what she told him "filled out a Department of Motor Vehicles (DMV) accident report form and had her sign it." *Id.* Mr. Lusk claims that after undertaking some additional steps to complete the form with his insurance agent, he mailed the accident report form to the DMV on Tuesday, March 30, 1982. In the present litigation, there are no questions of material fact that remain. Mr. Dobbins has admitted that he was physically and emotionally able to report the incident immediately following its occurrence. Moreover, he and Mrs. Dobbins have admitted that they cannot recall specifically when they attempted to report the alleged hit-and-run accident, but at the earliest, it was more than four days after the accident's occurrence. Merely attempting to report the alleged hit-and-run to law endorsement is not sufficient. Indeed, the remaining questions of fact identified by the West Virginia Supreme Court of Appeals clearly indicate that, in *Lusk,* if either (1) notice was never actually given to the DMV, or (2) even if it was, if Ms. Lusk was physically able to give notice earlier than such notice was given, then her claim would be barred for failing to comply with West Virginia Code § 33-6-31.

Importantly, in footnote 4 of *Lusk*, the Court explains that "the notice provisions of West Virginia Code §33-6-31(e) affect only the contractual relationship between an insured and insurer. They are not intended to inure to the benefit of a presently unknown tortfeasor. The language of subsection (e) clearly stipulates that the notice provisions are **prerequisites** only 'to recover under the uninsured motorist endorsement or provision' of the insured's policy."" *Id.* (Emphasis supplied.) Respondents had a legal duty to comply with all of the prerequisites to recover under the uninsured motorist endorsement or provision. Accordingly, Respondents' attempt in this litigation to substitute the notice given to WV National for the notice they were statutorily obligated to give law enforcement is plainly wrong. Here, like in *Lusk*, when Respondents reported the alleged hit-and-run to WV National is not relevant to the question of when the accident was reported to law enforcement. The question here, like in *Lusk,* is when was the alleged hit-and-run reported to law enforcement and was it within the time period required by West Virginia Code §33-6-31(e)(1). It was not. *Lusk* does not support the position of Respondents, and, Respondents' case is not "more compelling than" the Lusks' case such that this Court should eviscerate the reporting requirement of West Virginia Code §33-6-31(e)(1).

II. THE CIRCUIT COURT IMPROPERLY CONCLUDED THAT RESPONDENTS SOUGHT TO REPORT THE INCIDENT WITHIN THE "TOLLED" PERIOD.

Respondents essentially concede that that they have no evidence to substantiate when they actually attempted to report the alleged hit-and-run accident to law enforcement. This is evidenced by the fact that they seek to have this Court "liberally construe" the "evidence" they presented to the Circuit Court and now this Court. On page 10 of their brief, Respondents state that "This evidence, after being liberally construed to achieve the public policy goals of W.Va. Code §33-6-31, demonstrates the Respondents reported this collision to the police on 02/19/19 -

or within the "tolled" twenty-four (24) hour time period." As a matter of law, a Court cannot "liberally construe evidence." A plaintiff can either prove a fact or a plaintiff cannot. It is not the place of a circuit court to liberally construe evidence in favor of a plaintiff. In the present case, there is **no** evidence of what day Respondents actually sought to report the subject accident such that a "liberal construction" could even be afforded it or that a genuine issue of material fact remains. Under these circumstances, the Circuit Court improperly concluded that Respondents sought to report the incident within the tolled period.

The deposition testimony Respondents point to in their Brief is the same deposition testimony they pointed to below and the same deposition testimony the Circuit Court erroneously relied upon to render its decision. On pages 25 through 28 of WV National's Brief, it explains in detail the Circuit Court's misconstruction of Respondents' testimony as well as the additional testimony offered by Respondents that clearly demonstrates that there is no evidence of a date certain when Respondents attempted to report the subject hit-and-run accident to law enforcement. WV National will avoid restating this four-page explanation herein. It will however, refer this Court to additional evidence contained in the Appendix that further substantiates this fact.

On pages 0227-0230, Mrs. Dobbins testified regarding the completion of a claim form mailed to her on February 21, 2019. App. at 0092, at Ltr.; App. at 0227-0230. On February 21, 2019, WV Virginia National mailed a claim form to Respondents to be completed and returned to WV National. *See id.* WV National appears to have received the completed form on April 1, 2019, approximately 39 days after it was initially mailed to Respondents. *See* App. at 0093-0094, at Completed "Insured Driver Statement Form." During her deposition, Mrs. Dobbins was asked about her and Mr. Dobbins' efforts to report the alleged hit-and-run accident to law

enforcement in relation to completion of the claim form and she provided the following testimony:

> Q. So what police department did you go down there to report it to? Was it the Logan City Police?
>
> A. I guess it was city police because -- yeah, the city police right there, where the City Hall is. I guess it's all on one or something. I don't know.
>
> Q. Have you all went down there to talk to the city police before you signed and sent this form back that's –
>
> A. I can't really remember that. I just know that we went down there days later after the accident.
>
> Q. Is there any reason to believe, Mrs. Dobbins, that whenever you completed this form that was sent back to West Virginia National, that whenever this was done, you still hadn't gone down there and made that report?
>
> A. I don't -- I don't know. I just know it was several days after it happened, is all I remember.

App. at 0229. While this claim form has a date of February 15, 2019, Mrs. Dobbins has admitted that that date was not the date of completion of the form by her as she did not even have the form as of that date. App. at 0230. However, it would appear that it was completed sometime after February 21, 2019, the date WV National mailed it to her and Mr. Dobbins. During her deposition, Mrs. Dobbins could not recall whether she and Mr. Dobbins had gone to "city hall" at the time she completed this form, which was sometime after February 21, 2019.

Under these circumstances, the Circuit Court committed plain error when it assigned a date certain to when Respondents sought to inform authorities about this incident. The only available evidence of when Respondents may have reported the subject incident to the authorities (Respondents' own recollections at their depositions) clearly demonstrates that neither Mr. Dobbins nor Mrs. Dobbins know when they sought to inform the authorities of the incident, but

have acknowledged that they had not done so at the time they reported the incident to WV National on February 19, 2019.

Respondents' reliance upon WVCSR §114-14-4 is misplaced. It is immaterial to this appeal and is an effort to deflect from their failure to comply with West Virginia statutory law. Simply put, under the facts and circumstances of this case, Respondents had an affirmative legal obligation imposed by West Virginia statutory law to report the alleged hit-and-run accident to law enforcement within 24-hours of its occurrence. That the WV National policy reiterated and restated Respondents' affirmative legal duty does not impose a duty upon WV National to instruct Respondents on West Virginia law. Respondents had an obligation to comply with West Virginia Code §33-6-31(e)(1) regardless of the inclusion of mirrored language in WV National's Policy.

III. THE CIRCUIT COURT ERRED WHEN IT FAILED TO STRICTLY APPLY WV NATIONAL'S POLICY LANGUAGE, INSTEAD, APPLYING A PREJUDICE STANDARD.

As WV National explained in its Brief, its Policy prescribed a time period specifically authorized by West Virginia Code §33-6-31(e)(1). In fact, WV National's Policy merely restated Respondents' affirmative legal duty imposed by West Virginia statute. As a result, it, like West Virginia Code §33-6-31(e)(1), must be strictly applied. Further, WV National argues that *Youler* is inapplicable to this litigation because it is, in fact, inapplicable. When the facts and circumstances of *Youler* are actually considered, it becomes readily apparent that *Youler* does not advance the cause of Respondents. Again, as WV National explained in its brief, unlike *Youler*, Respondents' claim does not involve underinsured motorist coverage. Moreover, WV National does not seek to strictly enforce a notice provision of its policy that requires notice to **WV National, an insurer,** to justify its denial of the Respondent's claim. Rather, Respondent's

claim is one for uninsured motorist coverage and strict enforcement of a **notice provision to a police, peace or to a judicial officer that mirrors West Virginia Code §33-6-31(e)(1)**. In *Youler,* the respondents' reporting requirement was the subject of a provision contained in an insurance policy. Here, while the reporting requirement is subject to a provision contained in an insurance policy, that requirement mirrors a legal requirement imposed by West Virginia statute. The issue of notice involved in *Youler* did not involve notice to the authorities and it did not mirror an affirmative legal duty imposed by West Virginia law. The duty to report a hit-and-run incident to a police, peace or judicial officer is not the same duty considered in *Youler.*

The *Youler* Court never considered the application of its "prejudice to the investigative interest of the insurer" where the delay in notification by an insured violated a statutory duty, mirrored in the policy language, to report a hit-and-run accident for purposes of uninsured motorist coverage to a **police, peace or judicial officer**. Notably, however, the West Virginia Legislature has. By establishing the 24-hour reporting period, the West Virginia legislature concluded that reporting a hit-and-run accident after that initial 24-hour reporting period prejudices law enforcement's ability to effectively investigate hit-and-run accidents. The Circuit Court's reliance upon *Youler* to impose a prejudice standard upon Respondents' requirement to report a hit-and-run accident to law enforcement was plain error.

To further demonstrate this point and the inapplicability of *Youler* to this litigation one need only to look to *Lusk, supra.* There, the Court did not apply a "prejudice to the investigative interest of the insurer," to the requirements set forth in West Virginia Code § 33-6-31(e). Instead, with its holding, the Court essentially recognized that failure of Ms. Lusk to comply with the plain language of West Virginia Code § 33-6-31(e) by either (1) having failed to ever actually give notice to the DMV, or (2) even if such notice was given, failing to give earlier

notice, if Ms. Lusk was physically able to give notice earlier, then her claim would be barred for failing to comply with West Virginia Code § 33-6-31.

In their Brief, Respondents continue to beat the drum of *Colonial Ins. Co. v. Barrett*, *Kronjaeger v. The Buckeye Union Ins. Co.*, *Bowyer by Bowyer v. Thomas* and *Moses Enterprises, LLC v. Lexington Ins. Co, et al.* As WV National explained in its Brief, *Colonial, Kronjaeger* and *Bowyer* do not involve notice requirements that mandate notice to law enforcement, which mirror an affirmative legal duty imposed by West Virginia law. For these same reasons, *Moses* is also not applicable. Again, it also involves a suit where an insured's claim was denied for failure to report a claim to the **insurer** within the time allowed in the policy provision. The delay in the reporting by Moses was that they had not yet learned that the purchaser had stolen the identity of another to purchase the vehicle. There, the US District Court for the Southern District of WV applied a "substantial compliance" standard, citing to WVCSR §114-14-4.4, which specifically provides, **"[e]xcept where a time limit is specified by statute or legislative rule**, no insurer may require a first-party claimant to give notification of a claim or proof of claim within a specified time." In the present litigation, unlike in *Moses,* the time limit is specified by statute. As such, Respondents in this litigation, unlike in *Moses*, had a duty to comply with West Virginia law or have their uninsured motorist coverage benefit claim denied.

All of the cases cited by Respondents and the Circuit Court are easily distinguishable and none of them set forth a standard of law that is applicable or that should be applied to the facts and circumstances of the present case. The prejudice standard applied by the Circuit Court to WV National's Policy language exceeds the rule of law set forth in West Virginia Code §33-6-31(e)(1) (the source of WV National's Policy language), and therefore, is plainly wrong.

Respondents seeks to excuse their neglect of their statutory duty by claiming that had they attempted to report the alleged accident anytime in the 24-hours following the accident they "would have been instructed to report the collision to City Hall during business hours on 02/19/19 - which is what occurred." First, this is nothing more than speculation and conjecture on their part as they never tried. Further, their claim that they reported the alleged accident on February 19, 2019, is not supported by the available evidence. Again, enforcement agencies typically afford the public 24-hour non-emergency numbers by which the authorities may be called to report crimes, suspected crimes and/or to provide information relative to an active investigation. Moreover, law enforcement officers serve the public and can be approached directly while on duty. There are so many ways to report a hit-and-run accident, and a hit-and-run accident is a crime for which an individual can be held not only civilly liable, but also criminally liable. Certainly, it is very easy for Respondents to claim that had they called 911, a non-emergency law enforcement number and/or approached an on duty officer in the 24-hours following the accident, none of those sources would have taken their report of the alleged hit-and-run accident and that they would have been sent to "city hall." Despite having had significant time below to develop supporting evidence of this claim, Respondents never presented any evidence to substantiate this assertion that they now make on appeal.

Moreover, Respondents' limited education is not an excuse for failure to comply with the law. As WV National has noted many times, Respondents failed to comply with their duty to report the incident within 24-hours of its occurrence pursuant to West Virginia Code §33-6-31(e)(1). Under West Virginia law, "'[a]ll persons are presumed to know the law. Ignorance thereof is no excuse[.]'" *Hartley Hill Hunt Club v. County Comm'n of Ritchie County*, 220 W.Va. 382, 391 n. 13, 647 S.E.2d 818, 827 n. 13 (2007) (*quoting State v. McCoy*, 107 W.Va. 163, 172,

148 S.E. 127, 130 (1929))." *Dept. of Transp. v. Parkersburg Inn*, 671 S.E.2d 693, 222 W.Va. 688 (W. Va.2008). Respondents have never cited to any legal authority to justify why this general principle should not apply to them.

Again, while Respondents and the Circuit Court both go to great lengths to attack WV National's investigation of the alleged subject incident this is plainly wrong. The policy provision cited by WV National, which, again, mirrors the affirmative legal duty imposed by West Virginia Code §33-6-31(e)(1), requires reporting of the incident to law enforcement, not WV National. As noted previously, as a matter of law, the West Virginia legislature deemed the reporting of a hit-and-run accident more than 24-hours after its occurrence, prejudicial to law enforcement's ability to effectively investigate hit-and-run accidents. As such, by operation of statutory law, failure to comply with this reporting requirement precludes an insured from recovering under the uninsured motorist endorsement or provision. W. Va. Code §33-6-31(e)(1). The notice requirement contained in WV National's policy when a "hit-and-run" is involved mirrors statutory law and is plain and unambiguous. There is no occasion for construction. The Court is bound to adhere to the policy as written, enforcing West Virginia law as well as the policy as made.

CONCLUSION

The Circuit Court's order granting Respondents' Partial Motion for Summary Judgment should be reversed, and, Petitioner West Virginia National's Motion for Summary Judgment should be granted.

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CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of August, 2023, a true and accurate copy of the foregoing **Petitioner's Reply Brief** was served electronically and also United States mail, postage prepaid to all other parties to this appeal as follows:

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