

IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

BARRY BARR

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Plaintiff Below, Petitioner,

v.

CASE NO. 23-ICA-337

BRENT JACKSON, LYNN PERKINS, and
HEDGESVILLE REAL ESTATE, LLC,
VIP GENTLEMEN'S CLUB, LLC d/b/a
LUST GENTLEMEN'S CLUB,
WEST VIRGINIA SPORTS PROMOTIONS, INC.,

Defendants Below, Respondents.

**BRENT JACKSON, LYNN PERKINS, AND HEDGESVILLE
REAL ESTATE, LLC'S RESPONSE TO PETITIONER'S BRIEF**

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Dated: December 14, 2023

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ASSIGNMENT OF ERROR

The Circuit Court of Berkeley County (the “Circuit Court”) correctly applied the settled principle of *lex loci delicti* to determine that Maryland law applied, and mandated dismissal of the underlying claims against Brent Jackson, Lynn Perkins, and Hedgesville Real Estate, LLC. Appellant urges this Court to abandon the well settled rule of *lex loci delicti* and apply the public policy exception based on the proximity of the accident to the West Virginia state line and the domicile of the parties. The public policy exception applies only where Maryland law would violate the public policy of West Virginia; it is not dependent upon how far into the state of Maryland the crash occurred, or the residency of the parties. The Circuit Court correctly found no public policy violation here. An analysis of Maryland law clearly establishes that Maryland, like West Virginia, has laws forbidding the service of alcoholic beverages to intoxicated individuals, has heightened criminal penalties associated with the same, requires alcohol awareness training, and regulates alcohol to ensure the “protection, health, welfare, and safety of the people of the State.” *See* Md. Code Ann., Alc. Bevs. §§ 6-307, 6-402. Thus, the Circuit Court was correct in its finding that there is no conflict between the substantive law of Maryland and the public policy of West Virginia that warrants application of the public policy exception to *lex loci delicti* and the Intermediate Court of Appeals should affirm the Circuit Court’s dismissal.

STATEMENT OF THE CASE

This case arises out of a March 6, 2022 motor vehicle accident in Washington County, Maryland, involving a vehicle owned and operated by Defendant Michael Maydian (“Maydian”) and a second vehicle in which Alexandra Barr, the Petitioner’s decedent, was a passenger. Appx. at 13, 18-19, ¶¶ 38-39; 41. Petitioner filed suit in the Circuit Court, asserting a claim of “Dram Shop/Negligence” against Brent Jackson, Lynn Perkins, and Hedgesville Real Estate, LLC (the “Jackson Defendants”), West Virginia Sports Promotions, Inc. (“Sports Promotions”), and Special

Services Bureau, Inc., for serving Maydian to the point of intoxication and allowing him to leave VIP Gentleman's Club, LLC, doing business as Lust Gentlemen's Club ("Lust") when he was visibly intoxicated. Appx. at 23-24, ¶¶ 79-86. Maryland, the place of the injury, does not recognize a civil cause of action for dram shop liability. *See Warr v. JMGM Group, LLC*, 433, Md. 170, 70 A.3d 347 (2013). The Jackson Defendants, Lust, and Sports Promotions therefore moved for dismissal in three separate Motions to Dismiss. Appx. at 87-179. The Circuit Court granted these Motions on June 29, 2023. Appx. at 180-185.

Petitioner appeals the Circuit Court's dismissal of its "Dram Shop/Negligence" claims. The Circuit Court correctly concluded that, under the doctrine of *lex loci delicti*, Maryland law applied, as there is no conflict between the substantive law of Maryland and the public policy of West Virginia. Appx. at 182-183, ¶¶ 3, 8. Petitioner now argues that the Circuit Court misidentified the applicable substantive law and thus examined the wrong public policy, therefore its refusal to apply the public policy exception to *lex loci delicti* was in error.

In its Order, the Circuit Court properly examined the substantive law of Maryland regarding regulation of alcohol and accurately concluded that it was not in conflict with the public policy of West Virginia. Appx. at 184, ¶ 12. Maryland not only strictly regulates alcohol to ensure the "protection, health, welfare, and safety of the people of the State," but also has "heightened criminal penalties" associated with the service of alcohol to intoxicated individuals. Appx. at 183-184, ¶¶ 9, 11. Nevertheless, Petitioner argues on appeal that Maryland's lack of civil remedy under a dram shop theory contravenes the public policy of West Virginia. The Circuit Court correctly rejected this argument and determined that Maryland law should be applied to Petitioner's claims. Appx. at 184, 12.

Further, amicus curiae West Virginia Association for Justice (“WVAJ”) has submitted a brief in support of Petitioner. Despite averring that the single issue on appeal is whether West Virginia’s public policy precludes the application of Maryland law, WVAJ bases its argument almost entirely on its contention that West Virginia has “the most significant relationship” to the parties and controversy. However, neither Petitioner nor WVAJ disputes that *lex loci delicti* is the correct choice of law doctrine in West Virginia in cases of clear-cut physical injury. Accordingly, Petitioner and WVAJ have accepted the finding that, absent any conflict with West Virginia public policy, the parties’ substantive rights are to be determined by the law of the place of injury. Appx. at 183, at ¶¶ 4-7.

SUMMARY OF ARGUMENT

The Circuit Court properly concluded that there is no conflict between the substantive law of Maryland and the public policy of West Virginia that warrants application of the public policy exception to *lex loci delicti*. As an initial matter, Petitioner acknowledges that West Virginia follows the doctrine of *lex loci delicti* in tort cases, which precludes him from recasting his argument as one in favor of applying a different choice of law approach. *See* Petitioner’s Brief at 4. Further, WVAJ’s arguments, which are predicated on which state has the “most significant relationship” and “significant interest” in this matter, are a thinly disguised request for a wholesale abandonment of the doctrine of *lex loci delicti*, in favor of a “more significant relationship” test in all cases. *See Generally* WVAJ Brief at 5, 7. West Virginia Courts have long been committed to *lex loci delicti* in clear-cut cases of physical injury and this Court is not the place to argue for wholesale changes in the law. *Stare decisis* requires the application of *lex loci delicti* in this matter.

The Circuit Court properly found that the public policy exception to *lex loci delicti* was not applicable here. Maryland’s lack of a civil cause of action for dram shop negligence does not create a conflict with any public policy of West Virginia. Like West Virginia, Maryland has a

strong public policy against both driving under the influence and the service of alcoholic beverages to intoxicated patrons. Further, the determination of whether the public policy exception applies cannot be structured upon the specific facts of the case. Why Maydian drove to West Virginia, the distance from the state line to the site of the crash, and whether other accidents occurred in that general area cannot be considered. To do so would frustrate the purpose of *lex loci delicti* in that the consistency, predictability, and ease of its application would be discarded for a case-by-case analysis.

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Pursuant to West Virginia Rule of Appellate Procedure 18(a), oral argument is not necessary because the dispositive issues have been authoritatively decided and the facts and legal arguments are adequately presented in the briefs and on record on appeal.

ARGUMENT

I. STANDARD OF REVIEW

The standard of review for a circuit court's grant of a motion to dismiss a complaint is *de novo*. Syl. Pt. 2, *State ex rel. McGraw v. Scott Runyan Pontiac-Buick, Inc.*, 194 W.Va. 770, 461 S.E.2d 516 (1995). The reviewing Court will "therefore give a new, complete and unqualified review to the parties' arguments and the record before the circuit court." *Gastar Expl. Inc. v. Rine*, 239 W. Va. 792, 798, 806 S.E.2d 448, 454 (2017).

II. THE CIRCUIT COURT PROPERLY DETERMINED THE PUBLIC POLICY EXCEPTION IS NOT APPLICABLE IN THE INSTANT MATTER.

There is no dispute that *lex loci delicti* is the appropriate choice-of-law analysis in clear-cut cases of physical injury, such as this one. See Petitioner's Brief at 6; see generally WVAJ Brief at 4. The doctrine of *lex loci delicti* "has long been the cornerstone of [West Virginia] conflicts of law doctrine." *Paul v. Nat'l Life*, 177 W. Va. 427, 433, 352 S.E.2d 550, 555 (1986).

The parties' sole disagreement as to its applicability stems from Petitioner's argument that the public policy exception requires the application of the West Virginia law providing for a dram shop liability cause of action where Maryland has none. However, it has long been established that "the consistency, predictability, and ease of application provided by the traditional doctrine are not to be discarded lightly." *Id.* This Court should decline, as the Circuit Court appropriately did, to discard these critical virtues by carving out a new exception to the doctrine for dram shop liability.

A. Appropriate Application Of The Public Policy Exception Cannot Be Determined Upon The Specific Facts Of This Case.

Petitioner and WVAJ attempt to persuade this Court to invoke the public policy exception by referencing 1) the proximity of the crash to the West Virginia state line, 2) other accidents that have occurred in the area, 3) Lust's operation of a gentleman's club, and 4) the residence of Petitioner and his decedent. The Supreme Court of Appeals of West Virginia has previously refused to "structure [its] determination of the appropriate application of the public policy exception upon the specific actions of the parties in any particular case." *Mills v. Quality Supplier Trucking, Inc.*, 203 W. Va. 621, 624, 510 S.E.2d 280, 283 (1998). Consideration of case specific facts would cause this Court to "be relegated to determining the application of an integral rule of conflicts of law upon a case by case analysis." *Id.*

Moreover, Petitioner asks this Court to set a dangerous precedent in suggesting that the distance the subject accident occurred from the state line should impact the determination of the application of the public policy exception. Maryland gained jurisdiction over Maydian the moment he crossed its border. West Virginia does not recognize a "bulge" rule whereby it retains control over some radius outside of its borders for purposes of traffic laws, alcohol regulation, or personal jurisdiction. The same goes for unrelated categories of regulation, such as taxation.

Ignoring state boundaries in this case would have a serious impact on future litigation across many subject areas by allowing litigants to strategically bend geographical boundaries at their whim.

WVAJ further attempts to insert case specific facts into the choice of law analysis by arguing “West Virginia has a significant interest in applying its law to conduct occurring in West Virginia by a West Virginia corporation which killed a West Virginia resident.” WVAJ Brief at 7. This argument fails for a number of reasons. First, whether West Virginia has a significant interest in a matter is a condition precedent for the applicability of the public policy exception, not a factor weighing in favor of its applicability. *See State ex rel. Am. Elec. Power Co. v. Swope*, 239 W. Va. 470, 480, 801 S.E.2d 485, 495 (2017); *Paul*, 177 W.Va. at 434 n.14, 352 S.E.2d at 556 n.14. As stated in *Swope*, “in order to avoid flagrant forum shopping, this State must have some connection with the controversy above and beyond mere service of process before the public policy exception to the doctrine of *lex loci delicti* will be applied.” *State ex rel. Am. Elec. Power Co. v. Swope*, 239 W. Va. 470, 480, 801 S.E.2d 485, 495 (2017) (internal citation omitted) (emphasis added). Thus, the parties’ conduct and domiciles which tie them to West Virginia are relevant for the limited purpose of establishing that the public policy exception may be applied, not for purposes of determining whether it should.

Second, *lex loci delicti* commands that the law of the place of injury applies, regardless of whether contributing tortious conduct occurred in another state. *See Caudill v. EAN Holdings LLC*, No. 21-0096, 2022 W. Va. LEXIS 315, at *17 (Apr. 26, 2022). In *Caudill*, the complained of conduct that eventually led to the subject car crash occurred in Kentucky and Tennessee. *Id.* at *15. Despite this, the Court found that West Virginia law should apply because *lex loci delicti* commands that the applicable law is that of the place of the injury, and the car crash occurred in West Virginia. *Id.* at *17-*18. Further, the Court wrote that *lex loci delicti* has generally been

applied in cases of clear-cut physical injury. *Id.* at *17 (citing *Oakes v. Oxygen Therapy Servs.*, 363 S.E.2d 130 (W. Va. 1987)).

Here, the conduct Plaintiff complains of—the serving of alcoholic beverages to Maydian—occurred in West Virginia. The subject car crash and clear-cut injury occurred in Maryland. As clearly illustrated by *Caudill*, even though the complained of conduct occurred in West Virginia, the law of the place of the injury still controls. Thus, the fact that some conduct occurred in West Virginia is not relevant to the determination of whether the public policy exception applies and should not be considered in relation to such. The only critical fact to this analysis is that the crash occurred in Maryland. Consideration of any other case specific fact would relegate the Court to a case-by-case analysis, completely disrupting the consistency, predictability, and ease of application currently provided by *lex loci delicti*.

B. Maryland’s Lack Of A Dram Shop Negligence Cause Of Action Is Not In Conflict With Any Public Policy Of West Virginia.

Petitioner’s primary argument is that the Circuit Court erroneously held that Maryland’s lack of dram shop liability was a violation of West Virginia public policy. However, while West Virginia recognizes dram shop liability, no statute, regulation, or case law exists which declares lack of dram shop liability to violate the public policy of West Virginia. In fact, West Virginia does not have its own dram shop liability statute but created the cause of action through the reading of two separate statutes in tandem. Unable to point to a specific public policy regarding dram shop liability, Petitioner attempts to fit it within other established public policies.

1. Maryland, Like West Virginia, Has Strong Public Policy In Favor Of Prohibiting Overservice of Patrons.

The Circuit Court properly examined public policy regarding regulation of alcohol. Maryland’s substantive law pertaining to drunk driving and serving intoxicated patrons, combined with the state’s strong public policy against the same, demonstrates that the public policy exception

does not apply in this matter. Like West Virginia, Maryland has a strong public policy against both intoxicated driving and the service of alcoholic beverages to intoxicated patrons. This is evidenced by Maryland's laws prohibiting the service of intoxicated individuals and driving while intoxicated. *See* Md. Alcoholic Beverages Code § 6-307; Md. Criminal Code § 2-503. In fact, Maryland's laws are even more stringent in that, unlike West Virginia, Maryland mandates that applicants for a license for alcohol service complete approved alcohol awareness training. *See, e.g.,* Md. Alcoholic Beverage Code Annotated, § 31-1903. Maryland also has long had criminal penalties for violations of laws that prohibit service of intoxicated individuals, which are more stringent than those in West Virginia. *Compare Id.* at §6-402 with W. Va. Code § 60-7-12(a)(4)(c).

In *Motor Vehicle Admin. v. Gaddy*, 335 Md. 342, 643 A.2d 442 (Md. 1994), the Maryland Court of Appeals discussed the state's strong stance against drunk driving:

We have consistently recognized that the statutory provisions enacted to enforce the State's fight against drunken driving . . . were enacted for the protection of the public and not primarily for the protection of the accused. The General Assembly's goal in enacting the drunk driving laws . . . is to meet the considerable challenge created by this problem by enacting a series of measures to rid our highways of the drunk driver menace. These measures . . . are primarily designed to enhance the ability of prosecutors to deal effectively with the drunk driver problem.

Id. at 347-48, 444-45 (internal quotation marks and citations omitted).

The refusal of Maryland courts to impose civil liability on establishments under a Dram Shop theory does not equate to a lack of public policy against over-service and drunk driving. Maryland courts hold that a civil cause of action for those injured as a result must be created by the state's legislature, which it has declined to do. *See Fisher v. O'Connor's Inc.*, 53 Md. App. 338, 452 A.2d 1313 (Md. 1982); *Moran v. Foodmaker, Inc.*, 88 Md. App. 151, 594 A.2d 587 (Md. 1991).

While West Virginia recognizes dram shop liability, the fact that two states have different laws does not mean that a less favorable law violates West Virginia public policy, a point recognized by the West Virginia Supreme Court of Appeals in Syllabus Point 3 of *Nadler v. Liberty Mut. Fire Ins. Co.*, 188 W.Va. 329, 424 S.E.2d 256 (W. Va. 1992):

The mere fact that the substantive law of another jurisdiction differs from or is less favorable than the law of the forum state does not, by itself, demonstrate that application of the foreign law under recognized conflict of law principles is contrary to the public policy of the forum state.

Syl. Pt. 3, *Nadler*, 188 W. Va. at 331, 424 S.E.2d at 258.

While Maryland and West Virginia may come down on opposite sides of the dram shop liability issue, one thing is clear: both states recognize the dangers caused by drunk driving and the service of intoxicated patrons, and both states have laws resulting from strong public policies against the same. Accordingly, Maryland substantive law does not conflict with West Virginia substantive law on either issue; thus, the public policy exception to *lex loci delicti* does not apply in this matter.

2. Applying Maryland Law Would Not Foreclose Petitioner’s Ability to Recover in Tort.

Petitioner argues that the public policy exception must apply in order to provide a path for victims of drunk driving to recover in tort against licensed sellers of alcohol. See Petitioner’s Brief at 8. In support of his argument, Petitioner recites public policy found in *Paul v. National Life*, 177 W. Va. 427, 433, 352 S.E.2d 550, 556 (1986): “It is the strong public policy of this State that persons injured by the negligence of another should be able to recover in tort.” Petitioner’s Brief at 7. Petitioner’s argument fails because *Paul* does not go so far as to stand for the proposition that a forum court must apply the law that maximizes a plaintiff’s recovery or ensures that multiple avenues of recovery are possible. In *Paul*, application of *lex loci delicti* would have foreclosed the sole tortfeasor from liability due to Indiana’s guest statute, whereas the public policy exception

required application of West Virginia law to avail the plaintiff the opportunity to recover *any* damages. *Paul*, 177 W. Va. at 434, 352 S.E.2d at 556. Here, Petitioner has named the driver of the vehicle that actually hit the decedent as a defendant in in this case. This claim remains pending and is not subject to a motion to dismiss. Thus, Petitioner has a viable cause of action and a viable avenue for recovery.

Here, if the Court were to apply the public policy exception to *lex loci delicti*, it would be construing the law so as to *maximize* Petitioner's chance at a recovery. The parties agree that this would be inappropriate. *See* Appx. 50. Nevertheless, Petitioner seeks to have the Court ignore the longstanding doctrine of *lex loci delicti* so that he may seek damages against individuals and entities that, if Maryland law were rightfully applied, would not be involved in this suit. Whereas in *Paul* there was a single tortfeasor from whom the plaintiff could seek a recovery, here, there are tortfeasors aside from Respondents from whom Petitioner can seek a recovery. The Respondents dismissal from this suit did not and will not foreclose Petitioner's opportunity to recover for his alleged damages. Petitioner's claim is for damages resulting from the tortious act of an intoxicated person, who has been criminally prosecuted and who may be liable for a civil recovery under Maryland law. Accordingly, the dismissal of the Jackson Defendants from this suit does not violate the public policy of West Virginia and the Circuit Court correctly dismissed the claims against them.

C. West Virginia Courts Have Refused To Apply The Public Policy Exception In Other Cases Involving Out-Of-State Injuries.

WVAJ contends that the Supreme Court of Appeals has only rejected application of the public policy exception in cases where the parties and controversies were devoid of any West Virginia connection. WVAJ Brief at 8. However, our federal courts have shined additional light on the issue. In prior cases involving West Virginia residents suffering out-of-state injuries, it has

been found that the public policy exception does not require the application of West Virginia substantive law. For example, in *Vass v. Volvo Trucks N. Am., Inc.*, 315 F. Supp. 2d 815 (S.D. W. Va. 2004), the plaintiff sought to avoid the application of Virginia law to her wrongful death claim filed in West Virginia for an accident that occurred in the Commonwealth of Virginia. Applying the law of *lex loci delicti*, the Court applied Virginia law, with the exception of Virginia contributory negligence law, and dismissed the case. The decedent in *Vass* was a West Virginia resident who was a truck driver for the defendant. After picking up a load of parts at a Volvo facility in Virginia, the decedent proceeded to transport them to a different Volvo facility in Virginia. *Id.* at 816. Upon opening the door to the truck to retrieve the parts, the cargo fell and fatally injured the decedent. *Id.* It was revealed that Volvo employees had negligently loaded the parts into the decedent's truck. *Id.*

The Decedent's estate filed suit under the West Virginia wrongful death statute. *Id.* Defendant moved to dismiss the suit on the grounds that there was no claim under the West Virginia wrongful death statute because the decedent was injured within the geographic confines of Virginia due to conduct that occurred in Virginia. *Id.* The plaintiff argued that the public policy exception to *lex loci delicti* should apply, allowing the suit to continue under West Virginia substantive law. *Id.* Defendant responded that West Virginia public policy only warranted that Virginia's contributory negligence rule not be applied. *Id.*

In dismissing the suit, the court looked to *Mills v. Quality Supplier Trucking, Inc.*, 203 W. Va. 621, 510 S.E.2d 280 (1998) to determine whether West Virginia substantive law should apply:

The *Mills* court set up its analysis by noting that in the case at issue "the operative distinction between West Virginia and Maryland law is the application of the comparative negligence doctrine in West Virginia." Because the contributory negligence rule was contrary to forum public policy, the court concluded: "we hold that West Virginia law should govern the resolution of the wrongful death issues in

the case sub judice.” The court then added that "contributory negligence laws of foreign jurisdictions will not be enforced in the courts of this State."

Vass, supra at 817 (quoting *Mills*, supra at 623-24; 282-83).

The court in *Vass* sought to determine whether *Mills* required the application of all West Virginia substantive law or only West Virginia’s comparative negligence law. *Id.* at 818. In its analysis, the court concluded that the public policy exception only applied where the principles of contributory fault would apply to a claim as opposed to comparative fault:

Therefore, although there is language in the *Mills* opinion that could be read to command the application of West Virginia law to the plaintiff's claims in their entirety, this language is appropriately regarded as *dicta*. The binding holding of *Mills* is that a foreign contributory negligence law will not be enforced, and this is especially apparent in light of the fact that the *Mills* court began its discussion by noting that the “operative distinction” between the two states' laws was the application of the contributory negligence rule.

Id. at 819-20. Aside from its principles of contributory fault, Virginia law applied, which mandated a dismissal of the case. *Id.* at 820.

The *Vass* court wrote that this view was consistent with prior West Virginia decisions, looking specifically to *Chase v. Greyhound Lines, Inc.*, 156 W. Va. 444, 195 S.E.2d 810 (1973), *overruled on other grounds*, *Lee v. Comer*, 195 W. Va. 585, 224 S.E.2d 721 (1976), for the notion that the law of the place of the injury applied where a West Virginia resident was killed in a Pennsylvania car crash, with the exception of laws that violated West Virginia public policy. *Id.* In *Chase*, the subject laws involved parent-minor child suit immunity and recovery of funeral expenses. *Id.* Regarding the *Chase* court’s application of the public policy exception, the court in *Vass* wrote:

The limitation counseled by *Chase* would apply to make elements of Virginia law, such as the contributory negligence defense, inapplicable if they violate West Virginia public policy. Had the *Chase* court intended to simply substitute West Virginia law for dissimilar Pennsylvania law because of public policy differences in other areas, then it would have relied upon the West Virginia wrongful death

statute to allow the plaintiffs to recover the funeral expenses. Instead, the *Chase* court allowed only the recovery that was granted by Pennsylvania law, and limited Pennsylvania law to comport with West Virginia public policy.

Id. at 819.

Here, as in *Vass*, a West Virginia resident suffered injuries in a state other than West Virginia. The court's adherence to the *lex loci delicti* doctrine in *Vass*, while acknowledging the public policy exception, clearly demonstrates that this Court should apply Maryland substantive law to this suit, as it is the law of the place of Petitioner's injury.

This result is further supported by the court's decision in *Wise v. C.R. Bard, Inc.*, 2015 U.S. Dist. LEXIS 13661 (S.D.W. Va. 2015). The *Wise* court rejected the defendant physician's argument that Ohio law should apply to the claims of an Ohio resident who was treated in Ohio, although her surgery took place in West Virginia. The court quoted the following language from *Quillen v. Int'l Playtex*, 789 F.2d 1041, 1044 (4th Cir. 1986): "[T]he place of the wrong for purposes of the *lex loci delicti* rule, however, is defined as the place where the last event necessary to make an act[or] liable for an alleged tort takes place." (internal citations omitted). The court declared that "the injury—that is, the last event necessary to make an actor liable for an alleged tort—took place in West Virginia, where Ms. Wise was implanted with the allegedly defective device. The fact that Ms. Wise received treatment for that injury elsewhere does not alter the *lex loci delicti* analysis...". *Wise* at *8.

Here, the last event necessary for Petitioner's decedent to suffer injuries was the accident in Washington County, Maryland. As Maryland is the situs of the injuries sustained by Ms. Barr, that state's law must be applied to the facts of the case under the choice of law provisions long followed in West Virginia. As Maryland does not recognize dram shop liability, the Circuit

Court's dismissal of the Jackson Defendants from this suit was warranted, as Petitioner's claims against them arise solely out of their connection to Lust.

III. COURTS IN OTHER LEX LOCI DELICTI JURISDICTIONS APPLY THE LAW OF THE STATE WHERE THE ACCIDENT OCCURRED IN INTERSTATE DRAM SHOP CASES.

WVAJ further argues that courts in other jurisdictions commonly apply the law of the alcohol vendor's state in interstate dram shop cases. However, jurisdictions around the country that have addressed the issue of interstate dram shop cases in the context of *lex loci delicti* have uniformly held that it is the law of the place of injury, not the law of the place of alcohol beverages, that applies. *See Butler v. Wittland*, 18 Ill. App. 2d 578, 579 (applying Missouri law); *Rubitsky v Russo's Derby, Inc.* 70 Ill App 2d 482, 216 NE2d 680 (1966) (applying Wisconsin law); *Waynick v. Chicago's Last Dep't Store*, 269 F.2d 322 (7th Cir. 1959) (applying Illinois law).

For example, in *Butler v. Wittland*, Illinois residents instituted a dram shop cause of action against three Illinois tavern owners for injuries they suffered as a result of a collision in Missouri with a driver who had purchased liquor from the tavern owners. *Butler*, 18 Ill. App. 2d at 580-581, 153 N.E.2d at 107 (1958). While Illinois provided for dram shop liability, Missouri did not. *Id.* Reasoning that "the liability of defendants, if any, was not created by the sale to and resulting intoxication of such person alone, but arose when the automobile of the intoxicant and that of plaintiffs' collided in Missouri," the court held that the place of the tort was Missouri. *Id.* at 585, 110. Therefore, it applied Missouri's law and sustained the dismissal of the action. *Id.*

CONCLUSION

This case arises from Maydian's operation of a vehicle in Maryland while under the influence of alcohol, and the time and place of the accident, which lead to the fatal accident within Maryland's borders. As a result, Maydian was criminally charged, convicted, and sentenced in Maryland under Maryland criminal laws. Petitioner's efforts to recover from other individuals

and entities have been directed toward sidestepping the consistent, predictable, and easy application of *lex loci delicti*, which has long been a cornerstone of West Virginia's choice of law doctrine. Petitioner failed in this effort in the Circuit Court and should fail here. The law regarding the public policy exception to *lex loci delicti* makes clear that a mere difference in substantive law is insufficient, and the exception should be applied sparingly so as not to undermine the rule. Where, as here, the substantive law of the place of the injury is not contrary to pure morals or abstract justice, a court should not refuse to apply foreign law in otherwise proper circumstances on public policy grounds. This Honorable Court should decline Petitioner's request to change the law by recognizing a conflict in public policy where there is none, or to abandon the doctrine of *lex loci delicti* in favor of an inconsistent and unpredictable case-by-case approach.

For all the foregoing reasons, the Jackson Defendants respectfully request that this Honorable Court affirm the Circuit Court's dismissal of Petitioner's dram shop claims.

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CERTIFICATE OF SERVICE

I hereby certify that on December 14, 2023, I filed the foregoing *Brent Jackson, Lynn Perkins, and Hedgesville Real Estate, LLC's Response to Petitioner's Brief* using File & ServeXpress, which will send notification of such filing to all counsel of record.

/s/ Lee Murray Hall
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