

The Respondents, Danny J. Dobbins and Jackie L. Dobbins, his wife, by counsel, Matthew M. Hatfield, hereby file their summary response to the *Petitioner's Brief* ("Brief"). JCA E-Filed Jul 28 2023  
03:10PM EDT  
Transaction ID 70510955  
the Logan County Circuit Court properly concluded that WV National Auto Insurance Company ("WV National") must afford uninsured motorist coverage (UM) to its insureds (the Respondents) to protect against the loss and hardships caused by the negligent, financially irresponsible driver who caused the hit-and-run collision of 02/15/19.

### **Statement Of The Case**

Conveniently, WV National failed to include many facts relevant to the issues presented herein. This is the rest of the story. WV National questions whether Respondent Jackie Dobbins' 2001 Dodge Dakota pick-up truck ("Dodge"), being operated by Respondent Danny J. Dobbins, was struck by a hit-and-run driver of a black Toyota on 02/15/19. For example, WV National argues the Respondents allege the Dodge was being operated by Respondent Danny Dobbins at the time of the collision; that the at-fault driver is alleged to have fled the scene following the collision; and that Respondent Danny Dobbins is the alleged victim of the said hit-and-run. Brief at pg. 1-2. These facts are not alleged. Rather, they are proven. Respondent Danny Dobbins confirmed the Toyota struck the rear passenger side of the Dodge and then fled the scene. A.R. at 125, 126. Additionally, multiple witnesses (Alexis Hainer, Heather Neace and Kevin Fisher) observed the hit-and-run collision and confirmed via recorded statements to WV National that the driver of the Toyota caused the collision and then fled<sup>1</sup>. A.R. at 140, 141, 175. WV National also assigned Mike Call with Call Adjusting Services, Inc. who inspected the Dodge, confirmed

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<sup>1</sup> See Alexis Hainer's statement of 06/28/19, Heather Neace's statement of 07/31/19 and Kevin Fisher's statement of 08/12/19. A.R. at 140, 141, 175.

damage to the rear passenger side of the said vehicle, photographed the damage, and confirmed the Dodge was a total loss due to this collision. A.R. at 160, 162-174. Thus, all evidence indicates Respondent Danny Dobbins was driving the Dodge when it was struck by a negligent, financially irresponsible hit-and-run driver.

WV National is also extremely critical of the Respondents, almost to the point of belittling, because the Logan City Police Department refused to prepare a police report. For example, WV National argues the Respondents chose to report the collision to “city hall” instead of calling 911. Brief at 2-3. WV National, however, fails to explain that neither Respondent is well educated. Respondent Danny Dobbins dropped out of school in the Fifth (5<sup>th</sup>) Grade and cannot read or write. A.R. at 128-129. Respondent Jackie Dobbins dropped out of school in the Eleventh (11<sup>th</sup>) grade and had difficulty filling out collision-related documents for WV National. A.R. at 3, 227-230.

WV National also glosses over the fact this hit-and-run collision occurred on Friday, 02/15/19 at 3:30 p.m. (i.e., at the end of business on the Friday of President’s Day weekend, a legal holiday). A.R. at 144, 145. Again, it criticizes the Respondents for not calling 911 from the collision scene because police officers, firefighters and EMT’s are available “24 hours a day, seven days per week, 365 days per year.” Brief at 18-19. WV National, however, fails to acknowledge it was notified of this hit-and-run collision by the Respondents on 02/19/19 and, despite this notification, it never contacted the police or informed the Respondents they needed to do so. A.R. at 138. WV National also ignores the fact the Respondents reported the collision to Logan Police Department (“city hall”) on 02/19/19, however, the police would not investigate. A.R. at 136.

WV National also contends that it strived to properly investigate this matter so it could correctly determine whether it must afford UM coverage herein. Brief at 4. For example, it provided the Respondents with a 02/21/19 letter advising that an enclosed claim form must be

executed, however, its investigation was hampered because the Respondents were slow in returning the said claim form. Brief at 4. To the contrary, WV National was never concerned about investigating this hit-and-run collision so it could protect its insureds as required. Rather, it searched for any and every excuse to deny UM coverage. WV National was notified of this hit-and-run collision on 02/19/19, however, it did not investigate at this time. A.R. at 138. Rather, it waited until 02/27/19 to obtain a statement from Respondent Danny Dobbins. A.R. at 138, 140-141. Despite this statement, it still did not investigate. The Respondent then provided WV National with the requested Insured Driver Form wherein they identified Alexis Hainer, Heather Neace, and others, as witnesses. A.R. at 125, 126, 138. Again, WV National did not investigate. Instead, it provided a letter of 04/05/19 advising it was denying Respondent Jackie Dobbins' UM property damage claim and Respondent Danny Dobbins' UM personal injury claim because the police were not contacted within twenty-four (24) hours of the collision. A.R. at 154, 155. Only after the Respondents retained counsel in June, 2019 did WV National request witness contact information and to inspect the Dodge. A.R. at 156, 160, 161, 24. Despite Mr. Call confirming the Dodge was a total loss due to the 02/19/19 collision and statements of Alexis Hainer, Heather Neace and Kevin Fisher, WV National again denied the UM claims because the police were not contacted within twenty-four (24) hours. A.R. at 168-174, 140, 141, 142, 175, 176<sup>2</sup>.

### **Response To Argument**

An insurer cannot issue an automobile insurance policy in this State *“unless it contains an endorsement or provision undertaking to pay the insured all sums which he or she is legally*

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<sup>2</sup> WV National's continued denial of UM coverage after Mr. Call's inspection and confirmation from the witnesses the Dodge was struck by a hit-and-run driver on 02/15/19 casts serious doubts upon WV National's motive for this “investigation” (i.e., it was hoping and praying the investigation would reveal something meaningful to justify the UM claim denial).

*entitled to recover from the owner or operator of an uninsured motor vehicle.”* Miller v. Lambert, 195 W.Va. 63, 464 S.E.2d 582 (W.Va. 1995). The purpose of this requirement is to “*ensure that innocent West Virginia citizens who are injured in motor vehicle accident are protected against the loss and hardships caused by negligent, financially irresponsible drivers who are uninsured or underinsured.*” Perkins v. Doe, 177 W.Va. 84, 350 S.E.2d 711 (W.Va. 1986). Also see Westfield Ins. Co. v. Paugh, 390 F.Supp.2d 511 (N.D. W.Va. 2005). Additionally, the West Virginia Supreme Court of Appeals has noted:

the legislature has articulated a public policy of full indemnification or compensation underlying both uninsured or underinsured motorist coverage in the State of West Virginia. **That is, the preeminent public policy of this state in uninsured or underinsured motorist cases is that the injured persons 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 (emphasis added).**

State Auto. Mut. Ins. Co. v. Youler, 183 W.Va. 556 at 564, 396 S.E.2d 737 at 745 (W.Va.1990) Clearly, W.Va. Code §33-6-31 (the UM statute) “is remedial in nature and, therefore, must be construed liberally in order to effect its purpose.” Also see Perkins and Cunningham v. Hill, 226 W.Va. 180, 698 S.E.2d 944 (W.Va. 2010).

I. The Circuit Court Properly Construed W. Va. Code §33-6-31(e) To Protect The Respondents From A Financially Irresponsible Hit-And Run Driver

WV National first argues the Circuit Court improperly applied W.Va. Code §2-2-1 to toll the twenty-four (24) hour reporting requirement under W. Va. Code §33-6-31(e)(1) because “making a report to city, county or state officials is not an act that requires consideration of the day of the week or whether the particular day is a legal holiday”. Brief at 17, 18. Further, WV National contends police officers, like firefighters and EMT’s, are accessible 24 hours a day, seven days a week, 365 days per year and that all three can be summoned by simply calling 911. Brief

at 18. Accordingly, WV National argues W.Va. Code §2-2-1 serves only to frustrate the policy behind §33-6-31(e)(1) which is to “encourage the expeditious reporting of crime” and to halt “advancing illegitimate claims for UM coverage”. Id. WV National is incorrect.

This is not a criminal case as WV National suggests. It is an UM case wherein the goal is to ensure that victims of a hit-and-run collision are made whole. Additionally, whether police, firefighters and EMT’s are accessible via 911 is irrelevant as W. Va. Code §33-6-31(e) does not require the same to present an UM claim. Further, the fact this hit-and-run collision occurred on Friday, 02/15/19 at approximately 3:30 p.m. (i.e., at the end of business on the Friday of President’s Day weekend, a legal holiday) is relevant as to when the twenty-four (24) hour reporting period under §33-6-31 expires. A.R. at 144, 145. Otherwise, the legislature would have never adopted a law setting forth how a Court must interpret the construction of a statute when an act to be done falls on a Saturday, Sunday or legal holiday (which is what occurred in this case).

Specifically, W.Va. Code §2-2-1(e) states, in part, that “*If any applicable provision of this code or any legislative rule or other administrative rule or regulation promulgated pursuant to the provisions of this code designates a particular date on, before or after which an event, default or omission is required or allowed to occur, and if the particular date designated falls on a Saturday, Sunday, legal holiday or designated day off, then the date on which the act, event, default or omission is required or allowed to occur is the next day that is not a Saturday, Sunday, legal holiday or designated day off [emphasis added].*” First, W.Va. Code §33-6-31(e) is the applicable provision of the W.Va. Code. Second, W.Va. Code §33-6-31(e) states that if an owner or operator of a motor vehicle which causes property damage or bodily injury is unknown, then the insured must report the collision to a police, peace or judicial officer within twenty-four hours. Accordingly, W.Va. Code §33-6-31(e) designates a particular date which an event is required.

Third, the subject collision occurred at the end of business on Friday, 02/15/19. A.R. at 225-34, 144, 145. Twenty-four (24) hours following the collision would fall on a Saturday. Id. Of course, the next day would be Sunday. Id. The following day would be Monday, 02/18/19, President's Day and a legal holiday as set forth in W.Va. Code 2-2-1. The next day would be Tuesday, 02/19/19. Accordingly, the designated twenty-four (24) hours would not expire until Tuesday, 02/19/19. Here, the Respondents complied with the law and reported the collision to the Logan City Police on 02/19/19 (or within twenty-four (24) hours). Specifically, Respondent Danny J. Dobbins testified went to the Logan City Hall to report the collision on 02/19/19, however, the police would not investigate the collision (and WV National concedes the Respondents, in fact, did report this collision as represented). A.R. at 81, 82, 136, 229. W.Va. Code §33-6-31(e) only requires that a person seeking to recover under a UM provision report the collision to the police within twenty-four (24) hours. The said statute does not require the police to investigate the collision – nor can the Respondents force the police to investigate.

WV National also contends the Court in Lusk v. Doe, 338 S.E.2d 375, 175 W.Va. 775 (W.Va. 1985) held that the twenty-four (24) hour reporting requirement under W.Va. Code §33-6-31(e) is a hard and fast rule and, therefore, the Circuit Court erred. Brief at 20-21. Contrary to WV National's argument, Lusk did not hold the twenty-four (24) hour notice requirement in W.Va. Code §33-6-31(e) is a hard and fast rule. In Lusk, Wilma Lusk ("Mrs. Lusk") was operating her vehicle on Thursday, 03/25/82 when she was struck by the driver of an unknown truck. Due to the collision, she was injured and hospitalized. Thereafter, Mrs. Lusk and Paul Lusk ("Mr. Lusk") filed suit against John Doe and served State Farm, their UM carrier. Mrs. Lusk testified her vehicle was struck by an unknown driver of a coal truck; Mrs. Lusk's sister-in-law testified she informed the State Farm agent on Friday, 03/26/82, Mrs. Lusk was injured in the collision and that the driver

of the at-fault coal truck was unknown; and Mrs. Lusk's brother-in-law testified he went to the hospital on Sunday, 03/28/82, and assisted Mrs. Lusk with filling out a DMV accident report form. Lusk, 338 S.E.2d at 377. Mr. Lusk also testified he provided information about the collision to the State Farm agent on Monday, 03/29/82; that he met with a State Farm adjuster on Tuesday, 03/31/82<sup>3</sup>; and that he completed and mailed the DMV accident report. *Id.* State Farm refuted this evidence by arguing the sister-in-law was unaware as to whether Ms. Lusk's vehicle made "physical contact" with the truck. Further, State Farm Agent Glen McKinney testified that he was never advised Mrs. Lusk's vehicle made "physical contact" with the coal truck and that he was never informed of a potential UM claim within sixty (60) days of the collision. *Id.* Lastly, State Farm submitted an affidavit from the DMV advising its records were reviewed and no report of the subject collision was on file (i.e., it did not have record of the collision being reported). *Id.* State Farm then moved to dismiss because Mrs. Lusk's vehicle did not make "physical contact" with the truck; the collision was not reported to the police and/or DMV within twenty-four (24) hours; and because it was not timely notified of the collision pursuant to W.Va. Code §33-6-31(e).

Ultimately, the Court in Lusk held that State Farm was not entitled to a dismissal. In reaching this conclusion, the Lusk Court noted W.Va. Code §33-6-31(e) contains two separate notice provisions applicable to a hit and run driver. Subsection (e)(i) provides for notice to the police and/or DMV and subsection (e)(ii) provides for notice to the UM carrier. As such, Mr. Lusk's statement to the insurance agent that his wife advised she was struck by an unknown vehicle would constitute sufficient notice to the insurer as subsection (e)(ii) does not require a "legalistic" formal notice couched in the language of the statute. Lusk, 338 S.E.2d at 378, 379. Further, "[t]he

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<sup>3</sup> He informed the adjuster that he did not know whether Ms. Lusk's vehicle made actual contact with the coal truck because he was not present at the time of the collision.

*circuit court's narrow construction of the language of subsection (e)(i) of the uninsured motorist statute contravenes the intended objective of the uninsured motorist statute. The **primary, if not sole purpose of mandatory uninsured motorist coverage is to protect innocent victims from the hardships caused by negligent, financially irresponsible drivers. [emphasis added]***" Id. Based upon the above and the spirit and intent of the UM statute, the Court in Lusk held that the fact the collision was not reported to the police and/or DMV within twenty-four (24) hours did not prejudice Ms. Lusk's ability to pursue an UM claim against State Farm.

The facts of this case are more compelling than the facts in Lusk. Here, there is no dispute there was "physical contact" between the Dodge truck and the hit and run driver. A.R. at 156-174. The Respondents also reported this collision to WV National on the next business day following the collision, just like the sister-in-law in Lusk reported the collision to State Farm on the next business day following the collision. Further, the Respondents attempted to report this collision to the police, just like Mr. Lusk attempted to report the collision to the DMV. A.R. at 81, 82, 229. As such, this Court should follow the guidance set forth in Lusk and liberally construe W.Va. Code §33-6-31(e) by holding WV National must afford UM coverage to the Respondents.

## II. The Respondents Clearly Reported The Collision Within The "Tolled" Period

WV National next argues the Respondents do not have any evidence they attempted to report this collision within the "tolled" period as determined by the Circuit Court. Brief at 25. Also see W.Va. Code §2-2-1(e). This argument is disingenuous. First, Respondent Danny Dobbins testified as follows:

Q: Okay. Would you agree with me that that form accurately reflects that you had not contacted the authorities as of February 19, 2019?

A: Yeah, because they wouldn't let me report it.

Q: Do you know if you even went down there by February 19, 2019?

A: Yeah, I went down there to report it, yeah. She said you waited too late.

Q: Listen to me. Okay? According to the information that we have, you waited several days before you went down there. Is that correct?

A: Yeah, yeah.

Q: You didn't go the next day, you went several days later?

A: Yeah.

Q: Is that correct?

A: Yeah.

A.R. at 81,82. Respondent Jackie Dobbins also corroborates this testimony by advising she went with Respondent Danny Dobbins to Logan City Police Department to report this collision. A.R. at 229. Moreover, WV National concedes the Respondents reported this incident to the Logan City Police. Specifically, Respondent Danny Dobbins stated during his deposition of 03/25/21:

Q: Okay. And the information that I have from the insurance company, I have information here, it says that the city - - Logan City Police Department did not have a report on file, which you don't dispute because they wouldn't take that. Right?

A: That's right, yeah.

Q: **And when we spoke to the records person, they indicated you had came to their office requesting to do a report, - - [emphasis added]**

A: There you go.

Q: - - but they advised you that they were not doing a report because you did not contact them at the time of the incident but instead had come down there days later.

A: Thought I was lying about that, didn't you? **I told you I talked to them. [emphasis added]**

A.R. 136. 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.

Second, WVCSR §114-14-1, et seq., requires that an insurer must disclose to first-party claimants all pertinent benefits, coverages or other provisions of an insurance policy under which a claim is presented. The Respondents are first-party claimants. WV National, as the insurer, was required to disclose the pertinent provisions of the insurance contract (including any provisions that require the Respondents to report the collision to the police within twenty-four (24) hours). Thus, West Virginia National was required to inform the Respondents during the initial conversation of 02/19/19 (which would have been within twenty-four (24) hours under W.Va. Code §2-2-2) of the policy provisions which required they immediately report the collision to the police. It, however, failed to make such required disclosure to the Respondents (and there is no evidence to suggest otherwise). As such, WV National should now be precluded from taking advantage of its insured (Respondents) – which is exactly what it is attempting to do.

### III. WV National Must Show Prejudice And, Since It Cannot, It Must Afford Coverage

WV National next contends the Circuit Court erred because it applied a “prejudice” standard which “improperly constricts” W.Va. Code §33-6-31(e)(1) and “precludes the enforcement of the plain, unambiguous insurance policy language”. Brief at 29. In support of its position, WV National asserts Youler is not applicable because that Court did not consider the application of “prejudice to the investigative interest of the insurer” where the delay violated a statutory duty. Brief at 31. To the contrary, Youler is applicable, however, WV National argues otherwise because the same does not advance its cause herein. To begin, the Youler Court warned that “Courts should exercise restraint in regard to requiring strict technical compliance with

coverage provisions that require the notice of an accident or proof of claim requirements”. Id at 183 W.Va. at 562, 396 S.E.2d at 744. **“In an uninsured motorist case, prejudice to the investigative interests to the insurer is a factor to be considered, along with the reasons for the delay and the length of delay,** in determining the overall reasonableness in giving notice of the collision. Typically, an insured must put on evidence showing the reason for the delay in giving notice. Once this prerequisite is satisfied, the insurer must then demonstrate that it was prejudiced by the insured’s failure to provide notice sooner”. Syl. Pt. 2, Youler. To determine whether an insurer has been prejudiced by an unreasonable delay, Courts should abide by the following:

. . . several factors must be considered before the Court can determine if the delay in notifying the insurance company will bar the claim against the insurer. The length of the delay in notifying the insurer must be considered along with the reasonableness of the delay. If the delay appears reasonable in light of the insured’s explanation, the burden shifts to the insurance company to show that the delay in notification prejudiced their investigation and defense of the claim. If the insurer can produce evidence of prejudice, then the insured will be held to the letter of the policy and the insured barred from making a claim against the insurance company. If, however, the insurer cannot point to any prejudice caused by the delay in notification, then the claim is not barred by the insured’s failure to notify.

Dairyland Ins. Co. v. Voshel, 189 W.Va. 121, 428 S.E.2d 542 (1993) at Syl. Pt. 2. Thus, WV National must show its investigative interests were prejudiced. It cannot, so it attempts to avoid the real issue and argue Youler is not controlling<sup>4</sup>.

This collision occurred at the close of business on Friday, 02/15/19, at 3:30 p.m. Contrary to WV National’s position, Logan City Hall, where the City Police Department is located, would not be open for business until Tuesday, 02/19/19 due to the President’s Day holiday. The same

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<sup>4</sup> WV National has been all over the “checkerboard”. For example, it previously argued Youler was not dispositive because the Respondents could not articulate a single reason for the delay, however, it now argues Youler is not applicable regardless of delay. A.R. at 194-195.

holds true with the Logan County Sheriff's Department and West Virginia State Police. Obviously, the said agencies would be available on an emergency basis via 911, however, none would respond to a hit and run collision that occurred twenty-four (24) hours before wherein the driver fled. Rather, the plaintiffs would have been instructed to report the collision to City Hall during business hours on 02/19/19 – which is what occurred. There are additional reasons for any purported delays. Respondent Danny Dobbins dropped out of school in Fifth (5<sup>th</sup>) Grade and cannot read or write. A.R. at 128-129. Respondent Jackie Dobbins dropped out of school in Eleventh (11<sup>th</sup>) Grade and had difficulty filling out collision-related documents for WV National. A.R. at 3, 227-230. Since the Respondents have set forth reasons for the purported delay, WV National must now show it was prejudiced by this delay. It cannot do so. Specifically, the Respondents reported the collision to WV National on 02/19/19 (twenty-four hours pursuant to W.Va. Code §2-2-2); the Respondents provided WV National with the completed Insured Driver Statement Form as requested; West Virginia National was provided with an opportunity to examine the Respondents' Dodge truck as requested (said examination took place by Mr. Call); the Respondents provided WV National with the identity and contact information for the individuals who witnessed the hit-and-run collision as requested; and WV National was provided with an opportunity to independently obtain statements from the witnesses. Put simply, WV National cannot show it was prejudiced by any purported delay on behalf of the Respondents in notifying the police of this collision.

The Respondents are also aware WV National contends it was prejudiced by the purported delay because the police could have issued a BOLO for the at-fault driver and obtained "real time" statements. A.R. 185. The police are not going to issue a BOLO eight (8), ten (10), twenty-four (24) and one hundred twenty-four (24) hours after a collision. Moreover, the police are not going

to obtain “real time” statement from witnesses eight (8), ten (10), twenty-four (24) or one hundred twenty-four (124) hours after a collision. In fact, WV National would not have waited until June/July, 2019 before it attempted to contact the witnesses if were so concerned about obtaining “real time” statements (and then only upon receipt of the undersigned’s 06/7/19 letter). A.R. 156.

The issue of whether an insurer is prejudiced by an insured’s delayed notice is not limited to only first-party claims. Rather, there are a litany cases which hold that an insurer must show it was prejudiced by an insured’s delayed notification. For example, in Colonial Ins. Co. v. Barrett<sup>5</sup> 208 W.Va. 706, 542 S.E.2d 869 (W.Va. 2000) the Court held that the notice requirement in an insurance contract is satisfied when the said insurer receives notice of the claim from any source (the insured or a third party) and, therefore, the issue is whether the notice was unreasonably delayed so as to prejudice the insurer’s rights. In Kronjaeger v. The Buckeye Union Ins. Co., 200 W.Va. 570, 490 S.E.2d 657 (W.Va. 1997) the Court held an insurer must show it was prejudiced due to an insured failing to obtain the insurer’s consent to settle and waiver of subrogation before settling with the tortfeasor to justify a refusal to pay UIM benefits. In Bowyer by Bowyer v. Thomas, 423 S.E.2d 906, 188 W.Va. 297 (W.Va. 1992) the Court held that before an insurance policy will be voided because of an insured’s failure to cooperate, such failure must be substantial and of such nature to prejudice the insurer’s rights.

Lastly, the United States District Court for the Southern District of West Virginia in Moses Enterprises, LLC v. Lexington Ins. Co, et al., (W.Va. S.D. 3:19-0477) recently addressed whether an insurer was required to provide coverage under an insurance police wherein the insured was not

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<sup>5</sup> See Petrice v. Federal Kemper Ins. Co., 163 W.Va. 737, 740, 260 S.E.2d 276, 278 (1979) which held that a notice provision "is to be liberally construed in favor of the insured" (and not read as a series of technical hurdles). Rather, all that is required is the insurer must be able to adequately investigate the claim and estimate its liabilities. Id.

notified of the loss within ninety (90) days as required under the policy. A.R. 177-181. In Moses, the plaintiff sold a vehicle to an individual using a stolen identity on 08/2/18. The vehicle was financed through United Bank. On 11/15/18, a person reported to law enforcement their identity had been stolen to purchase the said vehicle. United Bank then notified the plaintiff of the fraudulent purchase on 11/28/18. That same day, the plaintiff contacted its insurance agency to advise of the claim. A formal claim was then submitted to the insurer on 12/4/18, however, the insurer denied the same because it was not reported within ninety (90) days after parting with the vehicle as required under the policy. Suit was then filed and the District Court agreed more than ninety (90) days had passed since the he plaintiff parted with the vehicle. The Court, however, noted the plaintiff reported the fraudulent transaction to its insurance agent the same day it learned of the same and that a formal claim was filed with the insurer less than a week later. Based upon these facts, the burden shifted to the insurer to show it was prejudiced due to the delay. The insurer could not demonstrate any prejudiced by the delay so the Moses Court granted summary judgment to the plaintiff by concluding the insurer unlawfully denied coverage for the loss.

To summarize, both the West Virginia Supreme Court of Appeals and Federal Court liberally construe the W.Va. Code §33-6-31 to effectuate coverage and protect first-party insureds (such as the Respondents). This Court should, likewise, do the same.

#### IV. W.Va. Law Does Not Require Strict, Technical Compliance With Policy Provisions Requiring Notice

WV National also argues the unambiguous terms of its insurance policy requires an insured to contact the police within twenty-four (24) hours of a hit-and-run collision. First, the Respondents notified the police within twenty-four (24) hours pursuant to W.Va. Code §2-2-2. Second, West Virginia law does not require such strict technical compliance with coverage

provisions that require notice. Colonial. If policy provisions are given full force and effect in each and every situation, then the holdings set forth in Youler, Colonial, Kronjaeger, and Moses would not exist. Moreover, the West Virginia Supreme Court of Appeals has not hesitated to strike an insurance policy provision when the same is not justified or contrary to law and public policy. *See, e.g., Jones v. Motorist Mut. Ins. Co.*, 177 W.Va. 763, 356 S.E.2d 634 (W.Va. 1987) [named driver exclusion not valid up to the mandatory liability limits of insurance]; Henry v. Benyo, 203 W.Va. 172, 506 S.E.2d 615 (W.Va. 1998) [workers' compensation exclusion not valid with respect to non co-worker tortfeasor]; Hamric v. Doe, 201 W.Va. 619, 499 S.E.2d 619 (W.Va. 1997) [physical contact requirement not valid where there is independent third party testimony to verify existence of phantom vehicle]; and Cunningham [reduction of UIM coverage not valid pursuant to W.Va. Code §33-6-31(b)].

### **Conclusion**

*WHEREFORE*, the Respondents pray this Court upholds the spirit and intent of W.Va. Code §33-6-31 by affirming the Circuit Court's decision.

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INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

WV National Auto Insurance Company,  
Defendant Below, Petitioner,

vs.

No. 23-ICA-101

DANNY J. DOBBINS and  
JACKIE L. DOBBINS,

Plaintiffs Below, Respondents.

CERTIFICATE OF SERVICE

I, Matthew M. Hatfield, counsel for Respondents, do hereby certify that I have this the 28<sup>th</sup> day of July, 2023, provided a true copy via e-file of the foregoing *Respondents' Summary Response* unto the following:

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