IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

No. 23-702

ERIE INSURANCE PROPERTY & CASUALTY COMPANY,

Petitioner,

vs.

JAMES SKYLAR COOPER,

Respondent.

CERTIFIED QUESTION FROM THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT,
No. 22-1129

PETITIONER'S BRIEF

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CERTIFIED QUESTION PRESENTED

This case is before the West Virginia Supreme Court of Appeals upon the following certified question from the United States Court of Appeals for the Fourth Circuit:

> *Does West Virginia Code § 33-6-31 require an insurer, who issues a commercial automobile insurance policy to a named insured providing liability coverage for particular owned vehicles and a class of non-owned vehicles, to offer underinsured motorist coverage for the class of non-owned vehicles?*

Petitioner, Erie Insurance Property & Casualty Company, submits that the West Virginia Supreme Court of Appeals should answer the certified question in the negative and hold that insurers are not required to extend offers of underinsured motorist coverage to a class of non-owned autos that are insured for liability coverage.

STATEMENT OF THE CASE

This certified question to the West Virginia Supreme Court of Appeals arises from a declaratory judgment action filed in the United States District Court for the Southern District of West Virginia concerning the availability of underinsured motorist ("UIM") coverage for James Skylar Cooper ("Cooper") for a motor vehicle accident that occurred on August 9, 2019. [JA 366]. At the time of the accident, Cooper was working for his employer, Pison Management, Inc. ("Pison Management"), and riding as a guest passenger in a personal vehicle owned and operated by a co-employee, Rick Huffman ("Huffman"). [J.A 414; 388]. As a result of his injuries and a settlement for the tortfeasor's limits of liability coverage, Cooper collected UIM coverage through policies issued to his mother and grandmother, and also sought UIM coverage through a commercial auto policy issued by Erie Insurance Property & Casualty Company ("Erie") to Pison Management. [JA 419 – 452; 291].

While the Erie Policy provided UIM coverage for autos owned by Pison Management, it did not provide UIM coverage for non-owned autos, including the Huffman vehicle, and there was no premium charged for UIM coverage for non-owned autos. [JA 419]. Separately, the Erie Policy did not provide UIM coverage to Cooper because Cooper did not fall within the definition of "Persons We Protect", as defined by the Erie Policy. [JA 439]. By way of the underlying declaratory judgment action, the District Court recognized that the Erie Policy did not provide UIM coverage to Cooper, but for the first time held that W. Va. Code § 33-6-31 and public policy required insurers to offer UIM coverage for non-owned autos when that non-owned auto qualifies for liability coverage under the policy of insurance. [JA 13 - 26]. Based on this conclusion, the District Court reformed the Erie Policy to add UIM coverage for non-owned autos and otherwise

concluded that Cooper was entitled to that coverage for the August 9, 2019 motor vehicle accident. *Id*.

The underlying facts and circumstances surrounding the August 9, 2019 motor vehicle accident are not in dispute. On the morning of the accident, Cooper was picked up by Huffman in Huffman's personal vehicle and the two traveled to a job location in Cross Lanes, West Virginia where they were to meet other employees and get grass-cutting equipment they needed for the job that day. [JA 402]. Once Huffman and Cooper arrived at the Cross Lanes location, they assisted in attaching a trailer to a 2003 Chevrolet Silverado owned by Pison Management and loaded the trailer with the lawn cutting equipment they needed. *Id*. Once the trailer was attached and loaded, Huffman and Cooper walked back to Huffman's vehicle and waited for the other employees to leave for the job site. [JA 404].

When the group left for the job site, Huffman and Cooper were riding in Huffman's personal vehicle and were following two other vehicles. [JA 405]. The first vehicle in the convoy had two Pison Management employees in a 2019 Dodge Ram. [JA 404 - 405]. The Dodge Ram was owned by Pison Management and was a listed vehicle on the Erie Policy. [JA 419]. The second vehicle in line was a 2004 Chevrolet Silverado operated by another Pison Management employee, Demetrius Elder. [JA 373 - 375]. The Chevrolet Silverado was owned by Pison Management and was a listed vehicle on the Erie Policy. [JA 419]. The Huffman vehicle, occupied by Huffman and Cooper, was the third vehicle in line. [JA 405]. The Huffman vehicle was not a listed vehicle on the Erie Policy and was not owned by Pison Management. [JA 419; 377].

The motor vehicle accident at issue occurred when the three vehicles were en route to the job site. [JA 401]. At that time, a vehicle owned and operated by Thelma White, while traveling

in the opposite direction, crossed the centerline and struck the trailer attached to the Chevrolet Silverado and then struck the Huffman vehicle head-on. [JA 367].

At the time of the August 9, 2019 motor vehicle accident, Pison Management was insured by a Commercial Auto Insurance Policy issued by Erie, Policy No. Q02 5830178, with a policy period of February 8, 2019 to February 8, 2020 (hereinafter the "Erie Policy"). [JA 419 - 452]. The named insured identified on the Erie Policy is "Pison Management LLC". [JA 419].

As a result of the motor vehicle accident, Mr. Cooper sustained bodily injuries and pursued a claim against Thelma White. After settling his claims for the liability limits of coverage insuring Thelma White, Cooper sought UIM coverage through the Erie Policy. [JA 45 - 51]. Cooper also sought and collected UIM coverage under policies of insurance owned by his mother and grandmother because he was a resident of their household at the time of the motor vehicle accident. [JA 291]. As to the claim for UIM coverage under the Erie Policy, Erie determined that the Huffman vehicle constituted a non-owned auto, that no premium was charged for UIM coverage relative to non-owned autos, and that UIM coverage was not available to Mr. Cooper because he did not meet the definition of Others We Protect in the UIM Endorsement of the Erie Policy. [JA 419; 439].

Cooper disagreed with Erie's coverage determination. Cooper asserted that he was entitled to UIM coverage and advanced two alternate theories. First, Cooper asserted that he was using the Pison Management vehicle that was traveling in front of him at the time of the accident. [JA 45 – 51]. Alternatively, Cooper asserted that Erie was required to offer UIM coverage for non-owned autos and the Huffman vehicle should have been covered for UIM coverage under the Erie Policy. *Id*.

As a result of the dispute over coverage, Erie filed a Petition for Declaratory Judgment on May 7, 2020 in the United States District Court for the Southern District of West Virginia, seeking a declaration concerning the scope of coverage provided by the Erie Policy for the August 9, 2019 motor vehicle accident. [JA 29 - 36]. On July 6, 2020, Cooper responded to Erie's Petition for Declaratory Judgment and asserted counterclaims for declaratory judgment and breach of contract. [JA 37 - 51].

After a short period for discovery, Erie and Cooper filed cross motions for summary judgment as to the declaratory judgment claims on November 2, 2020. [JA 87 - 89; 112 - 113]. By Memorandum Opinion and Order dated January 28, 2021, the District Court agreed that the terms of the Erie Policy did not provide UIM coverage to Mr. Cooper and further held that Mr. Cooper was not using the Pison Management vehicle traveling in front of him at the time of the accident. [JA 13 - 26].

However, while acknowledging that this issue had never been addressed by this Court, the District Court held that excluding non-owned autos from the offer of UIM coverage was contrary to public policy and West Virginia's omnibus statute, W. Va. Code § 33-6-31, and that insurers in West Virginia are required to offer UIM coverage for non-owned autos that qualify for liability coverage under an automobile policy of insurance. [JA 24 - 26]. As a result, the District Court reformed the Erie Policy to add UIM coverage for non-owned autos in an amount of One Million Dollars, the limits of liability coverage, and further held that Cooper was entitled to collect UIM coverage up to those reformed limits. *Id.*

On January 29, 2021, the District Court entered a Judgment Order in favor of Cooper and dismissed the case from its docket. However, the Judgment Order was vacated in response to Cooper's Rule 59(e) Motion to Amend Judgment by Memorandum Opinion and Order dated

February 26, 2021. By way of its February 26, 2021 Order, the prior Judgment Order was vacated due to the fact that Cooper's breach of contract claim remained pending and denied Cooper's request that the January 28, 2021 Memorandum Opinion and Order be entered pursuant to Rule 54(b) to allow for an immediate appeal. Thereafter, the remaining claims pending before the District Court were mutually resolved while preserving the parties' rights to appeal the District Court's January 28, 2021 Memorandum Opinion and Order. The District Court entered a Final Order on January 13, 2022, dismissing the remaining claims and preserving the parties' rights to appeal. [JA 27 - 28].

Erie timely filed its Notice of Appeal to the United States Court of Appeals for the Fourth Circuit on February 7, 2022. After briefing had been completed, the United States Court of Appeals set the matter for oral argument on September 19, 2023. By Order entered December 5, 2023, the United States Court of Appeals for the Fourth Circuit agreed with the conclusions of the District Court that the Erie Policy, by its terms, did not extend UIM coverage to Cooper or the Huffman vehicle as a result of the August 9, 2019 motor vehicle accident, but certified the following question to this Court:

> *Does West Virginia Code § 33-6-31 require an insurer, who issues a commercial automobile insurance policy to a named insured providing liability coverage for particular owned vehicles and a class of non-owned vehicles, to offer underinsured motorist coverage for the class of non-owned vehicles?*

Accordingly, the only issue before this Court is whether Erie was required to offer UIM coverage for non-owned autos that qualified for liability coverage under the Erie Policy.

SUMMARY OF THE ARGUMENT

The West Virginia Legislature's enactments and this Court's precedents require insurers to offer UIM coverage as an optional coverage to a vehicle *owner* to collect full compensation from their own insurer for amounts not recoverable from an at fault driver who is underinsured. The District Court, on the other hand, created a new requirement that insurers offer UIM coverage for the benefit of third parties who occupy vehicles neither owned by the policyholder nor listed on the insurance policy. No statute nor any decision by this Court has recognized such a requirement. Indeed, pursuant to this Court's precedent, the District Court's expansion of the law is contrary to the purpose of UIM coverage and the statutory framework of W. Va. Code § 33-6-31.

In reaching its decision, the District Court erroneously relied on West Virginia's general public policy of full indemnification for uninsured and underinsured motorist claims to hold that W. Va. Code § 33-6-31(b) requires an insurer to separately extend offers of UIM coverage to non-owned autos when those non-owned autos qualify for liability coverage under the insurance policy. In this particular case, the District Court extended that offer requirement to an *entire class* of unidentified non-owned autos. The impact of the District Court's ruling was to extend UIM coverage for the benefit of third parties to the insurance contract, despite this Court's prior holdings that UIM coverage is for the benefit of the policyholder and that extending the scope of UIM coverage to third parties was "far afield" from what the Legislature intended. This is because UIM coverage already extends to the named insured in a non-owned auto without the need to separately offer that coverage for a non-owned auto.

Statutorily, when a policyholder is provided with an offer of UIM coverage for owned vehicles insured by the policy of insurance, W. Va. Code § 33-6-31(c) mandates that UIM coverage automatically extend to the named insured, his or her spouse, and resident relatives when they are

occupying non-owned autos. Conversely, this statutory framework only requires the provision of UIM coverage to a third party when that third party is occupying a vehicle to which the policy applies. This Court has recently rejected the notion that the extension of liability coverage to a non-owned auto makes that non-owned auto a vehicle to which the policy applies under the statute. The District Court's decision erroneously expands the scope of vehicles to which the policy applies to include non-owned autos solely for broadening the availability of UIM coverage for third parties to the insurance contract.

By expanding the scope of W. Va. Code § 33-6-31 to include UIM coverage offers for vehicles that are not owned *and* not scheduled on the policy of insurance, the District Court misapplied the language of the statute and construed the statute more broadly than has ever been recognized by West Virginia precedent. A plain reading of W. Va. Code § 33-6-31(a) specifically contemplates issuance of those policies to the *owners* of such vehicles. As such, there is only one recipient of the policy identified in that section and it is the owner of the vehicle. In further support of this application, W. Va. Code § 33-6-31(a) thereafter broadens the definition of "owner" for purposes of permissive use, by including within the term "owner" the custodian of the vehicle and ensuring that permissive use of the vehicle can be extended through the custodian's permission. W. Va. Code § 33-6-31(b) thereafter requires that offers of uninsured and underinsured motorist coverage be extended to *the* insured as the "owner" of the vehicles subject to those offers.

The District Court also failed to consider that its decision finding that insurers in this state are required to offer UIM coverage for a class of non-owned vehicles, in addition to those vehicles specifically identified in the insurance policy, prevents an insurer from complying with the statutory obligations of W. Va. Code § 33-6-31d. In order to obtain the statutory presumption of a commercially reasonable offer of UIM coverage, W. Va. Code § 33-6-31d expressly requires an

insurer to identify *the number of vehicles* subject to the offer of UIM coverage. By requiring an insurer to include within that offer a class of vehicles that are non-owned, insurers have the impossible task of complying with both the District Court's holding in this case and its statutory obligations relating to offers of UIM coverage. Not only is West Virginia's established public policy concerning UIM coverage contrary to the District Court's ruling, West Virginia statutory law mandates a different result.

For these reasons, the Petitioner, Erie Insurance Property & Casualty Company, requests that this Court answer this certified question in the negative and hold that insurers are not required to extend offers of UIM coverage to a class of non-owned autos that are not specifically listed vehicles under the insurance policy.

STATEMENT REGARDING ORAL ARGUMENT

Petitioner, Erie Insurance Property & Casualty Company, submits that this case is appropriate for oral argument in accordance with Rule 20 of the West Virginia Rules of Appellate Procedure, as the certified question from the United States Court of Appeals for the Fourth Circuit involves an issue of first impression which is of fundamental importance to how and when UIM coverage must be offered under the statutory framework of W. Va. Code § 33-6-31 and W. Va. Code § 33-6-31d.

ARGUMENT

A. STANDARD OF REVIEW

When presented with a certified question from a federal district court or federal appellate court, the West Virginia Supreme Court of Appeals' standard of review is *de novo*. *Westfield Insurance Company v. Sisterville Tank Works, Inc.*, 895 S.E.2d 142, 148 (W. Va. 2023), citing Syllabus Pt. 1, *Light v. Allstate Insurance Co.*, 203 W. Va. 27, 506 S.E.2d 64 (1998) ("A *de novo* standard is applied by this Court in addressing the legal issues presented by a certified question from a federal district of appellate court.").

B. WEST VIRGINIA PUBLIC POLICY DOES NOT REQUIRE OFFERS OF UIM COVERAGE FOR NON-OWNED AUTOS BECAUSE UIM COVERAGE IS ALREADY EXTENDED TO THE NAMED INSURED FOR NON-OWNED AUTOS

For purposes of UIM coverage, W. Va. Code § 33-6-31(c) creates two classes of insureds. The first class of insureds ("Class I insureds") include the, "named insured and, while resident of the same household, the spouse of any such named insured and relatives of either, while in a motor vehicle or otherwise." *W. Va. Code § 33-6-31(c)*. The second class of insureds ("Class II insureds") include, "any person, except a bailee for hire, who uses, with the consent, expressed or implied, of the named insured, the motor vehicle to which the policy applies." *Id.* The import of these separate classifications of insureds is that Class I insureds are entitled to broader protection, "while in *a* motor vehicle or otherwise" and protection for Class II insureds is limited to their occupancy of "<u>the</u> motor vehicle to which the policy applies."[1] *Id.* (emphasis added); see also *Starr v. State Farm Fire and Cas. Co.*, 188 W. Va. 313, 316, 423 S.E.2d 922, 925 (1992) (emphasis added) ("It is generally held that uninsured/underinsured motorist provisions of an automobile insurance policy which separately define coverage for the owner, spouse, and any relative living in the owner's

[1] There is no dispute in this case that Cooper would be considered a Class II insured.

household as one group, and for other persons while occupying the covered vehicle with the consent of the owner or his or her spouse as another group, create two distinct classes of covered individuals").

While West Virginia has recognized a general public policy behind W. Va. Code § 33-6-31 for the "full indemnification or compensation underlying both uninsured and underinsured motorist coverage," that public policy has never been extended to broaden the scope of who qualifies as an insured for purposes of that coverage. *State Auto Mut. Ins. Co. v. Youler*, 183 W. Va. 556, 564, 396 S.E.2d 737, 745 (W.Va. 1990). In fact, before applying the public policy enunciated in *Youler*, this Court has stated that, "the party's status as an insured under the policy must first be established before it can be determined that underinsured coverage is available." *Alexander v. State Auto Mut. Ins. Co.*, 187 W. Va. 72, 75, 415 S.E.2d 618, 621 (1992). Despite this stated limitation, the District Court misapplied that general public policy pronouncement to expand the definition of an insured when it concluded that offers of UIM coverage for a class of non-owned autos are required when that non-owned auto is insured for liability coverage.

After the District Court reached its decision in this case, this Court decided *Progressive Max Ins. Co. v. Brehm*, 246 W. Va. 328, 873 S.E.2d 859 (2022). *Brehm* is in direct conflict with the District Court's decision. In *Brehm*, this Court rejected the notion that UIM coverage had to be extended to guest passengers of a non-owned auto despite the fact that the driver's personal auto policy was statutorily required to provide the primary level of liability coverage for that non-owned auto. *Progressive Max Ins. Co. v. Brehm*, 246 W. Va. 328, 873 S.E.2d 859 (2022). In other words, this Court concluded that the provision of liability coverage to a non-owned auto did not make the non-owned auto "the motor vehicle to which the policy applies", such that UIM coverage would extend to a Class II insured. *W. Va. Code § 33-6-31(c).*

The significance of the holding in *Brehm* as to its impact on the certified question in this case is clear. If UIM coverage for a Class I insured already extends to the occupancy of non-owned autos in accordance with W. Va. Code § 33-6-31(c), there would be no need for an insurer to separately offer UIM coverage for non-owned autos for the benefit of the Class I insured. The only purpose for a specific offer requirement of UIM coverage for non-owned autos would be to extend the scope of UIM coverage for a Class II insured, such that the non-owned auto would constitute "the motor vehicle to which the policy applies." *W. Va. Code § 33-6-31(c)*. Such a finding would be wholly inconsistent with this Court's well-reasoned precedent that the purpose of UIM coverage is "to enable the insured to protect *himself*, if he chooses to do so, against losses occasioned by the negligence of other drivers who are underinsured." *Deel v. Sweeney*, 181 W. Va. 460, 463, 383 S.E.2d 92, 95 (1989) (emphasis added).

In *Brehm*, this Court found that the insurance policy issued by Progressive Max, by its terms, did not extend UIM coverage to the two guest passengers of the non-owned rental car because the two guest passengers did not meet the definition of an "insured person" and the rental vehicle was not a "covered auto".[2] So, the only question before the *Brehm* Court was whether restricting the availability of UIM coverage for Class II insureds while occupying a non-owned auto was more restrictive than required by statute or public policy. In holding that such restrictions were entirely consistent with statute and public policy, this Court reaffirmed its holding in *Starr*, supra, that a Class II insured was not entitled to the same protections as a Class I insured.

[2] While the terms "insured person" and "covered auto" differ from the terms used in the Erie Policy, Progressive Max's coverage determination was in accord with Erie's position in this case. Erie has consistently asserted in this case that UIM coverage was not available to Cooper while a passenger in the Huffman vehicle because the Huffman vehicle, as a non-owned auto, was not insured for UIM coverage and therefore not a covered auto. Additionally, Cooper was not insured for UIM coverage because Cooper did not meet the definition of "you" or qualify for coverage as "Others We Protect" and was therefore not an insured for purposes of UIM coverage.

Similar to the basis for the District Court's decision in this case, the Class II insureds in *Brehm* unsuccessfully argued that the Progressive Max policy was more restrictive than allowed by statute because the Progressive Max policy was required to provide liability coverage to the rental vehicle in accordance with W. Va. Code § 33-6-29(b). The District Court in this case reached a similar conclusion, finding that because Huffman's vehicle was insured for liability coverage under the Erie Policy, the option to purchase UIM coverage for that non-owned auto was mandated by W. Va. Code § 33-6-31(b). This Court in *Brehm* rejected the assertion that the extension of liability coverage required a corollary extension of UIM coverage to any person occupying a vehicle insured for liability coverage and, in doing so, focused on the fact that W. Va. Code § 33-6-31(c) creates two classes of insureds. On that point, this Court stated,

> That statutory definition provides for two classes of insureds. The first class of insureds includes "[t]he named insured and his or her spouse and resident relatives" who "enjoy broader uninsured/underinsured motorist protection because their coverage is not limited to their occupancy of a particular motor vehicle." When a person seeking coverage does not fall into that first class – like Brehm and Hess - § 33-6-31(c) specifies that coverage is available only if he or she was injured or damaged by an uninsured or underinsured motorist ***while using "the motor vehicle to which the policy applies.***"

Brehm, at 333, 864, citing *Starr v. State Farm Fire & Cas. Co.*, 188 W. Va. 313, 318, 423 S.E.2d 922, 927 (1992) (emphasis added).

This Court's discussion concerning W. Va. Code § 33-6-31(c) not only affirms the scope of coverage provided by way of the Erie Policy but, more importantly, leaves no doubt that the scope of § 33-6-31 is limited to vehicles owned and scheduled on a policy of insurance. Thus, owned and scheduled vehicles are the motor vehicles "to which the policy applies." *W. Va. Code § 33-6-31(c).*

In reversing the circuit court's decision in *Brehm*, this Court necessarily concluded that the rental vehicle being operated by the Class I insured and occupied by the Class II insureds was not a vehicle to which the Progressive Max policy applied because it did not meet the definition of a covered auto for purposes of UIM coverage. Even though the rental vehicle was covered for liability coverage through the Progressive Max policy, it still was not a covered auto for purposes of UIM coverage. If this Court had found that the extension of liability coverage triggered the "to which the policy applies" language in W. Va. Code § 33-6-31(c), the two guest passengers in *Brehm* would have qualified for UIM coverage as Class II insureds based on the statutory definition of insured. However, as Class II insureds, they did not meet that definition because they were not occupying a motor vehicle to which the Progressive Max policy applied, despite the fact that the rental vehicle was covered for purposes of liability coverage.

The holding reached in *Brehm* reinforces both the statutory framework for UIM coverage and this Court's prior precedent regarding the purpose of UIM coverage. Through the enactment of W. Va. Code § 33-6-31(k), the Legislature has specifically recognized an insurer's right to limit and restrict the scope of coverage as consistent with the premium charged.

W. Va. Code § 33-6-31(k) provides,

> Nothing contained herein prevents any insurer from also offering benefits and limits other than those prescribed herein, nor does this section prevent any insurer from incorporating in such terms, conditions and exclusions as may be consistent with the premium charged.

W. Va. Code § 33-6-31.

In *Deel v. Sweeney*, this Court addressed whether an insurer could appropriately exclude underinsured motorists coverage for an accident that occurred while the injured party was operating a vehicle that was not a listed vehicle under the applicable policy of insurance. *Deel v.*

Sweeney, 383 S.E.2d 92 (W.Va. 1989). In *Deel*, the insured's son, Johnny Deel, was operating a vehicle that he owned when he was struck by another vehicle. After recovering the liability limits from the tortfeasor's vehicle, Johnny Deel sought UIM coverage under his father's policy, as a resident of his household, because Johnny Deel's own policy did not provide UIM coverage. In denying Johnny Deel's claim for UIM coverage, the insurer relied on an owned but not insured exclusion, which excluded UIM coverage for vehicles owned by the insured or a relative but not insured for that coverage under the policy.

On appeal, this Court affirmed a finding of no coverage for Johnny Deel. Finding the owned but not insured exclusion to be unambiguous, the Court noted that the only issue was whether the exclusion violated the purpose and intent of W. Va. Code 33-6-31. In finding the exclusion valid and enforceable, the Court distinguished between *mandatory* uninsured motorists coverage and *optional* underinsured motorists coverage, noting the Legislature's clear intent to allow insurers to incorporate exclusions for underinsured motorists coverage pursuant to W. Va. Code 33-6-31(k). *Id*. at 95. The Court stated,

> The above statutory changes [referencing WV Code 33-6-31(k)] indicate that the Legislature does not view uninsured and underinsured coverage in the same light. Uninsured motorist coverage is required, while underinsured motorist coverage is optional. There are significant public policy reasons for the mandatory requirement of uninsured motorist coverage. As *Bell* pointed out, the State has a legitimate interest in assuring every citizen is protected from the risk of loss caused by the uninsured motorist. The purpose of optional underinsured motorist coverage is to enable the insured to protect himself, if he chooses to do so, against losses occasioned by the negligence of other drivers who are underinsured.

Deel, 383 S.E.2d 92, 95 (internal citations omitted). As noted in *Deel*, unlike uninsured motorist coverage, the purpose of UIM coverage is to enable the insured to have an option to protect himself

or herself, not to extend UIM coverage to others who are not insured by that policy and have chosen not to purchase that type of coverage.

The purpose and scope of UIM coverage identified in *Deel* was further reinforced in *Alexander v. State Auto Mut. Ins. Co.*, 187 W.Va. 72, 415 S.E.2d 618 (1992), which upheld an exclusion for UIM coverage to a guest passenger. In *Alexander*, the plaintiff, Lena Alexander, was injured in an auto accident as a guest passenger in a vehicle owned by her sister, Louise Lowther, and operated by another sister, Verna Elbron. The accident occurred when Verna Elbron turned left across oncoming traffic and was struck by another driver. At the time, the vehicle's owner was insured by State Auto and the driver was insured by State Farm. The plaintiff, Lena Alexander, did not have UIM coverage on her own policy. *Id*. at 618-619. Both State Auto and State Farm tendered the limits of liability coverage under their policies and the plaintiff attempted to pursue UIM coverage under both policies. State Auto denied coverage and an appeal ensued.

On certified questions to this Court, the issue before the Court was whether, based on the definition of underinsured motor vehicle in the policy, which excluded any vehicle owned by or furnished for the regular use of an insured or family member, plaintiff was precluded from obtaining UIM coverage. In upholding that exclusion, the Court cited to its decision in *State Automobile Mutual Ins. Co. v. Youler*, 183 W. Va. 556, 396 S.E.2d 737, noting, "*Youler's* relevance to our opinion today is found in the principle that UIM coverage contemplates recovery 'from one's *own* insurer . . . ,' not from a third party." *Alexander*, 415 S.E.2d 618, 621 (emphasis in original). This Court in *Alexander* concluded that based on the language of W. Va. Code § 33-6-31(b) and (k), "the exclusionary language found in the State Auto policy is not more restrictive than, and thus is not contrary to, the statute." *Id.*, at 623. This Court further stated,

> We cannot help but conclude that the plaintiff's attempts to obtain underinsured motorist coverage from Mrs. Lowther's policy are far

> afield from what the Legislature intended in codifying the underinsured motorist coverage in Chapter 33 of the West Virginia Code. During oral argument, counsel admitted that Mrs. Alexander, like Johnny Deel, had not chosen to purchase underinsured motorist coverage for herself. It seems patently unfair that a person, who by her own free will, chooses not to buy optional underinsured motorist coverage, should still seek to benefit from someone else's choice to protect themselves, at a cost, from the potential negligence of other motorists who are underinsured.

Id., at 625. As the Court recognized in *Alexander*, the underlying public policy and intent of the underinsured motorist statute in West Virginia contemplated recovery from one's own insurer. The District Court's decision to extend public policy to allow Cooper's recovery of UIM coverage in this case through a policy of insurance that was not issued to Cooper and involved a vehicle not owned by the named insured runs afoul of existing West Virginia law.

This Court's line of decisions in *Brehm, Deel* and *Alexander* make it clear there is no statutory or public policy mandate that an insurer offer optional underinsured motorists coverage to a class of vehicles that are not owned by the insured and thereby expand the scope of UIM coverage to a person who is not a Class I insured. Likewise, in accordance with the *Alexander* case, there is no statutory or public policy mandate that requires the extension of UIM coverage to individuals who are not insured for that coverage under the applicable policy. Rather, when an insured purchases a liability policy for an auto that he or she owns, the insurer is required to offer *the insured* the option to purchase UIM coverage for his or her benefit.

The District Court's formulation of the question presented in this case was misguided. In reaching its decision, the District Court recognized that this Court, "has not addressed the question of whether an insurer may offer UIM only as to certain vehicles insured under a policy." [JA 24]. The District Court's inquiry should have been whether an insurer may limit or exclude UIM coverage as to Class II insureds under a policy of insurance when the claim arises from the use of

a non-owned auto. *Brehm's* holding unequivocally instructs that an insurer may do so. Because the only purpose of requiring separate offers of UIM coverage for non-owned autos would be to extend the scope of that coverage for the benefit of Class II insureds, the District Court's reliance on *Youler's* general public policy pronouncement of full indemnification was in error. On that basis, Erie requests that this Court answer the certified question in the negative and find that insurers are not required to extend separate offers of UIM coverage for a class of non-owned autos that are not listed on the policy of insurance.

C. WEST VIRGINIA CODE § 33-6-31 DOES NOT REQUIRE OFFERS OF UIM COVERAGE FOR NON-OWNED AUTOS BECAUSE IT TIES UIM COVERAGE TO THE INSURED AND VEHICLES OWNED BY THE INSURED

Aside from the fact that West Virginia public policy clearly does not support the District Court's expansion of the law to include non-owned autos as being subject to offers of UIM coverage, the District Court also lacked statutory support for its conclusion that Erie was required to extend an offer of UIM coverage for a *class* of non-owned autos. The foundation of the District Court's decision was that offers of UIM coverage are required for *any* auto that qualifies for liability coverage under the policy of insurance, regardless of whether such vehicle is specifically listed on the policy, or owned by the insured. In doing so, the District Court construed the scope of W. Va. Code § 33-6-31 more broadly than ever recognized by this Court.

As an initial matter, the Erie Policy issued to Pison Management extended liability coverage for a class of non-owned autos, which were collectively identified as "Auto 12" on the Declarations. [JA 419]. Non-owned autos are defined by the Erie Policy as follows:

> 3. **Non-owned Autos** (Employer's Non-Ownership Liability). These are **autos you** do not own, hire, rent or borrow that are used in **your** business, but only for coverages for which a premium charge is show. This includes **autos** owned by **your**

> partners, employees or members of their households, but only while used in **your** business or personal affairs.[3]

[JA 425]. While the Huffman vehicle was insured for liability coverage, the reference to "Employer's Non-Ownership Liability" reflects the fact that the purpose of that liability coverage was to protect Pison Management, as the employer, for potential vicarious liability arising from the use of the non-owned auto. Indeed, although the Huffman vehicle was insured for liability coverage as a non-owned auto, Mr. Huffman did not qualify as an insured for liability coverage. For purposes of that liability coverage, the Erie Policy identified insureds as "anyone we protect", which included the named insured, Pison Management, but excluded from that definition an employee if the vehicle was owned by that employee or a member of the employee's household. [JA 426]. The inability of an insurer to extend liability coverage for employers for the use of a non-owned auto in its business would result in a gap in coverage for the employer, as the employer is unlikely to be insured by the employee's auto liability policy. Further, the Huffman vehicle is not specifically identified as an insured vehicle under the Erie Policy, but only fell within the class of unidentified vehicles grouped collectively as "NON-OWNED AUTO 1 – 25 EMPLS". [JA 419]. Accordingly, the scope of liability coverage for non-owned autos under the Erie Policy ranged from 1 to 25 employees. *Id.*

The District Court nevertheless concluded that because liability coverage was provided for the Huffman vehicle, even though for the benefit of Pison Management, it qualified as a vehicle subject to mandatory liability coverage requirements under W. Va. Code § 33-6-31(a) and thereby subject to a mandatory offer of UIM coverage under W. Va. Code § 33-6-31(b). According to the District Court's reasoning, "Nothing in West Virginia statutory or common law precedent, related to insurance coverage requirements, suggests that Erie's carve-out excluding

[3] Words in bold in the Erie Policy are defined terms.

UIM coverage for non-owned, insured vehicles is permissible." [JA 25]. In reaching this conclusion, the District Court failed to recognize that, statutorily, the Huffman vehicle was separately subject to liability coverage requirements under Huffman's own personal auto policy, and thereby also separately subject to the UIM coverage offer requirements through Huffman's personal policy. The net effect of that conclusion was that the Huffman vehicle was subject to multiple liability coverage requirements under W. Va. Code § 33-6-31(a) and multiple UIM coverage offers under W. Va. Code § 33-6-31(b).

The error in the District Court's decision on this point is demonstrated through a plain reading of W. Va. Code §§ 33-6-31 and 33-6-31d. This statutory framework establishes that the West Virginia Legislature did not intend to include non-owned autos within the scope of the statute's requirements. W. Va. Code § 33-6-31 begins by addressing the requirements for liability coverage. Specifically, § 33-6-31(a) provides, in part, as follows:

> No policy or contract of bodily injury liability insurance, or of property damage liability insurance, covering liability arising from the ownership, maintenance or use of any motor vehicle, may be issued or delivered in this state **to the owner** of such vehicle, or may be issued or delivered by any insurer licensed in this state upon any motor vehicle for which a certificate of title has been issued by the Division of Motor Vehicles of this state, unless it contains a provision insuring the named insured and any other person, except a bailee for hire and any persons specifically excluded by any restrictive endorsement attached to the policy, responsible for the use of or using the motor vehicle with the consent, expressed or implied, of the named insured or his or her spouse against liability for death or bodily injury sustained or loss or damage occasioned within the coverage of the policy or contract as a result of negligence in the operation or use of such vehicle by the named insured or by such person:

(Emphasis added). By its terms, this provision addresses the requirements for a policy of insurance "issued or delivered in this state to the owner of such vehicle." A policy of insurance issued to the owner of a vehicle must contain a provision insuring the named insured and any

permissive user of the vehicle, aside from a bailee for hire or person excluded by restrictive endorsement, against liability as a result of negligence in the operation or use of the vehicle.

By extending coverage to permissive users of a vehicle, subsection (a) ensures that liability coverage secured by the owner of the vehicle extends to a non-owner's use of the vehicle with permission. As that provision applies to any vehicle insured in the state of West Virginia, subsection (a) ensures that there is a consistent and uninterrupted level of liability coverage on all motor vehicles insured in the state of West Virginia. In doing so, the statute again expressly ties the issuance of liability coverage to the owner of the vehicle.

W. Va. Code § 33-6-31(a) then provides:

> Provided, That in any such automobile liability insurance policy or contract, or endorsement thereto, if coverage resulting from the use of a nonowned automobile is conditioned upon the consent of the *owner* of such motor vehicle, the word "owner" shall be construed to include the custodian of such nonowned motor vehicles.

W. Va. Code § 33-6-31(a) (emphasis added). While this section of the statute references non-owned autos, its clear intent is to ensure that a person who is the custodian of the auto, even though not the owner, can provide the requisite permission to constitute permissive use of the vehicle, again ensuring a consistent and uninterrupted level of liability coverage. On that point, this Court has held,

> The statute dictates that not only the owner of the automobile, but its custodian can provide the requisite permission to invoke coverage under the liability section of an automobile insurance policy. Specifically, West Virginia Code § 33-6-31(a) provides, in pertinent part, that "if coverage resulting from the use of a non-owned automobile is conditioned upon the consent of the owner of such motor vehicle, *the word 'owner' shall be construed to include the custodian* of such non-owned motor vehicles."

Metro. Prop. & Liab. Ins. Co. v. Acord, 195 W. Va. 444, 450, 465 S.E.2d 901, 907 (1995) (emphasis in original).

As recognized by this Court, this section of W. Va. Code § 33-6-31(a) is intended to ensure that a custodian of an auto can provide the permissive use required for the extension of liability coverage. Necessarily, the custodian is not an "owner" of the vehicle and the reference to the use of a non-owned auto refers to the permissive user, who is not an owner of the vehicle. Without this additional language in the statute, a non-owner custodian would otherwise have no right to provide permission. *See e.g. Pham v. Harford Fire Ins. Co.*, 419 F.3d 286, 291 (2005), *citing Stone v. Liberty Mutual Ins. Co.*, 478 S.E.2d 883 (Va. 1996) (Applying Virginia law and interpreting Virginia's Omnibus Statute: "[w]hen construing such language, we repeatedly have held that a named insured generally cannot give permission to use a vehicle that the named insured does not own."). In all respects, this section of the statute continues to anchor the extension of liability coverage to the owner of the auto by expanding the definition of "owner" to custodians of the insured vehicle for purposes of permissive use coverage.

W. Va. Code § 33-6-31(b) addresses the requirements for uninsured and UIM coverage and initially provides the following:

> Nor may any such policy or contract be so issued or delivered unless it contains an endorsement or provisions undertaking to pay the insured all sums which he or she is legally entitled to recover as damages from the owner or operator of an uninsured motor vehicle, within limits which shall be no less than the requirements of section two, article four, chapter seventeen-d of this code, as amended from time to time:

Through the use of the phrase, "[n]or may any such policy or contract be so issued," the Legislature indisputably refers to the policy of insurance initially identified in subsection (a) of the statute. Noteworthy in this section is that the statute references "the insured" rather than "an insured", making the section specifically applicable to the named insured.[4] As subsection (a) states, that

[4] This reference to "the insured" is broadened to include the named insured, his or her spouse, and resident relatives in W. Va. Code § 33-6-31(c).

policy of insurance is one that is issued "to the owner of such vehicle" and evinces a clear intent that the insurance obligations provided by the statute are placed on the owner of the vehicle.

Specific to UIM coverage, subsection (b) of the statute makes the same reference to the policy of insurance at issue, which subsection (a) dictates is issued to the owner of the auto:

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

W. Va. Code § 33-6-31(b) (emphasis in original). More importantly, W. Va. Code 33-6-31(b) makes no reference to non-owned autos and does not tie the offer of underinsured motorists coverage to a vehicle, or class of vehicles, but rather to the insured. The offer must be made to ***the*** insured for ***the*** insured's benefit.

This interpretation of West Virginia's Omnibus Statute is wholly consistent with how Virginia has interpreted its own Omnibus Statute, which is virtually identical to West Virginia's statute. As with West Virginia's Omnibus Statute, subsection A of Virginia's Omnibus Statute provides in relevant part as follows:

> No policy or contract of bodily injury or property damage liability insurance, covering liability arising from the ownership, maintenance or use of any motor vehicle, aircraft, or private pleasure watercraft, **shall be issued or delivered in the Commonwealth to the owner of such vehicle**, aircraft, or watercraft, **or shall be issued of delivered by any insurer licensed in the Commonwealth** upon any motor vehicle, aircraft, or private pleasure watercraft that is principally garaged, docked or used in the Commonwealth, unless the policy contains a provision insuring the named insured, and any other person using or responsible for the use of the motor vehicle, aircraft, or private pleasure watercraft with the expressed or implied consent of the named insured . . . .

VA Code Ann. § 38.2-2204 (emphasis added). Similar to W. Va. Code § 33-6-31(c), Virginia's statutory framework also defines "insured" as follows:

> "Insured" as used in subsections A, D, G and H, means the named insured and, while resident of the same household, the spouse of the named insured, and relatives wards or foster children of either, **while in a motor vehicle or otherwise**, and any person who uses **the motor vehicle to which the policy applies**, with the expressed or implied consent of the named insured, and a guest in **the motor vehicle to which the policy applies** or the personal representatives of any of the above.

VA Code Ann. § 38.2-2206 (emphasis added).

In *Stone v. Liberty Mut. Ins. Co.*, 253 Va. 12, 478 S.E.2d 883 (Va. 1996), an employee was injured in a motor vehicle accident caused by another driver while driving his personal vehicle in the course and scope of his employment delivering pizzas. After recovering the available coverage from the other driver's policy, the employee pursued UIM coverage under his employer's commercial auto policy. The employee argued that because his vehicle qualified for liability coverage under the employer's policy, he was operating a vehicle to which the policy applied and therefore qualified for UIM coverage under the policy. On appeal, much like this case, the United States Court of Appeals certified a question to the Virginia Supreme Court as to whether the restrictions contained in the Liberty policy complied with Virginia's Omnibus Statute. The Virginia Supreme Court upheld the policy language and Liberty's denial, finding that the vehicles referenced in the portion of the Omnibus Statute pertaining to uninsured and underinsured motorist coverage only applied to owned autos and did not apply to non-owned autos. The statute mandated only that uninsured motorist coverage be provided to those who are in the motor vehicles listed in the policy, as opposed to any vehicle to which the policy might apply. *Id.* at 18, 478 S.E.2d 886. In reaching this decision, the Virginia Supreme Court started with the same premise as this Court as to the purpose of UIM coverage:

> An analysis of the statute in question must be made against the following settled background. The Virginia uninsured motorist statute "is meant to protect an insured motorist, his family and permissive users of his vehicle against the peril of injury by an uninsured wrongdoer, not to provide "insurance coverage upon each and every uninsured vehicle to everyone.[5]

Stone v. Liberty Mut. Ins. Co., 253 Va. 12, 17, 478 S.E.2d 883, 885, citing *Bayer v. Travelers Indem. Co.*, 221 Va. 5, 8, 267 S.E.2d 91, 93 (quoting *Nationwide Mut. Ins. Co. v. Harleysville Mut. Cas. Co.*, 203 Va. 600, 603, 125 S.E.2d 840, 843 (1962). The Virginia Supreme Court concludes:

> Simply put, "the vehicle" referred to in subsection (B) includes only owned, not non-owned vehicles. Thus there is no statutory mandate that requires the courts to ignore the insurer's policy language as written.

Id. at 19, 478 S.E.2d 886.

In *Levine v. Emplrs Ins. Co.*, 887 F.3d 623 (4th Cir. 2018), a case very similar to the facts of this case, the Fourth Circuit upheld a finding under Virginia law that an insurer could properly exclude UIM coverage when the accident resulted from the use of a non-owned auto during the course of employment. In *Levine*, Purnell Furniture Services hired two independent contractors to deliver furniture using a truck that Purnell Furniture had rented from Penske. During the course of that delivery, the contractors were involved in a motor vehicle accident that killed one of the contractors and injured the other contractor. The contractors sought UIM coverage through a policy of insurance issued by Employers Insurance Co. of Wausau to Purnell. The insurance policy issued by Wausau extended liability coverage to any auto but limited UIM coverage to "Owned Autos Only". Since the Penske truck involved in the accident was not an owned auto, Wausau denied coverage. Relying on *Stone*, the Fourth Circuit affirmed a finding of no coverage, holding:

[5] While the language in *Stone* refers to uninsured motorist coverage, the Court noted that the policy's endorsement for uninsured motorist coverage included underinsured motorist coverage and, for clarity, the Court used the term uninsured to include both underinsured and uninsured coverage. *Id.*, at 883, 14.

> *Stone* refutes the Plaintiffs' argument here and weighs in favor of Wausau. Like the restaurant's policy in *Stone*, the Policy here specifically limits UIM coverage to owned vehicles, while extending liability coverage to certain non-owned vehicles. The Plaintiffs seek to use the broad language in the endorsement to support UIM coverage despite this limitation, but the limitation is clearly permitted by Virginia state law, as *Stone* plainly held. The Plaintiffs therefore cannot use the broad language in the UIM endorsement to gain UIM coverage.

Levine v. Emplrs. Ins. Co., 887 F.3d 623, 630. The Court in *Levine* noted that this conclusion was entirely consistent with Virginia public policy on UIM insurance coverage, again citing to *Stone* that "[i]n Virginia, UIM coverage is meant to protect an insured motorist, his family and permissive users of *his vehicle* against the peril of injury by an uninsured wrongdoer, not to provide insurance coverage upon each and every uninsured vehicle to everyone." *Id*. at 629 (internal citations omitted) (emphasis in original).

The statutory framework in Virginia is nearly identical to the language in the West Virginia Omnibus Statute, which focuses on the providing of UIM coverage to the *owner* of a vehicle. *W. Va. Code § 33-6-31(a)*. Just as in *Levine* and *Stone*, West Virginia's statute addressing UIM coverage should be interpreted as applying only to autos actually owned by the insured. Unless the policy language provides otherwise, there should be no statutory basis requiring the extension of UIM coverage to a Class II insured in a vehicle that the named insured does not own. The District Court's initial premise that the Huffman vehicle was subject to the mandatory liability coverage obligations under W. Va. Code § 33-6-31(a) and corresponding UIM offer requirements of W. Va. Code §33-6-31(b) through the policy issued to *Pison Management*, in addition to the *Huffman* policy created the error in its decision. Limiting the scope of W. Va. Code § 33-6-31(a) to its stated purpose of only imposing those liability coverage requirements to the owners of those vehicles is the only way to reconcile the language of the statute and this Court's prior decisions affirming the

more limited scope of UIM coverage for Class II insureds. For these reasons, Erie requests that this Court find that W. Va. Code § 33-6-31(a) is limited to owned autos and does not apply to non-owned autos which are not specifically insured under an employer's policy of insurance.

D. REQUIRING OFFERS OF UIM COVERAGE FOR A CLASS OF AUTOS PREVENTS INSURERS FROM COMPLYING WITH WEST VIRGINIA CODE § 33-6-31d

The District Court's reading of the statute also effectively precludes an insurer from complying with its obligations with respect to offers of UIM coverage under W. Va. Code § 33-6-31d. In connection with the offer of UIM coverage, that statute requires an insurer to inform an insured of specific information, including the number of vehicles which will be subject to the coverage.[6] No specific number of vehicles could be identified for non-owned autos, which are a class of vehicles rather than the specific owned autos that are insured in accordance with W. Va. Code § 33-6-31. The clear intent of W. Va. Code § 33-6-31d is that the owned autos that are insured in accordance with W. Va. Code § 33-6-31 are specifically identified numerically in connection with that coverage. To read these statutory sections to require offers of UIM coverage to an undefined class of autos would result in an insurer having no way to comply with its obligations under W. Va. Code § 33-6-31d.

W. Va. Code § 33-6-31d provides, in part:

> (a) Optional limits of uninsured motor vehicle coverage and underinsured motor vehicle coverage required by §33-6-31 of this code shall be made available to the named insured at the time of

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6 At the time of this accident, offers of underinsured motorists coverage were dictated by the West Virginia Insurance Commissioner's Informational Letter No. 121, which provides the prescribed forms for an effective offer as directed by W. Va. Code § 33-6-31d. The forms proscribed by the Insurance Commissioner follows the statutory mandate and requires the identification of the specific number of vehicles subject to the offer. Otherwise, West Virginia case law holds that an insurer can lose the statutory presumption of an effective offer. *See Thomas v. McDermitt*, 232 W. Va. 159, 751 S.E.2d 264 (2013). It raises the question how an insurer would accurately complete that component of the form if there was a required offer for a "class" of non-owned vehicles and further reinforces the fact that offers of underinsured motorists coverage are limited to listed and owned vehicles.

> initial application for liability coverage and upon any request of the named insured on a form prepared and made available by the Insurance Commissioner. The contents of the form shall be prescribed by the commissioner and shall specifically inform the named insured of the coverage offered and the rate calculation for the coverage, including, but not limited to, levels and amounts of the coverage available and **the number of vehicles** which will be subject to the coverage.

W. Va. Code § 33-6-31d (emphasis added).

W. Va. Code § 33-6-31d was enacted in response to the West Virginia Supreme Court of Appeals' decision in *Bias v. Nationwide Mut. Ins. Co.*, 179 W. Va. 125, 365 S.E.2d 789 (1987), wherein the Court first held that an insurer was required to prove that the insured had received a commercially reasonable offer of UIM coverage sufficient to make a knowing and informed selection or rejection of that coverage. *Id.* The failure to make such an offer resulted in a reformation of the policy to include UIM coverage by operation of law in an amount equal to liability limits. *Id.* Under *Bias*, the insurer had the burden of proof in establishing an effective offer of UIM coverage.

By way of W. Va. Code § 33-6-31d, the West Virginia Legislature created a framework by which an insurer could utilize a form for the offer of UIM coverage, thereby obtaining a presumption of a commercially reasonable offer and knowing and informed selection or rejection of coverage. *W. Va. Code 33-6-31d.* The statute instructed the Insurance Commissioner to promulgate the form to be used in the offer of UIM coverage and specified certain requirements that the form had to contain, including the levels and amounts of coverage being offered and the number of vehicles that would be subject to the coverage. *Id.*

This statutory framework for offers of UIM coverage pursuant to W. Va. Code § 33-6-31d reinforces the fact that offers of UIM coverage in West Virginia only apply to specific, scheduled vehicles on a policy of insurance. If UIM coverage were intended to apply to *an entire class of*

vehicles, neither the statute nor the form would require insurers to identify the number of vehicles subject to the coverage. This fact amplifies a point that the District Court ignored: offers of UIM coverage in West Virginia were never intended to include unidentified, classes of vehicles, such as non-owned autos.

CONCLUSION

This Court's precedent recognizes that West Virginia law requires insurers to offer UIM coverage to the named insured on an auto insurance policy to protect the named insured, his or her spouse and resident relatives, and anyone permissively using a vehicle on the named insured's policy. The Court has never held that West Virginia law or public policy demand that insurers offer that coverage for the benefit of third parties using or occupying vehicles the named insured does not own and which are not specifically listed on the policy of insurance. Indeed, the District Court's conclusion is contrary not only to the statutory text tying UIM coverage to the insured, but also this Court's public policy decisions recognizing that the purpose of UIM coverage is for the named insured to protect himself, if he chooses to do so, through the optional purchase of UIM coverage. For these reasons, this Court should hold that insurers are not required to extend offers of UIM coverage for non-owned autos.

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CERTIFICATE OF SERVICE

The undersigned, counsel for the Petitioner, Erie Insurance Property & Casualty Company, does hereby certify that on the 9th day of February, 2024, the foregoing Petitioner's Brief was filed electronically with the Court via West Virginia's File & ServeXpress which will provide an electronic copy upon counsel of record.

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