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OF WEST VIRGINIA

Trump, Justice, concurring, in part, and dissenting, in part, with whom Justice Wooton joins:

I concur with the majority on the waiver and estoppel issues that have been argued in this case. Those doctrines are immaterial to the determination that liability coverage exists for Ms. Dye under her Farmers & Mechanics homeowners liability insurance policy. I respectfully dissent from the majority's decision to affirm the finding that the business exclusion in that policy bars coverage here. The claims against Ms. Dye in the underlying lawsuit arise from an "occurrence" under the policy. Farmers & Mechanics has failed to establish, as a matter of law, that either the intentional acts exclusion or the business exclusion bars coverage for Ms. Dye under the policy it issued to her.[1] Neither the majority nor the lower courts considered that because this case was decided at the summary judgment stage, all reasonable inferences must be drawn in favor of the nonmoving party, and doubts concerning coverage must be resolved in favor of the insured. However, even if summary judgment principles did not apply, it is obvious that the Farmers & Mechanics policy provides liability coverage to Ms. Dye in this case. Thus, I would reverse the circuit court's order and remand the case for further proceedings.

[1] It is the insurer's burden to prove that the exclusions apply. Syl. Pt. 2, *Smith v. Sears, Roebuck & Co.,* 191 W. Va. 563, 447 S.E.2d 255 (1994) (per curiam) (holding that "[a]n insurance company seeking to avoid liability through the operation of an exclusion has the burden of proving the facts necessary to the operation of that exclusion.") (citation omitted).

Contrary to the positions taken by both the majority and the Intermediate Court of Appeals, the threshold inquiry must be whether the allegations in the underlying complaint constitute an "occurrence" under the policy. If no occurrence is alleged, then the analysis ends and the exclusions need not be reached. *American Mining Ins. Co. v. Peters Farms, LLC*, 557 S.W.3d 293, 298-99 (Ky. 2018). This Court has repeatedly emphasized that the coverage inquiry begins with the allegations of the complaint itself: "The dispositive question [of coverage] is answered by looking at the allegations in [the] complaint to determine whether the allegations are reasonably susceptible of an interpretation that the claim may be covered." *West Virginia Fire & Cas. Co. v. Stanley*, 216 W. Va. 40, 47, 602 S.E.2d 483, 490 (2004). Likewise, "[g]enerally, in determining the existence of an 'occurrence' which gives rise to coverage under a homeowner's policy, the essential inquiry is on either the condition of the insured premises or the *activity of the insured*." *American Modern Home Ins. Co. v. Corra*, 222 W. Va. 797, 802, 671 S.E.2d 802, 807 (2008) (emphasis in original).

The dispositive question is not whether Ms. Dye intentionally authorized logging activity by Jones Hauling. She plainly did. Rather, the relevant inquiry is whether Ms. Dye intended the alleged trespass and resulting property damage. *See* Syl., in part, *Columbia Cas. Co. v. Westfield Ins. Co.*, 217 W. Va. 250, 617 S.E.2d 797 (2005) (holding that "primary consideration, relevance, and weight should ordinarily be given to the

perspective or standpoint of the insured whose coverage under the policy is at issue.").[2] The distinction matters. An insured may intentionally engage in conduct while nevertheless causing unintended harm because the conduct was carried out under a mistaken factual belief or through negligent execution. *See*, *e.g.*, *Farmers & Mechanics Mut. Ins. Co. of W. Va. v. Cook*, 210 W. Va. 394, 402, 557 S.E.2d 801, 809 (2001) (finding that the intentional act of shooting someone did not trigger the intentional acts exclusion where the insured did not "intend 'a result that is wrongful in the eye of the law of torts.'") (citation omitted); *State ex rel. Davidson v. Hoke*, 207 W. Va. 332, 339, 532 S.E.2d 50, 57 (2000) (Starcher, J. concurring) (recognizing that, when considering the applicability of the intentional acts exclusion, "most courts do not look at whether the *act* was intentional, but focus more on whether the policyholder expected or intended the *result*.") (emphasis in original). Here, the complaint alleges that Ms. Dye intentionally authorized logging on her own property, but failed to ascertain the true boundaries of her property before doing so. If that is so, any alleged resulting trespass upon and damage to the Bradleys' property were accidental from her perspective, notwithstanding the deliberate nature of the underlying logging activity.

Our precedents recognize that the concepts of "occurrence" and "intentional acts exclusion," though related, are distinct. An occurrence generally requires an accidental

[2] The Court further emphasized that "[t]his principle must, of course, be applied in conjunction with Syllabus Point 5 of *Tackett v. American Motorists Insurance Co.*, 213 W. Va. 524, 584 S.E.2d 158 (2003), which calls for resolving doubts regarding insurance coverage in favor of an insured." *Columbia Cas.*, 217 W. Va. at 254, 617 S.E.2d at 801.

or unintended event, while the exclusion bars coverage only where the insured expected or intended the resulting harm. *See Stanley*, 216 W. Va. at 50, 602 S.E.2d at 493 (recognizing that the "accident" language in liability policies often functions as the equivalent of an intentional acts exclusion). Thus, an intentional act does not necessarily preclude coverage if the resulting injury was unintended from the insured's standpoint. This Court has explained that "[a]n intentional acts exclusion in a liability policy is operable when the policyholder commits an intentional act *and* expects or intends the specific resulting damage." *Columbia Cas.*, 217 W. Va. at 252 n.2, 617 S.E.2d at 799 n.2 (citing Syl. Pt. 7, *Cook*, 210 W. Va. at 396, 557 S.E.2d at 803 (emphasis in original)).

The complaint does not allege that Ms. Dye knowingly directed the cutting of timber on property she understood to belong to someone else, nor does the record establish, as a matter of law, that she intended either the trespass itself or the alleged resulting property damage.[3] Rather, the underlying complaint alleges that she acted

[3] The Intermediate Court of Appeals correctly concluded that *Westfield Insurance Company v. Davis*, 232 F.Supp.3d 918 (S.D. W. Va. 2017) is factually distinguishable from this case, though not for the reasons it identified. *See Dye v. Farmers & Mechanics Mut. Ins. Co. of W. Va. (Dye I)*, No. 22-ICA-301, 2023 WL 7922892, *8 n.14 (W. Va. Ct. App. 2023). The dispositive distinction does not lie in the particulars of the timber sale arrangements, but in the allegations pleaded in the underlying complaint. In *Davis*, the plaintiffs alleged not only that the defendants harvested timber from their property without permission, but that they "continued [to do so] after being warned to stop[,]" ultimately prompting the plaintiffs to obtain a restraining order. 232 F.Supp.3d at 920. Thus, the alleged conduct of the defendants in *Davis*, even if it began as negligent, became intentional once they persisted in removing timber after notice. No comparable allegation was made against Ms. Dye, and that distinction materially undermines any persuasive value *Davis* might otherwise have had in resolving the issues presented here.

negligently in failing to verify her property boundaries before authorizing timbering on her property.[4] That distinction is critical because liability policies exist precisely to provide coverage for claims arising from negligent acts that produce unintended harm. *See Columbia Cas.*, 217 W. Va. at 253 n.5, 617 S.E.2d at 800 n.5 (explaining that this Court has expressed "no intent" to deny liability coverage where an insured allegedly acted negligently "but did not (actually or constructively) intend to cause a specific injury. The purpose of liability insurance policies is to provide a defense and indemnification to an insured for claims arising from the insured's own negligent acts or omissions.") (citation omitted).

Indeed, this Court's opinion in an earlier appeal in this same case substantially undercuts any conclusion that the allegations fall outside the definition of an occurrence. There we expressly recognized that the timber trespass statute at issue does not require proof of specific intent, observing that "W. Va. Code § 61-3-48a repels any inference that it is concerned with mens rea. . . ." *Bradley v. Dye*, 247 W. Va. 100, 106, 875 S.E.2d 238, 244 (2022) (citations omitted). This Court reversed the circuit court's grant of summary judgment to Ms. Dye on the Bradleys' negligence claims, holding that she owed

[4] Any negligence attributable to Ms. Dye must be considered in light of Jones Hauling's strict liability, given that the ultimate legal and financial responsibility for identifying property boundaries and preventing timber trespass rests with the party conducting the cutting. *See* W. Va. Code § 61-3-48a; *Bullman v. D & R Lumber Co.*, 195 W. Va. 129, 131 n.2, 464 S.E.2d 771, 773 n.2 (noting that "a reputable timbering company would have exercised more caution, such as a proper survey of the property with adequate markings, in ascertaining the property line from which it could timber.").

a duty to ascertain the location of the property boundaries before putting up no trespassing signs on property that may have been the Bradleys'. *Id.* at 108, 875 S.E.2d at 246. It is impossible to reconcile this Court's earlier determination that summary judgment in favor of Ms. Dye on the question of negligence was erroneous with any argument that the same conduct was, as a matter of law, necessarily non-accidental or intentional for insurance coverage purposes. If the underlying allegations were sufficient to warrant a trial upon negligence liability based upon Ms. Dye's failure to verify her property lines, then they are certainly sufficient to trigger defense and indemnification under her liability policy for the alleged resulting trespass and property damage done by Jones Hauling.

I likewise disagree with the majority's conclusion that the business exclusion bars coverage as a matter of law in this case. While the majority correctly points out that "[l]anguage in an insurance policy should be given its plain, ordinary meaning[,]" Syl. Pt. 1, *Soliva v. Shand, Morahan & Co*., *Inc*., 176 W. Va. 430, 345 S.E.2d 33 (1986), *overruled on other grounds by National Mut. Ins. Co. v. McMahon & Sons, Inc*., 177 W. Va. 734, 356 S.E.2d 488 (1987), the majority inexplicably – and contrary to the policy's text – reframes the focus of a personal lines policy from the conduct of the insured to that of a third party totally foreign to the insurance contract, creating the substantial risk that an insured forfeits coverage merely by contracting with a commercial actor to sell her property regardless of whether the insured herself "conducted ['business'] from an 'insured location'" or "engaged in ['business']." This result ignores *Soliva's* instruction that "[a] policy should never be interpreted so as to create an absurd result, but instead should receive a reasonable

interpretation, consistent with the intent of the parties." *Id*. at 432, 345 S.E.2d at 35. Here, the majority effectively rewrites the policy to exclude a substantial category of risks that it was written to cover.

Without meaningful analysis, the majority summarily concludes that the policy's definition of "business" applies to Jones Hauling, that "the 'business' was timbering[,]" and that the exclusion applies to bar coverage for Ms. Dye because Jones Hauling "conducted its business from" her property, making her property "the 'starting point' of the activity that resulted in the Bradleys' claims." *Dye v. Farmers & Mechanics Mut. Ins. Co. of W. Va. (Dye II)*, ___ W. Va. ___, ___, ___ S.E.2d ___, ___ 2016 WL 1678526 at *7, *8 (Slip. Op. at 14, 16) (W. Va. June 10, 2026). That finding dangerously conflates the conduct of Jones Hauling with the conduct of the insured, Ms. Dye. The relevant inquiry here is not whether Jones Hauling was engaged in a business – it unquestionably was – but rather whether Ms. Dye herself was engaged in one.[5] The fact that Ms. Dye contracted with Jones Hauling to sell timber she owned does not establish that she was conducting a business from her property within the meaning of the exclusion. Contrary to the majority's assertion, the business exclusion must focus on the insured's own continuous and profit-motivated activity, not merely the presence of a commercial actor on the premises. This Court has emphasized that "[i]t is well-established that a

[5] The Intermediate Court correctly concluded that Ms. Dye was not engaged in business here "simply by selling the timber on her land[,]" *Dye I*, 2003 WL 7922892, at *9 n.14, though not for the reasons it articulated, as discussed below.

contract of insurance is a personal contract between the insurer and the insured named in the policy. It is also axiomatic that an insurance policy is a contract of indemnity which pertains to the parties to the contract[.]" *Mazon v. Camden Fire Ins. Ass'n*, 182 W. Va. 532, 533, 389 S.E.2d 743, 745 (1990) (citations omitted). If an insurance contract does not apply "to the property being insured[,]" and "an individual who is not a party to the insurance contract cannot maintain a suit on the policy," *id*., then it logically flows that the applicability of a policy exclusion must likewise be determined by the conduct of the insured, not by the independent business activities of a third party who is neither a named or definitional insured nor a party to the insurance contract. The Court of Appeals of Indiana more succinctly stated: "It is the plain language of the policy that controls [the insurer]'s obligations to [its insureds]." *Kessel v. State Auto. Mut. Ins. Co.*, 871 N.E.2d 335, 340 (Ind. Ct. App. 2007).

Courts throughout the country have interpreted the various components of the exclusion at issue in this case[6] — including the definition of "business," the causation language, the location requirement, and the ownership/employment clause — broadly and often in favor of insurers. Yet those cases applying the business exclusion share a common premise: the business activity at issue was that of the insured. The majority identifies no

[6] Excluding "'[b]odily injury' or 'property damage' arising out of or in connection with a 'business' conducted from an 'insured location' or engaged in by an 'insured,' whether or not the 'business' is owned or operated by the 'insured' or employs an 'insured.'"

decision, and we have found none, extending materially identical policy language to exclude coverage based solely upon the definition of business or by applying the definition to the conduct of an independent contractor or other unrelated third party temporarily performing work on the insured location. That analytical leap is the cornerstone of the majority's holding, but it is unsupported by either the policy's text or the existing body of case law.

The overarching issue is that the majority overlooks a basic principle of policy construction that "[t]he contract should be read *as a whole* with all policy provisions given effect[,]" and "[i]f the policy as a whole is unambiguous then the insured will not be allowed to create an ambiguity out of sections *taken out of context*." *Soliva*, 176 W. Va. at 432, 345 S.E.2d at 35 (citation omitted) (emphasis added). This tenet must also apply to courts interpreting policies and to insurers seeking to avoid coverage. Thus, rather than reading the definition of "business" in a vacuum, we must read it in concert with the language of the exclusion as stated in the policy. *See Glen Falls Ins. Co. v. Smith*, 217 W. Va. 213, 222, 617 S.E.2d 760, 769 (2005) (citing *Soliva,* 176 W.Va. at 432, 345 S.E.2d at 35) (finding that "[d]efining a term in an insurance policy with reference to the context in which it is used is consistent with West Virginia law which requires that a policy be read as a whole, giving meaning to each term."). Instead, the majority takes the definition of "business" from one part of the policy and the phrase "whether or not the 'business' is owned or operated by an 'insured' or employs an 'insured'" from another part to reach the legally and structurally unsupportable conclusion that the exclusion can operate against an

insured based on the conduct of a non-insured party. In so doing, the majority confuses the scope of the excluded activity with the separate question of whose conduct is relevant in determining whether the exclusion applies. The phrase "whether or not the business is owned or operated by an insured or employs an insured" modifies and defines the nature of the business activity being excluded. It does not expand the universe of persons whose conduct is relevant to the coverage inquiry. The plain purpose of this language is to prevent an insured from evading the exclusion by claiming that she does not own or operate, nor is she an employee of, the "business" in which the insured is engaged. It closes a loophole for existing insureds; it does not create a mechanism to apply policy limitations to insureds based on the activities of total strangers to the contract. *See* discussion infra. To conclude that this phrase extends the exclusion's reach to insureds based on the "business" activities of non-insured parties requires straining the text far beyond its plain meaning. Taken to its logical conclusion, the majority's reasoning would permit coverage for an insured party to rise or fall based upon the conduct of non-insured commercial actors whose activities merely intersect with the insured premises, regardless of whether the insured herself engaged in any business activity at all. This absurd result, which *Soliva* cautions against, relies on a contextual fallacy, departs from settled principles of contract interpretation, and creates an unworkable and legally unsound precedent.

Instead, having determined the existence of an "occurrence," we must consider the business exclusion's applicability by analyzing the policy's language through the lens of Ms. Dye's course of conduct in relation to the timber sale. First, we must

determine whether her timber sale to Jones Hauling constituted a "trade, profession or occupation [she] engaged in on a full-time, part-time or occasional basis." Most homeowners policies now define "business" as Ms. Dye's policy does,[7] so there is ample authority to assist us in this analysis. To determine whether an insured is engaged in a business, the majority of jurisdictions apply the two-prong test of continuity and profit motive, *Camden Fire Ins. Ass'n v. Johnson*, 170 W. Va. 313, 315, 294 S.E.2d 116, 118 (1982), whether the exclusion is called a "business" exclusion or a "business pursuits" exclusion.[8] *See Metropolitan Property and Casualty Ins. Co. v. Jablonske*, 722 N.W.2d 319, 326-27 (Minn. Ct. App. 2006) (observing that Minnesota does not recognize a distinction between an exclusion labeled "business" and an exclusion labeled "business pursuits" and holding that "[i]f the [liability-causing] conduct, by whomever performed, is within a business activity *of anyone insured under the policy*, coverage is excluded.") (citation omitted) (emphasis added); *National Farmers Union Property and Cas. Co. v. Garfinkel*, 277 P.3d 905, 909 (noting that, even though the policy at issue did not use the term "business pursuits," the court would "refer to it as a 'business pursuits' exclusion, consistent with case law and the terminology used by the parties in this case."); 9A Lee R. Russ & Thomas F. Segalla, *Couch on Insurance* § 128:12 (3d ed. 2011) (explaining that

[7] *See Shriner v. Amica Mut. Ins. Co.*, 167 A.3d 326, 329 n.1 (Vt. 2017) (noting that the quoted language is "the standard-form homeowner's policy definition of 'business.'").

[8] In an apparent effort to evade *Camden*, this Court's seminal decision on the business exclusion, the majority – without explanation – attempts to draw a distinction between the "business" exclusion and the "business pursuits" exclusion that simply does not exist.

"nearly all [homeowners policies] employ virtually the same substantive language [defining business to include trade, profession or occupation], including broad exclusionary language for liabilities arising out of 'business engaged in by' or 'business pursuits' of an insured"). The language of the policy is what controls, not the casual vernacular of the marketplace. *See Payne v. Weston*, 195 W. Va. 502, 507, 466 S.E.2d 161, 166 (1995) (emphasizing that "we are to ascertain the meaning of the policy as manifested by its language.").

In applying the two-prong business test, this Court has expressly cautioned that profit alone is insufficient, recognizing that "not every activity undertaken for profit is necessarily a business pursuit." *Camden*, 170 W. Va. at 315, 294 S.E.2d at 118 (citations omitted). That understanding aligns with the policy's definition of "business." Although the definition includes activities conducted on an "occasional basis," the operative terms "trade," "profession," and "occupation" still contemplate some form of recurring vocational or commercial endeavor by the insured herself. They do not encompass a single sale of personal property merely because the transaction generated revenue. Rather than establishing that Ms. Dye was engaged in timbering, logging, or any comparable commercial enterprise as a trade, profession, or occupation, the record demonstrates that she entered into a one-time agreement with a timbering company to sell timber located on property she owned. That isolated transaction, occurring over the course of few weeks in the spring and early summer of 2016, does not satisfy the continuity element required by

Camden and therefore cannot, standing alone, constitute a "business" within the meaning of the policy.

Correspondingly, the majority's analysis gives no consideration to the continuity requirement of the exclusion. The record establishes that Ms. Dye did not operate a timbering business, manage an ongoing logging enterprise, regularly engage in commercial timber transactions, or otherwise pursue timber harvesting as a continuing – or even sporadic – source of income. She did not maintain business infrastructure, advertise services, repeatedly engage in similar transactions, or operate any sustained commercial venture akin to the enterprise at issue in *West Virginia Ins. Co. v. Jackson*, 200 W. Va. 588, 591, 490 S.E.2d 675, 678 (1997) (finding a business pursuit where the insured was actively developing a marketable technique, had borrowed funds to advance the enterprise, and was attempting to establish a commercial venture rather than merely engaging in a hobby). Rather, the record reflects a single transaction involving the sale of timber that was standing on her property. This does not transform her into a commercial actor engaged in a "business" any more than a homeowner conducting a yard sale or listing her home for sale with a realtor becomes a retail merchant engaged in business.

That distinction is not merely semantic, it is legally significant. The mere monetization of a personal asset does not automatically transform isolated conduct into a "business" within the meaning of a homeowners policy exclusion. Our cases applying the exclusion have consistently focused not only on the existence of profit, but also on the

presence of ongoing, continuous, or regular commercial activity. *See Camden*, 170 W. Va. at 318, 294 S.E.2d at 120 (finding that occasional babysitting in the home, even if sometimes compensated, was not a business pursuit); *West Virginia Ins. Co. v. Lambert*, 193 W. Va. 681, 686, 458 S.E.2d 774, 779 (1995) (holding that "a few random odd jobs" did not constitute a business pursuit). While the timber sale here may have involved a profit motive for Ms. Dye, the existence of profit alone is insufficient under our precedent to establish the existence of a "business" by Ms. Dye as a matter of law. To the contrary, because the business pursuits inquiry is "necessarily . . . determined on a case-by-case basis," *Camden*, 170 W. Va. at 316, 294 S.E.2d at 119, and because the evidence does not establish the continuity element required under our precedent, summary judgment that Ms. Dye was engaged in business precluding coverage constituted reversible error.

Further, while the majority correctly points out that the definition of "business" does not include language limiting its application to the "insured," it then applies the exclusion to Ms. Dye because "the 'business' was timbering" and "Jones Hauling was engaged in a business." *Dye II*, 2026 WL 1678526, at *7 (Slip. Op. at 14). However, the majority fails to consider that the definition likewise does not *include* language expanding it to any person or commercial actor carrying out its business activities from, on, or in the general vicinity of the "insured location."[9] The majority must drink from

[9] One need look no further than the other definitions in the policy to determine that Farmers & Mechanics is quite capable of including the conduct of an undefined group of people when that is its intention. For example, it defines the liability of certain aircrafts, hovercrafts, motor vehicles, and watercrafts to include "'bodily injury' or 'property

the same plain meaning cup it pours. *See* Syl., *Keffer v. Prudential Ins. Co. of America*, 153 W. Va. 813, 172 S.E.2d 714 (1970).

Here, the fact that Ms. Dye contracted with Jones Hauling to sell some timber she owned does not by itself establish that she was conducting a business from the property within the meaning of the exclusion. Her occupation was as a school bus driver and nothing more. Ms. Dye repeatedly testified she was not in the timbering business and knew nothing about how to cut down or sell trees. The contract Ms. Dye had with Jones Hauling was clear that Jones Hauling did all the work, and it did so free from any supervision or control by Ms. Dye. Under the majority's reasoning, an "insured location" could effectively become a "business" excluded from protection by a homeowners policy whenever any contractor, repair company, mowing service, or other commercial enterprise performs work there. That interpretation expands the exclusion well beyond its intended scope and improperly untethers it from the insured's own conduct.

Next, we consider whether Ms. Dye conducted "business" from an "insured location." The few courts that have considered whether a business was conducted from an insured location have not focused on the dictionary definition of the word "from," but on

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damage' arising out of the . . . [m]aintenance, occupancy, occupation, use, loading or unloading of such vehicle or craft *by any person*; [e]ntrustment of such vehicle or craft by an 'insured' *to any person*; [or] [f]ailure to supervise or negligent supervision *of any person* involving such vehicle or craft by an 'insured[.]'" (Emphasis added). There is no such expansive language in the policy's definition of "business."

the insured's own activities.[10] The *Kessel* court, applying the identical "business" and "business exclusion" language at issue here, found the exclusion applicable both because the insureds had leased their barn to a third party, that transaction being its own business conduct, and because their lessee operated a horse boarding and riding business from the barn. 871 N.E.2d at 339. The fact that the plaintiff's injury arose from the lessee's operations rather than from the insureds' business relationship with the lessee did not alter the analysis. *Id*. at 340. Similarly, also applying the same language that is at issue here, the Superior Court of Delaware held that the exclusion applied to bar coverage "for the loss arising out of or in connection with a business – Perry Trucking – conducted from an insured location – Perry's residence." *Perry v. Hartford Underwriters Ins. Co.*, No. N13C-10-224, 2015 WL 3508099 at *2 (Del. Super. Ct. June 3, 2015). By contrast, Ms. Dye was not engaged in any trade, profession, or occupation involving timber, and therefore was not conducting a business from her insured location. Nothing in the record suggests that she leased any portion of the property to Jones Hauling or otherwise permitted it to establish, maintain, or operate its timbering enterprise from her residence or any other structure on her premises. There is also no dispute that Ms. Dye owned no interest in Jones Hauling. Thus, unlike the insureds in *Kessel* and *Perry*, while Ms. Dye sold timber located on her

[10] Again, rather than reading the policy as a whole, the majority offers an exposition on the meaning of the word "from" while passing over the equally significant definition of "conducted," the past tense of a transitive verb meaning "to direct or take part in the operation or management of, as in conduct a business." Its synonyms include supervise, manage, oversee, govern, operate, control, and run. *Conducted*, Merriam-Webster, https://www.merriam-webster.com/dictionary/conduct (last accessed June 10, 2026). By any ordinary understanding of those terms, Jones Hauling conducted the timbering operation; Ms. Dye did not.

land, she did not transform her home into the situs of a commercial enterprise and was not conducting a business "from the 'insured location.'"

Because the facts do not fit within the policy language, the majority conjures the remarkable fiction that a logging contractor's business location materializes anew wherever it happens to be cutting timber on a given day.[11]

Even if we were to accept the majority's reasoning, coverage would still exist for Ms. Dye. Jones Hauling was not conducting its business "from" (or "on") Ms. Dye's property when it is alleged to have cut the Bradleys' trees; it was then conducting its business "from" the Bradleys' property, not the "insured location" at issue here, so the exclusion could not apply. Applying the exclusion based on Jones Hauling's activities only further exposes the fatal flaw in the majority's reasoning. Jones Hauling did not lease, rent, or otherwise possess any part of the insured location. It did not maintain offices there, store equipment there, return vehicles there at the end of the workday, or use the property as a base of operations. The checks Roberta Jones issued to Ms. Dye pursuant to the Timber Sale Contract bore an address and telephone number entirely different from the "residence premises" identified in Ms. Dye's policy declarations — a critical component of the policy's definition of "insured location." Likewise, the appendix record contains no

[11] Indeed, the majority's reading of this homeowners policy language would preclude coverage for any suit against an insured anytime she hires a contractor, handyman, or lawn service to work on her property or orders pizza for delivery to her property.

business records, tax documents, or other evidence identifying the "insured location" – Ms. Dye's home – as the origin, headquarters, or focal point of Jones Hauling's operations. [12] In short, contrary to its assertion otherwise, the majority excludes coverage for Ms. Dye not because Jones Hauling conducted business "from the 'insured location,'" but because it cut trees on property near the insured location — a distinction the policy itself conspicuously does not make, and which is contrary to this Court's own pronouncement that it "will not rewrite the terms of the policy; instead, we enforce it as written." *Payne*, 195 W. Va. at 507, 466 S.E.2d at 166.

The majority further leaps to a conclusion unsupported by law or logic when it asserts that the language "whether or not the business is owned or operated by an insured or employs an insured" allows the business activities of Jones Hauling to preclude coverage for Ms. Dye. This is simply incorrect. Courts in multiple jurisdictions have found that the business exclusion can apply even when the "business" at issue is owned or operated by a third party – such as an insured's employer or corporate entity – rather than the insured personally, but those courts still look to the insured's own conduct to analyze the exclusion

[12] Here again, the majority substitutes assertion for analysis when it declares that "Ms. Dye's property was the 'starting point' of the activity that resulted in the Bradleys' claims[,]" *Dye II*, 2026 WL 1678526, at *8, and goes on to assert, contrary to the facts deduced below, that "[b]ut for Ms. Dye's decisions to grant an easement to Jones Hauling and to enter into the Timber Sale Contract, Jones Hauling would not have had access to the Bradleys' property." *Id*. The record shows instead that, at the time Jones Hauling approached Ms. Dye about an easement for the access road, it had already been engaged to timber the adjacent Hayes and Hill properties. So whether or not Ms. Dye sold her own timber to Jones Hauling or granted it the easement, it still would have been in the area of the Bradleys' property and had access to the trees standing thereon.

and have not used this language to broaden its review to the conduct of unrelated third parties. The prevailing judicial view is that, where the policy's definition of "business" does not expressly restrict the term to a business owned or operated by the insured, the exclusion applies to any business-related activities in which the insured is engaged, regardless of who owns the business or whether the business activities occur on the insured's property. The exclusion turns, as it must, on the language of the policy and whether the insured was personally engaged in business activities, regardless of who holds title to or owns the enterprise. The application of this language most frequently arises in two recurring factual patterns: (1) when an insured is an employee who causes injury to a fellow employee or third party while performing work for an employer, and (2) when an insured conducts business activities through a corporate entity such as a limited liability company.

In the cases involving insureds acting in the course of their employment, courts have had little difficulty applying language materially akin to that at issue here to injuries arising from the insured's work for another. Thus, where the policy excluded liability arising out of the insured's "business activities" the Massachusetts Appeals Court held the exclusion applicable because the insured's alleged tortious conduct was "associated with, related to, and linked to [her] performing work for her employer." *Metropolitan Property and Cas. Ins. Co. v. Fitchburg Mut. Ins. Co.*, 793 N.E.2d 1252, 1255 (Mass. App. Ct. 2003). Likewise, the Missouri Court of Appeals concluded that the "logical and correct interpretation of the 'business pursuits' exclusion to the main policy was to

broadly exclude all business activities of the insured whether employed by another or through the insured's own business." *Killian v. Tharp*, 919 S.W.2d 19, 22 (Mo. Ct. App. 1996). Significantly, both courts focused on the insured's own business-related activities, not the conduct of the unrelated commercial actors by whom the insureds were employed.

The same is true in cases where the insured is engaged in business through corporations and other business entities. Applying the exact language at issue here, one court held that coverage was excluded where the insured was both an owner (through a corporation) and an employee of the liquor store when he shot a customer. *Travelers Home and Marine Ins. Co. v. Wilson*, 208 F.Supp.3d 1002, 1011 (E.D. Ark. 2016). The court found that the " evidence is undisputed that [the insured] was working at the liquor store at the time of the shooting and that work constituted a 'business' as defined by the policy." *Id*. Another court concluded that, notwithstanding the corporate form, the insureds "nevertheless were engaged in a business pursuit because their involvement in the fly ash operation flowed from their for-profit employment with [their company]." *Grain Dealers Mut. Ins. Co. v. Farmers Alliance Mut. Ins. Co.*, 298 F.3d 1178, 1182 (10th Cir. 2002). Conversely, when the insured's liability arose from his own conduct, rather than that of his roofing company, the Illinois Appellate Court held that he "was not engaged in a 'business pursuit'" while acting as his own general contractor constructing an addition to his home. *Bishop v. Crowther*, 428 N.E.2d 1021, 1027 (Ill. App. Ct. 1981) (citation omitted). In each instance, the decisive inquiry was the insured's personal involvement in the business activity, not the independent conduct of some third party.

These cases show that, while courts broadly reject the argument that the business exclusion is limited to the insured's own business, they consistently require that the insured be engaged personally in the business activities. The exclusion does not apply merely because a third-party's business is somehow involved in the underlying incident; rather, the insured herself must have been engaged in business activities or conducting a business from the insured location at the time of the injury-causing event. As the Colorado Court of Appeals emphasized, an insured must have "sufficient personal involvement in the entity's operations[]" for the exclusion to apply through a business entity. *Garfinkel*, 277 P.3d at 914. This personal engagement requirement is the key limiting principle that prevents the exclusion from sweeping in every incident that has any connection to any business.

Finally, the majority's conclusion distorts the business exclusion's purpose of reserving homeowners coverage for residential risks while ensuring that business-related risks are insured, and priced, through commercial policies. *See Garfinkel*, 277 P.3d at 908-09 (synthesizing cases explaining that the business exclusion is designed to keep premiums affordable by removing coverage for commercial risks that require specialized underwriting). Indeed, the fundamental purpose of homeowners insurance policies is to protect insureds against risks associated with the operation and maintenance of a home, not to absorb the expanded risks of commercial operations. *Id*. In applying the business pursuits exclusion, the Arizona Supreme Court explained:

> [The homeowners] policy is low premium protection designed to insure a homeowner against the hazards arising out of the operation and maintenance of his home. In this type of policy, certain risks are specifically excluded because they are not embraced within the course of a *homeowner's* normal activities. Business activities present additional risks over and beyond the ordinary and usual hazards to be found in the operation and maintenance of a home. They are not within the contemplation of or intended to be within policy coverage.

Kepner v. Western Fire Ins. Co., 509 P.2d 222, 223 (Ariz. 1973) (citation omitted) (emphasis added).[13] *See also Kessel*, 871 N.E.2d at 340 (reasoning that "[b]y leasing the barn to [their lessee] and allowing her to run the stables business, [the insureds] opened themselves up to liability above and beyond that associated with mere homeownership."); *Perry*, 2015 WL 3508099 at *2 (concluding that "[t]he increased risk associated with operating a business is exactly what Hartford sought to exclude and, indeed, did exclude from coverage under the homeowner's policy Hartford issued to Perry."). The majority completely upends this risk-allocation model. Instead of evaluating the domestic nature of the homeowner's activities, the majority imports the independent business risks of an unrelated third-party contractor to defeat coverage provided by a policy issued to a homeowner. This unprecedented expansion erases the line between domestic and

[13] This is an extension of the foundational principle that "a contract of insurance is a personal contract between the insurer and the insured *named in the policy*." *Mazon*, 182 W. Va. at 534, 389 S.E.2d at 745 (citations omitted) (emphasis added). Thus, "a court may not, by judicial construction, enlarge the [policy] to include other[s] . . . foreign to the insurer." *Farmers & Mechanics Mut. Ins. Co. v. Allen*, 236 W. Va. 269, 275, 778 S.E.2d 718, 724 (2015).

commercial hazards, effectively stripping Ms. Dye of the exact residential protection for which she paid.

In the end, the majority transforms a homeowners policy exclusion designed to address the insured's business-related activities into one triggered by the commercial activities of a third party, and moreover, the commercial activities of a third party allegedly trespassing upon the land of another person also not insured under the policy. Nothing in the policy's text compels that result, nothing in the legal authorities supports it, and nothing in the purpose of the exclusion justifies it. The majority reaches that result only by divorcing the exclusion from the insured's own conduct, which constitutes a complete misapprehension of applicable law. For these reasons, I would hold that the claims against Ms. Dye in this case arise from an "occurrence" under the policy, that the record before this Court establishes that neither the intentional acts exclusion nor the business exclusion applies here, and that Ms. Dye's Farmers & Mechanics policy entitles her to defense and indemnification for the Bradleys' claims as a matter of law. I would therefore reverse the circuit court's order and remand this matter to the circuit court for further proceedings. I am authorized to state that Justice Wooton joins in this separate opinion.