FILED
November 16, 2026
released at 3:00 p.m.
C. CASEY FORBES, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

BUNN, Chief Justice, concurring, in part, and dissenting, in part, in which TRUMP, Justice joins:

While I concur in the majority's conclusion that this matter is properly reviewable pursuant to Rule 54(b), I dissent to its misreading of West Virginia Code § 33-6-31(b) such as to invalidate a common underinsured motorist (UIM) coverage provision requiring an underinsured vehicle to have some nexus to the underlying accident. The language in respondent Milbank Insurance Company's (Milbank) UIM endorsement presents no conflict with the statute; in fact, its language is virtually identical to the statute and mirrors functionally equivalent language existing in UIM policies and statutes throughout the country. The majority fails to identify a single statute or case anywhere in the country suggesting that a tortfeasor's mere ownership of a vehicle parked in his or her garage triggers the availability of UIM coverage. The majority has left insurers writing policies for West Virginia residents suddenly exposed to claims that they did not contractually agree to cover and, as is the case when insurers' exposure is increased, an associated premium increase will be passed on to West Virginia policyholders.

1. Policy Definitions and Insuring Language

I note first that the majority badly misapprehends the operation of insurance policies generally and UIM coverage provisions more specifically. First, the majority conflates policy or statutory definitions with policy conditions, exclusions, and exclusionary language. Whether a person, vehicle, condition, or incident meets a definition

in the policy is merely part and parcel of determining whether the insuring language affords coverage and is the initial step in analyzing a policy. *See Dutton v. Am. Family Mut. Ins. Co*., 454 S.W.3d 319, 323-24 (Mo. banc 2015) ("Insurance policies are read as a whole, and the risk insured against is made up of both the general insuring agreement as well as the exclusions and definitions."). Setting aside for a moment the purported "conflict" between the policy and statute's definitions of "underinsured motor vehicle," simply because Mr. Ratcliffe's vehicle may meet the definition of an underinsured motor vehicle in the Milbank policy does not make that coverage instantly available.[1] Instead, once the applicable policy definitions trigger the insuring language, the analysis turns to whether any conditions, exclusions, or operative policy language render that coverage unavailable. The operable Milbank UIM insuring language provides:

> **Insuring Agreement**
>
> A. We will pay compensatory damages which an "insured" is legally entitled to recover from the owner or operator of an "uninsured motor vehicle" or "underinsured motor vehicle" where such coverage is indicated as applicable in the Schedule or in the Declarations because of:

[1] The Milbank policy defines "underinsured motor vehicle" as a vehicle "to which a liability bond or policy applies at the time of the accident" without modifiers regarding "ownership, operation or use":

> **D.** "Underinsured motor vehicle" means a land motor vehicle or trailer of any type to which a liability bond or policy applies at the time of the accident but the amount paid for "bodily injury" or "property damage" to an "insured" under that bond or policy is not enough to pay the full amount the "insured" is legally entitled to recover as damages.

> 1. "Bodily injury" sustained by an "insured" and caused by an accident; and
> 2. "Property damage" caused by an accident.
>
> *The owner's or operator's liability for these damages must arise out of the ownership, maintenance or use of the "uninsured motor vehicle" or "underinsured motor vehicle[.]"*

(Emphasis added). Therefore, despite qualifying under the Milbank policy language as an "underinsured motor vehicle," Milbank and Ms. Mattson contracted only for UIM coverage where the underinsured owner or operator's "liability" for damages "arise[s] out of the ownership, maintenance or use" of the vehicle. This language creates a condition of the underinsured vehicle's connection to the accident before the coverage is made available under the policy.

The majority appears to take the position that in the general spirit of "full compensation," insurers may not include such exclusions or conditions in their UIM policies if a vehicle qualifies under a statutory definition of "underinsured motor vehicle." This Court has held exactly the opposite: "Insurers may incorporate such terms, conditions and exclusions in an automobile insurance policy as may be consistent with the premium charged, so long as any such exclusions do not conflict with the spirit and intent of the uninsured and underinsured motorists statutes." Syl. Pt. 3, *Deel v. Sweeney*, 181 W. Va. 460, 383 S.E.2d 92 (1989); *see Todd v. Missouri United Sch. Ins. Council*, 223 S.W.3d 156, 163 (Mo. 2007). ("Definitions, exclusions, conditions and endorsements are necessary

provisions in insurance policies. If they are clear and unambiguous within the context of the policy as a whole, they are enforceable.").

In fact, the majority appears to read insurance policies out of the calculus altogether. It concludes that petitioners are entitled to UIM coverage "under a plain reading of West Virginia Code § 33-6-31(b)[,]" rather than the terms and conditions of the Milbank policy. But West Virginia Code § 33-6-31(b) does not purport to be a UIM policy or establish the outermost boundaries of the terms, conditions, and exclusions that a UIM policy may contain. The majority then inexplicably declares that an insured seeking UIM coverage "establishes entitlement [to that coverage] merely by establishing that the fault of the underinsured motorist gave rise to damages and the extent of those damages." The wild inaccuracy of that statement alone should give the reader pause in accepting any part of the majority's analysis.[2] UIM coverage is an optional, negotiated contract between insurer and insured, governed by the terms and conditions of the subject policy. And while that coverage must be consistent with any statutory requirements the Legislature has enacted to safeguard the public policy principles behind the uninsured/underinsured motorist statute, the UIM statutory definition of "underinsured motor vehicle" does not purport to function

[2] This notion is cited as attributable to *Jenkins v. City of Elkins*, 230 W. Va. 335, 347, 738 S.E.2d 1, 13 (2012). However, this quote is from a Colorado case quoted by the *Jenkins* Court and involved the issue of whether the requirement that an *uninsured* motorist be "legally entitled to recover" damages from a defendant can be met where the defendant is immune from liability. *Id*. at 344-45, 738 S.E.2d at 10-11. By no means did the *Jenkins* Court reduce the availability of *UIM* coverage to something as simplistic as whether the underinsured motorist was at fault.

as a de facto UIM policy, supplanting the actual insurance policy. Nor does it inhibit insurers from including conditions and exclusions consistent with the premium charged.

2. The "Ownership, Maintenance, or Use" Language Generally

In fact, this particular UIM policy requirement—that the tortfeasor's vehicle be involved or connected in some way to the underlying accident before UIM coverage is triggered—is not only universally written into those policies, but accords with financial responsibility statutes throughout the country that contain functionally the same language. Milbank did not covertly slip an unexpected exclusion into Ms. Mattson's policy; the "ownership, maintenance, or use" language (sometimes referred to as the "arising out of" language) is a widely utilized condition of UIM coverage, ensuring there is some nexus between the underinsured vehicle and the accident causing the damages:

> [U]nderinsured motorist coverage typically provides that the insurer will pay those damages which a covered person becomes "legally entitled" to recover from the owner or driver of an underinsured automobile which causes bodily injury as the result of an accident. Policy provisions relating to both uninsured and underinsured motorist coverage also routinely specify, in accordance with the associated statutes, that the owner's or operator's liability, or the bodily injury, must arise out of or be caused by ownership, maintenance, or use of an uninsured or underinsured vehicle. *This requires that there be a causal connection between the uninsured motor vehicle and the injury.*

16 Williston on Contract § 49:35, "*Motor vehicle insurance—Uninsured and underinsured motorist coverage*," (4th ed.) (footnotes omitted) (emphasis added); *see also* 9 Couch on Ins. § 123:33 ("The language varies by policy, but generally, the injury or loss must arise

out of the ownership, maintenance, or use of the . . . vehicle. . . . [T]he fact that the accident could have taken place without the vehicle may be irrelevant so long as there is a causal connection between the injury and the covered risk[.]" (footnotes omitted)). 46A C.J.S. Insurance § 2284 ("A provision for coverage or recovery for injuries arising out of the ownership, operation, maintenance, or use of an uninsured or underinsured motor vehicle requires a sufficient nexus, or causal connection or relation, between such vehicle and the injury, such that the vehicle may be deemed an active accessory in causing the injury." (footnotes omitted)).[3]

3. Comparison Between Policy and Statutory Language

The majority creates this sea change for UIM coverage in West Virginia by claiming that the policy language conflicts with the language of West Virginia Code § 33-6-31(b) defining "underinsured motor vehicle." West Virginia Code § 33-6-31(b) provides:

> "Underinsured motor vehicle" means a motor vehicle *with respect to the ownership, operation or use of which there is liability insurance applicable at the time of the accident*, but the limits of that insurance are either: (i) Less than limits the insured carried for underinsured motorists' coverage; or (ii) has been reduced by payments to others injured in the accident to limits less than limits the insured carried for underinsured motorists' coverage.

[3] While the instant case does not present an issue about whether the "use" of a vehicle is sufficiently connected to the accident, there are countless cases describing that even "use"—the most common and obvious way a vehicle's liability insurance is triggered—requires some actual involvement of the underinsured vehicle. *See, e.g., Ankerich v. Savko*, 734 S.E.2d 805, 809 (Ga. App. 2012) ("While only a 'slight causal connection' between the damages and the use of the vehicle is required, this broad interpretation does not extend . . . 'to something distinctly remote.'").

(Emphasis added). Comparatively, the Milbank UIM endorsement's insuring language conditions the availability of UIM coverage on accidents where "[t]he owner's or operator's liability . . . arise[s] out of the ownership, maintenance or use" of the underinsured vehicle. Despite having *nearly identical* language, the majority construes these two provisions to be so at odds that the policy language must be voided and does so in a new syllabus point.

Without explanation, the majority declares the policy language "more restrictive than West Virginia Code § 33-6-31(b)'s statutory requirements." Even more curiously, it concedes that "[t]he Milbank UIM endorsement language *plainly* conditions UIM coverage on the involvement of the underinsured vehicle"—without distinguishing what part of "ownership, maintenance, or use" in the policy evokes involvement of the vehicle that the nearly identical phrase "ownership, operation, or use" in the statute does not. It also summarily declares the phrase "owner or operator's 'liability' . . . broader [than] . . . "'liability *insurance'* be made '*applicable*[.]'" But there is no distinction between the requirement that a UIM owner/operator's "liability" must arise from his or her "ownership, maintenance, or use" of their vehicle and requiring the owner/operator's liability insurance to become "applicable" as a result of "ownership, operation or use." Fundamentally, it is "liability" that makes "liability insurance applicable."

4. The "Ownership" Requirement

Nor is there anything so complex or intricate about this language that it must be given a reading untethered to the scenarios it contemplates. The purpose of the "ownership operation/maintenance, or use" conditions is to ensure a proper nexus between the underinsured vehicle and the underlying accident. This language contemplates distinct scenarios in which a vehicle is connected to an accident such that it creates liability for the person who owns it or operates it. The most obvious is where the vehicle is "operated" during the accident; extending the coverage a bit further, the coverage also applies where the vehicle is "used" during the accident, inclusive of accidents where the vehicle is not technically in motion or otherwise being operated. *See Sigmund v. Progressive N. Ins. Co*., 374 F. Supp. 2d 33, 42 (D.D.C. 2005), aff'd, 179 F. App'x 61 (D.C. Cir. 2006) ("'[O]peration' is narrower than 'use[.]'"). The Milbank policy's "maintenance" requirement—which actually expresses a type of involvement not contemplated within our statute—envisages an accident caused by an owner or operator's failure to properly maintain the vehicle in a manner that contributes to an accident. Each of these terms under their simplistic and plain meaning serves to ensure that the underinsured vehicle has some type of nexus to the accident for which UIM benefits are being claimed.

It is the "ownership" requirement that the majority gives a superficial and conclusory gloss and uses to eviscerate a near-universal requirement that an underinsured vehicle must have some connection to the accident to trigger UIM coverage. The majority reasons that merely because Mr. Ratcliffe owned an underinsured vehicle with liability

coverage, that fact of ownership triggered Erie's liability coverage and thereby fulfilled the statutory definition. However, the purpose of the "ownership" reference in both the statute and policy is to ensure that negligent entrustment—the type of *liability*-creating event arising from a vehicle's *ownership*— does not inadvertently fall outside the definition or insuring language. *See Colonial Ins. Co. of California v. Lundquist*, 539 N.W.2d 871, 875 (S.D. 1995) ("[N]egligent entrustment" is a cause of action arising from the "ownership" of a vehicle."); *Viking Ins. Co. of Wisconsin v. Petersen*, 784 P.2d 437, 440 (Or. 1989) (examining same language in liability policy and finding that "[a] claim of negligent entrustment by the owner of the vehicle is precisely such a claim arising out of ownership of the insured vehicle, for which the statute mandates coverage."). Negligent entrustment claims are common; the "ownership" language contained in both the policy and statute is inextricably intertwined with the "liability" or the applicability of "liability insurance" language. Negligent entrustment demonstrates the underlying purpose and proper reading of the "ownership" requirement. Under those circumstances, the tortfeasor's liability-creating conduct is rooted in the ownership of the vehicle, establishing the requisite nexus to the accident. The mere fact of vehicle ownership does not create liability any more than it creates a trigger for UIM coverage.

Despite this commonly-held understanding that the availability of UIM coverage requires a connection between the at-fault vehicle and the accident—coupled with the absence of actual conflict between the policy and statute—the majority provides an obtuse and conclusory assertion that Mr. Ratcliffe's mere ownership of his vehicle renders

it an "underinsured motor vehicle": "Mr. Ratcliffe's vehicle plainly qualifies as an underinsured motor vehicle under West Virginia Code § 33-6-31(b) because [of] his 'ownership' of a vehicle with applicable Erie liability coverage[.]" It provides nothing more, declaring this patently incorrect statement to be "plain and simple."

Again, the majority's confusion regarding the operation of insurance policies is evident. While certainly Mr. Ratcliffe owned the vehicle associated with the Erie policy, it was not his *ownership* of that vehicle that rendered the policy's liability insurance "applicable" to the underlying accident. Rather, Mr. Ratcliffe was the at-fault, permissive driver of a non-owned vehicle (Ms. Mattson's), i.e. a permissive user. The ordinary insuring language of a standard personal auto policy operates generally to provide liability coverage for its at-fault insureds whether driving the specific vehicle covered under the policy or temporarily operating a "non-owned" vehicle with permission. *See Drake v. Snider*, 216 W. Va. 574, 580, 608 S.E.2d 191, 197 (2004) ("The purpose of a non-owned car provision 'is to provide protection to the insured for the occasional or infrequent use of [a] vehicle not owned by him or her and is not intended as a substitute for insurance on vehicles furnished for the insured's regular use.'" (citations omitted)); see also W. Va. Code § 33-6-31(a) (mandatory omnibus requirements affording coverage to anyone using a vehicle with the owner's permission).

The extension of liability coverage to an insured while driving a non-owned vehicle is not triggered because the at-fault driver "owned" a separate vehicle insured by

his or her own policy, but because of the contractual obligation to provide liability coverage— regardless of whose vehicle he or she is operating—pursuant to the language in the policy.[4] More importantly, this coverage is available to *any* individual who falls within the policy's definition of an "insured" or to whom coverage is otherwise extended—whether or not that individual owns a vehicle insured under the policy.[5] This alone demonstrates that liability insurance is not "made applicable" because of one's "ownership" of a vehicle insured under the policy. Rather, an insured is afforded this coverage because it was contracted for with the insurer and its availability arises from the insurance policy language itself.[6] *See Howell v. United States Fid. & Guar. Ins. Co*., 636 S.E.2d 626, 628 (S.C. 2006) (observing that, where not statutorily required, "liability

[4] In a footnote, the majority apparently becomes confused by reference to the permissive user concept. A permissive user is one who utilizes a vehicle not his own, i.e. "non-owned," with permission; under standard insuring language his liability coverage protects him while he is a permissive user of that vehicle. The reference to a "non-owned" vehicle and the permissive user concept merely explains why the *contractual insuring language* made Mr. Ratcliffe's liability coverage applicable despite the fact that he was driving a vehicle not insured under his policy. What the majority fails to address—because it cannot—is how liability coverage would be afforded to other named or definitional insureds such as family members or resident relatives if that coverage is only "applicable" due to "ownership" of a vehicle insured under the policy.

[5] "[A]utomobile liability insurance policies will not only provide coverage for the purchasers of the policy (who are typically the named insureds) but also extends coverage to individuals other than the named insureds that fall within the definition of 'insured' as contained in the 'omnibus' clause." 8 Couch on Ins. § 111:1 (3d ed.).

[6] The ICA briefly alluded to this reasoning by stating that "[w]hat transpired between Erie Insurance and their insured, Mr. Ratcliffe, was entirely based on the Erie policy issued to Mr. Ratcliffe and Erie's administration of that policy." *Milbank*, 250 W. Va. at 398, 903 S.E.2d at 267.

coverage for . . . non-owned vehicles . . . is provided by a voluntary contract between the insurer and the insured."); *see also* Barbara J. VanArsdale, et al, 7 Am. Jur. 2d Automobile Insurance § 204 (Aug. 2026) ("Generally, liability coverage for nonowned vehicles is . . . provided by a voluntary contract between the insurer and the insured which means that the parties may choose their own terms regarding coverage for nonowned vehicles.").

Under the majority's analysis, if the driver of Ms. Mattson's vehicle had been one of Mr. Ratcliffe's family members who qualified as an insured under the policy but whose name was not on the title of the vehicle insured under the Erie policy, petitioners would not be entitled to UIM coverage. But because Ms. Mattson's injuries were coincidentally caused by the titled owner of the vehicle under the Erie policy, UIM coverage is available under the majority's irrational approach.

5. Instructive Caselaw

This precise issue—and the majority's errant reasoning—was addressed by the Supreme Court of Connecticut. In *Travelers Ins. Co. v. Kulla*, passenger Robert Kulla was killed in a single-car accident while a passenger in a vehicle owned by his father and driven by Constance Lawlor. 579 A.2d 525, 527 (Conn. 1990). Ms. Lawlor also had her own vehicle which was separately insured and in no way involved in the accident. Travelers tendered liability policy limits as the insurer of the vehicle and Maryland Casualty tendered liability limits as the insurer of the driver, Ms. Lawlor. *Id*. Mr. Kulla's estate then made an

underinsured motorist claim against the Travelers UIM coverage associated with the vehicle. *Id*.

Just as petitioners did here, Mr. Kulla's estate claimed that Ms. Lawlor's vehicle was the underinsured vehicle. *Id*. at 528. The court "recognize[d] that it is possible to consider the Lawlor car as an 'underinsured motor vehicle' by applying the terms of § 38–175c(b)(2) literally[]" but that the claim would fail by virtue of policy language stating "[l]iability for such damages must arise out of the ownership, maintenance or use of the uninsured motor vehicle." *Id*. at 528-29. The estate then argued that the "policy provision limiting underinsured motorist coverage to damages arising out of 'the ownership, maintenance or use of the uninsured motor vehicle,' is unenforceable because it is contrary" to Connecticut's underinsured motorist statute. *Id*. The *Kulla* court rejected this argument:

> The Lawlor vehicle was not involved in the accident. The only connection that it had with the accident was that it happened to be owned by the operator of the Kulla vehicle.
>
> This factual situation is simply not the type of situation that underinsured motorist legislation is designed to cover. . . . The fact that Lawlor did own a car—but one that had no connection to the accident causing the defendant's loss—cannot convert that car into an "underinsured motor vehicle." Designating the Lawlor car as the underinsured motor vehicle in this factual situation "will no more change its essential character than calling a bull a cow will change its gender."

Id. at 529–30 (citations and footnotes omitted) (emphasis added).

Not unlike the majority's failure here to offer any supporting caselaw, the *Kulla* court noted that "the defendant has not referred us to any case, and we have found none, where a vehicle totally unrelated to the accident involved was considered to meet the definition of an "underinsured motor vehicle" under § 38–175c(b)(2)." *Id*. The court concluded that its reasoning "reflect[ed] the basic premise inherent in the statutory scheme of uninsured motorist coverage that the . . . underinsured vehicle must be causally connected to the occurrence that results in the claimant's loss[]" and a contrary ruling "would defy common sense and would tear from its roots the concept of an 'underinsured motor vehicle' as a condition of recovery[.]" *Id*. at 530. *Cf. Lewis v. Mid-Century Ins. Co*., 210 S.W.3d 113, 117 (Ark. 2005) (finding non-involved vehicle uninsured due to *absence* of policy language requiring accident to "arise out of the ownership, maintenance, or use of the uninsured motor vehicle").

Moreover, the majority ignores precedent demonstrating that this Court long ago understood and agreed with the requirement that to trigger uninsured or underinsured motorist coverage, an at-fault vehicle must be connected to the underlying accident in some way. *See Cox v. Amick*, 195 W. Va. 608, 611, 466 S.E.2d 459, 462 (1995). *Cox* involved a group of teenagers who drove around all morning smoking marijuana, drinking, and stealing; one passenger exited the vehicle at a gas station and a fatal car accident occurred shortly thereafter. *Id*. at 611, 466 S.E.2d at 462. The plaintiffs asserted that the exiting passenger was an "uninsured motorist" and attempted to collect their own uninsured motorist coverage provided by Nationwide.

Notably, even thirty years ago, the same exclusionary language contained in the current Milbank UIM endorsement was utilized by Nationwide in its uninsured motorist insuring language: "We will pay compensatory damages as a result of bodily injury and/or property damage . . . due by law from the owner or driver of an uninsured motor vehicle. Damages must result from an accident arising out of the[] . . . ownership[] . . . maintenance[] . . . or . . . use[] of the uninsured motor vehicle." *Id*. at 616, 466 S.E.2d at 467. The *Cox* Court agreed that this policy language made uninsured coverage unavailable because the exiting teenager "was not the owner or driver of an uninsured motor vehicle *which was involved in the car accident*." *Id*. at 616, 466 S.E.2d at 467 (emphasis added). The *Cox* Court understood what the majority does not: that this language does nothing more than require some degree of connection between a vehicle triggering uninsured or underinsured motorist coverage and the accident, consistent with the purpose of UIM coverage. There is nothing controversial or contrary to public policy in this requirement.

The majority does more than take the wrong side of an academic debate about the minutiae of insurance policies and statutory construction. It has abruptly expanded the coverage afforded under every UIM policy in the State. To the extent that insurers seek to have the Legislature address the majority's nonsensical position, the Legislature is presented the unenviable task of amending a statute to say that which it already plainly says—and what every other similarly worded statute across the country is well understood to mean.

Accordingly, I respectfully concur, in part, and dissent, in part. I am authorized to say that Justice Trump joins in this opinion.