INSURANCE LAW: THE DOCTRINE OF REASONABLE EXPECTATIONS—"Each Person" Liability Limit of Insurance Policies Encompasses Recovery for All Claims Which Arise from One Bodily Injury Including Claim for Parents' Loss of Consortium—*Lepic v. Iowa Mutual Insurance Company*, 402 N.W.2d 758 (Iowa 1987).

Two minors were injured in unrelated one-vehicle automobile accidents: one, Lisa Lepic, was a passenger in an underinsured automobile; the other, Brian Sullivan, was a passenger in a car which was owned by Burton Cashner and driven by his son.[1] Lepic sought recovery for bodily injury under her parents' underinsured motorist policy with Iowa Mutual Insurance Company.[2] Her parents attempted to recover for loss of consortium under the same policy.[3] Sullivan and his parents sought the same relief from the Cashner's automobile liability policy with Iowa American Insurance Company and from the Cashners personally.[4] The Lepics brought a declaratory judgment action against their insurer to determine whether the limit of liability as to "each person" in their underinsured motorist coverage applied to each person sustaining bodily injury and all claims in conjunction with such injury, or to each person claiming damage as a result of bodily injury sustained by a person covered by the policy.[5] The Sullivans also brought a declaratory judgment action to have the same issue decided as to liability insurance coverage.[6] In *Lepic* the trial court granted a motion for summary judgment in favor of the insurer, while the trial court in *Sullivan* granted a motion for summary judgment in favor of the Sullivans.[7] On appeal the two cases were consolidated[8] and the Supreme Court of Iowa[9] *held*, affirmed as

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1. Lepic v. Iowa Mut. Ins. Co., 402 N.W.2d 758, 759 (Iowa 1987).
2. *Id.*
3. *Id.*
4. *Id.*
5. *Id.* at 760.
6. *Id.*
7. *Id.*
8. The consolidation on appeal of these two actions, arising respectively in Johnson County District Court and Buchanan County District Court, was grounded upon the duplication of the determinative issues and the similarity of the pertinent insurance policy provisions. *Id.*

The relevant policy language is set out by the court; the Lepic policy provided:

> We [Iowa Mutual Insurance Co.] will pay damages which a covered person is legally entitled to recover from the owner or operator of an underinsured motor vehicle because of bodily injury:
> 1. Sustained by a covered person; and
> 2. Caused by an accident.
> . . . .
> "Covered person" as used in this endorsement means:

to the *Lepic* case and reversed as to the *Sullivan* case.[10] The "each person" liability limit in insurance policies encompassed recovery for all claims which arose from one bodily injury, including a claim for parents' loss of consortium. *Lepic v. Iowa Mutual Insurance Co.*, 402 N.W.2d 758 (Iowa 1987).

The central contention of the Lepics[11] was that the limit of liability in their insurance policy as to "each person" applied to each person claiming damages as a result of a covered person's bodily injury, rather than each person sustaining bodily injury.[12] The limits of liability of the policy were $100,000 per person and $300,000 per accident; the Lepics argued that they,

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1. You or any family member.

. . . .

The limit of liability shown in the Schedule or in the Declarations for "each person" for Underinsured Motorists Coverage is our maximum limit of liability for all damages for bodily injury sustained by any one person in any one accident. Subject to this limit for "each person," the limit of liability shown in the Schedule or in the Declarations for "each accident" for Underinsured Motorists Coverage is our maximum limit of liability for all damages for bodily injury resulting from any one accident. This is the most we will pay regardless of the number of:

1. Covered persons; [or]
2. Claims made; . . . .

Id. The declaration page of the policy listed limits for bodily injury liability coverage at "$100,000 each person/$300,000 each accident." *Id.*

The Sullivans sought to recover under the Cashner policy, which stated in relevant part:

We [Iowa American Insurance Co.] will pay damages for bodily injury or property damage for which any covered person becomes legally responsible because of an auto accident.

. . . .

"Covered person" as used in this Part means:

1. You or any family member for the ownership, maintenance or use of any auto or trailer.

. . . .

The limit of liability shown in the Schedule or in the Declarations for "each person" for Bodily Injury Liability is our maximum limit of liability for all damages for bodily injury sustained by any one person in any one auto accident. Subject to this limit for "each person," the limit of liability shown in the Schedule or in the Declarations for "each accident" for Bodily Injury Liability is our maximum limit of liability for all damages for bodily injury resulting from any one auto accident . . . . This is the most we will pay regardless of the number of:

1. Covered persons; [or]
2. Claims made; . . . .

Id. at 760 n.1.

The declaration page of the policy listed limits for bodily injury liability coverage at "$100,000 each person/$300,000 each accident." *Id.*

9. Considered by Harris, P.J., and McGiverin, Wolle, Lavorato, and Neuman, JJ. Justice McGiverin delivered the opinion of the court.

10. Lepic v. Iowa Mut. Ins. Co., 402 N.W.2d at 758.

11. To simplify discussion the court referred to the Lepics as the only plaintiffs and insureds.

12. Lepic v. Iowa Mut. Ins. Co., 402 N.W.2d at 758.

as parents, should be entitled to recover up to $100,000 each for claims of loss of consortium, in addition to their daughter's claim for $100,000.[13] The Lepics argued this point on various grounds.[14]

First, the Lepics contended that the court must consider the reasonable expectations of the insured, despite the ambiguous language of the policy.[15] The court acknowledged the existence of the doctrine of reasonable expectations and cited authority for the elements and standards of the doctrine,[16] but concluded that the case was not a proper subject for its application.[17] The absence of analysis and discussion concerning the doctrine of reasonable expectations is significant. The remainder of this case note focuses on the import of the court's reluctance to analyze this case under the doctrine of reasonable expectations.[18]

The Lepics made three separate arguments to support their assertion that the "each person" liability limitation was ambiguous and thus should have been construed in favor of the insured.[19] The court approached and analyzed the arguments by determining whether the language was "fairly susceptible to two interpretations."[20]

The Lepics' first argument with respect to liability limits was one of semantics. They argued that the phrase "sustained by any one person" modified the term "damages," not the phrase "for bodily injury," and that the

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13. *Id.* at 761.

14. *Id.* at 761-65.

15. *Id.* at 761.

16. "The doctrine of reasonable expectations is applicable when: a policy term is bizarre or oppressive; it 'eviscerates the nonstandard terms explicitly agreed to'; or 'it eliminates the dominant purpose of the transaction.' " *Id.* (citing C & J Fertilizer, Inc. v. Allied Mut. Ins. Co., 227 N.W.2d 169, 176 (Iowa 1975) (quoting RESTATEMENT (SECOND) OF CONTRACTS § 237 comment f (1973)). The standard for interpreting policy language is "whether an ordinary layman could reasonably expect coverage." *Id.* (quoting Farm Bureau Mut. Ins. Co. v. Sandbulte, 302 N.W.2d 104, 113 (Iowa 1981)).

17. The court concluded that the doctrine of reasonable expectations did not apply because "the factors considered in *C & J Fertilizer* and *Sandbulte* are not present here" and "the necessity for application of the reasonable expectations doctrine has not been shown by the Lepics." *Id.* The court never specifically indicated the factual distinction between the *Lepic* case and *C & J Fertilizer* and *Sandbulte*. The insurer argued that the distinction was between a dispute over policy coverage and a dispute as to liability limits. *Id.* The court also failed to state how the Lepics had failed to satisfy the requirements for the invocation of the doctrine of reasonable expectations. While the elements as enunciated in *C & J Fertilizer* (taken from the RESTATEMENT (SECOND) OF CONTRACTS § 237) were set out in the opinion, the court did not deliberate on the application. The court merely restated each element in the negative and concluded that the application of the doctrine of reasonable expectations was not proper in the case. *Id.*

18. The author will return to and focus on this topic following an analysis of the court's reasoning concerning the various arguments presented in the case.

19. Lepic v. Iowa Mut. Ins. Co., 402 N.W.2d at 761-65.

20. *Id.* (citing Farm Bureau Mut. Ins. Co. v. Sandbulte, 302 N.W.2d 104, 108 (Iowa 1981)).

phrase "for bodily injury" modified the term "damages" as well.[21] The point of this argument was that, in addition to Lisa Lepic's claim for $100,000, each parent was entitled to assert a claim for $100,000 for loss of consortium; the three claims were not limited to $100,000 in total.[22] The court rejected this argument, however, on the ground that the words of the policy should not be rearranged to create an ambiguity.[23] The court further relied on the doctrine of statutory construction enunciated in *Cairns v. Grinnell Mutual Reinsurance Co.*,[24] which provided that " 'qualifying words and phrases ordinarily refer only to the immediately preceding antecedent.' "[25]

The Lepics next argued that loss of consortium should be considered a separate bodily injury within the meaning of the policy.[26] The court rejected this argument and noted that, while Iowa courts have recognized loss of consortium as a *personal* injury, they have not been willing to extend this concept and classify loss of consortium as a *bodily* injury.[27]

Finally, the Lepics argued that there was an ambiguity in the phrase "all damages."[28] Their contention was that, since the policy did not provide a list of damages to be included in policy coverage, and further failed to specify loss of consortium as a basis for recoverable damages, an ambiguity existed.[29] The court, however, agreed with the insurer's contention that "all" meant "every" and included consortium.[30] The court then reviewed decisions from other jurisdictions in which recovery for loss of consortium damages together with all other direct or consequential damages under an auto insurance liability policy had been limited to the amount of coverage for bodily injury to one person.[31]

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21. *Id.*

22. *Id.*

23. *Id.* at 762. The Iowa Supreme Court cited other cases which held that policy language should be given effect as written. *See* State Farm Mut. Auto. Ins. Co. v. Hodges, 221 Ga. 355, 357, 144 S.E.2d 723, 724-25 (1965) (wife's loss of consortium claim limited); Dunn v. Travelers Ins. Co., 6 Mass. App. Ct. 910, 910-11, 378 N.E.2d 1007, 1008 (1978) (wife's loss of consortium claim limited); Holtz v. Mutual Serv. Casualty Co., 264 Minn. 121, 123, 117 N.W.2d 767, 769 (1962) (husband limited in amount he could recover for wife's medical expenses); Bernat v. Socke, 180 Pa. Super. 512, 515-16, 118 A.2d 253, 254 (1955) (limited husband's loss of consortium claim); Ryan v. Friede, 18 Wis. 2d 138, 142, 118 N.W.2d 208, 210 (1962).

24. Cairns v. Grinnell Mut. Reinsurance Co., 398 N.W.2d 821 (Iowa 1987).

25. Lepic v. Iowa Mut. Ins. Co., 402 N.W.2d at 762 (quoting Cairns v. Grinnell Mut. Reinsurance Co., 398 N.W.2d at 824-25).

26. *Id.*

27. *Id.* at 763. For cases recognizing loss of consortium as a personal injury see: Madison v. Colby, 348 N.W.2d 202, 207 (Iowa 1984) (recovery of loss of consortium damages goes to spouse who suffered the loss); Handeland v. Brown, 216 N.W.2d 574, 576 (Iowa 1974)("A rule [of civil procedure] 8 claim is brought by a parent to redress a wrong done to himself rather than another.")

28. Lepic v. Iowa Mut. Ins. Co., 402 N.W.2d at 763.

29. *Id.*

30. *Id.*

31. *Id.* at 763-65 (citing and discussing Gass v. Carducci, 52 I11. App. 2d 394, 202 N.E.2d

The court held the policy language to be unambiguous; consequently the parents' loss of consortium claim had to be considered together with their daughter's claim for the purpose of determining whether the limit of liability as to "each person" had been exhausted.[32]

"Reasonable expectations" is a concept which has been used as an interpretive tool in the construction of contracts since the beginning of this century.[33] The doctrine of "reasonable expectations" in insurance law requires that insurance contracts provide coverage which the insured could reasonably expect to receive.[34] Under this doctrine, the insurer must provide the coverage which a reasonable person in the position of the insured would have understood the policy language to provide.[35] The test, in other words, is not what the insurer intended the policy to mean, but what a reasonable person in the position of the insured would have understood it to mean.[36] This doctrine was developed to remedy the inequality of bargaining power which prevailed between the insurer and the insured.[37] Courts recognized the need to protect the consumer of insurance who was not familiar with the complexity of the insurance industry and who was subject to a contract of adhesion.[38] Courts have not applied the doctrine uniformly.[39] There are three variations.

First, courts utilize the doctrine of reasonable expectations when there exists an ambiguity in the insurance policy.[40] This approach is based on the rationale that, since insurance policies are, in a sense, contracts of adhesion,

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73 (1964); Moore v. State Farm Mut. Ins. Co., 710 S.W.2d 225 (Ky. 1986); Fish v. Martin, 201 So. 2d 341 (La. Ct. App. 1967); Williams v. State Farm Mut. Auto. Ins. Co., 99 N.J. Super. 377, 240 A.2d 38 (1968), *aff'd*, 54 N.J. 580, 258 A.2d 368 (1969)).

32. *Id.* at 765.

33. *See* Young, Lewis & Lee, *Insurance Contract Interpretation: Issues and Trends*, 625 INS. L.J. 71, 78 (1975) [hereinafter Young].

34. For background and review of the doctrine of reasonable expectations in insurance law, *see* Note, *A Reasonable Approach to the Doctrine of Reasonable Expectations as Applied to Insurance Contracts*, 13 U. MICH. J.L. REF. 603 (1980) [hereinafter Note]; Keeton, *Insurance Law Rights as Variance with Policy Provisions*, 83 HARV. L. REV. 961 (1970) [hereinafter Keeton].

35. 2 COUCH ON INSURANCE § 15.16 (2d ed. 1986). *See also* Prime Drilling Co. v. Standard Accident Ins. Co., 304 F.2d 221 (10th Cir. 1962) (language of a policy is to be construed in accordance with what a reasonable person in the position of the insured would understand its words to mean); Indiana Ins. Co. v. Fidelity Gen. Ins. Co., 393 F.2d 204 (7th Cir. 1968) (test for construction of a policy is that its terms mean what a reasonable person in the position of the insured would have understood them to mean).

36. 2 COUCH ON INSURANCE § 15.16 (2d ed. 1986). *See also* Shain v. Mutual Benefit Health & Accident Ass'n, 232 Iowa 1143, 7 N.W.2d 806 (1943).

37. *See* Keeton, *supra* note 34, at 963.

38. *Id.*

39. *See* Note *supra* note 34 (tracing the evolution of the doctrine of reasonable expectations).

40. *See* Herzog v. National Am. Ins. Co., 2 Cal. 3d 192, 199, 465 P.2d 841, 844, 84 Cal. Rptr. 705, 708 (1970); *see also* Young, *supra* note 33.

ambiguities contained in them should be resolved against the insurer and in favor of the insured.[41]

The second variation provides that "the insured is entitled to all the coverage he may reasonably expect to be provided under the policy and that only an unequivocally conspicuous, plain and clear manifestation of the company's intent to exclude coverage will defeat that expectation."[42] This variation would honor the insured's reasonable expectations even though a close and careful reading of the policy language would have negated such expectations.[43] This version of the doctrine may be applied when coverage is granted in clear, broad language and then excluded in a small, restrictive phrase of which the insured is not aware.[44]

The third approach involves a comparatively broad application, originally advocated by Professor Robert Keeton.[45] Keeton's principle does not require a finding of an ambiguity.[46] His principle provides: "The objectively reasonable expectations of applicants and intended beneficiaries regarding the terms of insurance contracts will be honored even though painstaking study of the policy provisions would have negated those expectations."[47] This variation of the doctrine of reasonable expectations allows recovery by the insured even though the language of an exclusion was unambiguous and the insured knew or should have known of the exclusion.[48] Keeton contends that the reasonable expectations of a policyholder, having an ordinary degree of familiarity with the policy coverage, should be given effect for three reasons: (1) policy forms are long and complex and cannot be understood without detailed study; (2) rarely do policyholders read their policies carefully enough to acquire such understanding; (3) most insurance transactions are final before a policyholder has a chance to see the detailed policy terms.[49] The Keeton doctrine has been criticized on the grounds that: (1) if there is to be any predictability and uniformity of decisions, the courts need to establish more precise guidelines for the doctrine;[50] (2) the analysis fails to consider the well-established rule of adhering to express contract language;[51] (3) it would allow recovery to insureds who fail to read and understand their policies despite clear and unambiguous policy language;[52] (4) the

41. 7 WILLISTON ON CONTRACTS § 900 (3d ed. 1963).

42. *See* Young, *supra* note 33, at 78; *see also, e.g.*, Gray v. Zurich Ins. Co., 65 Cal. 2d 263, 273, 419 P.2d 168, 174, 54 Cal. Rptr. 104, 110 (1966).

43. *See* Keeton, *supra* note 34, at 967.

44. *See* Young, *supra* note 33, at 79.

45. *See* Keeton, *supra* note 34.

46. *Id.* at 969.

47. *Id.* at 967.

48. *See* C & J Fertilizer, Inc. v. Allied Mut. Ins. Co., 227 N.W.2d 169 (Iowa 1975).

49. *See* Keeton, *supra* note 34, at 968.

50. *See* Note, *supra* note 34, at 617.

51. *See* Young, *supra* note 33, at 79.

52. *See* Note, *supra* note 34 at 617.

insurer would no longer be able to rely on the terms of a written insurance policy.[53]

The Iowa Supreme Court adopted the doctrine of "reasonable expectations" in *Rodman v. State Farm Mutual Automobile Insurance Co.*,[54] although the court claimed to have applied the principle previously without naming it as such.[55] The *Rodman* opinion cited Keeton throughout and purported to adopt the liberal view of the doctrine of "reasonable expectations" as enunciated by Keeton.[56] The court appeared to adopt not only the Keeton phraseology but the broad, liberal Keeton philosophy as well.[57] The court claimed not only to apply the doctrine of reasonable expectations as an interpretive tool as most courts do, but also to employ the concept in its broader meaning as an independent approach to the interpretation of insurance policies. The court stated: "It is clear the principle of reasonable expectations undergirds the congeries of rules applicable to construction of insurance contracts in Iowa."[58] The court's general language suggested that the court would apply the third variation of the doctrine, which would allow recovery by the insured even if the language was unambiguous and the insured had read it or had reason to know of the exclusion. However, with respect to the actual application of this new doctrine which had just been adopted, the court said: "The real question here is whether the principle of reasonable expectations should be extended to cases where an ordinary layman would not misunderstand his coverage from a reading of the policy and where there are no circumstances attributable to the insurer which foster coverage expectations."[59]

The requirement that the insured read the policy was inconsistent with the Keeton theory which the court claimed to have adopted. Keeton does

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53. *Id.*

54. Rodman v. State Farm Mut. Auto. Ins. Co., 208 N.W.2d 903 (Iowa 1973).

55. *Id.* at 906 (citing Qualls v. Farm Bureau Mut. Ins. Co., 184 N.W.2d 710, 712 (Iowa 1971) ("a contract of insurance should be interpreted from the standpoint of an ordinary man's viewpoint, not a specialist or expert"); Central Bearing Co. v. Wolverine Ins. Co., 179 N.W.2d 443, 445 (Iowa 1970) ("the court should ascertain what an insured as a reasonable person would understand the policy to mean, not what the insurer actually intended"); Goodsell v. State Auto & Casualty Underwriters, 261 Iowa 135, 140, 153 N.W.2d 458, 461 (1967) ("a contract of insurance should not be construed through the magnifying eye of the technical lawyer but rather from the standpoint of what an ordinary man would believe it to mean"); Umbarger v. State Farm Mut. Auto. Ins. Co., 218 Iowa 203, 208, 254 N.W. 87, 89 (1934) ("How would the assured, as a reasonable person, naturally and ordinarily understand and interpret this language?")).

56. *See* Keeton, *supra* note 34, and accompanying text.

57. Rodman v. State Farm Mut. Auto. Ins. Co., 208 N.W.2d at 906.

58. *Id.*

59. *Id.* The court refused to extend the doctrine of reasonable expectations to impose liability on an auto insurer where the insurance policy exclusion clearly excluded coverage for bodily injury to insured or any member of insured's family where "an ordinary layman would not misunderstand his coverage from a reading of the policy unless there [were] other circumstances attributable to insurer which cause such expectations." *Id.* at 908.

not require the insured to read the policy and, in fact, assumes that he has not done so.[60]

The Iowa court did, however, apply Keeton's broad doctrine of reasonable expectations in *C & J Fertilizer, Inc. v. Allied Mutual Insurance Co.*,[61] in which the court held that an average insured in the plaintiff's position could reasonably expect coverage for goods stolen from his premises even though the plaintiff knew that the policy excluded coverage where there were no visible marks of forced entry on the exterior of the insured's premises.[62] Factors considered by the court in *C & J Fertilizer* were the fact that insureds ordinarily fail to read policies, the unequal bargaining position between the insurer and the insured, the fine print of the exclusionary clause, and the fact that insurance policies are essentially contracts of adhesion.[63] The trial court found the policy to be unambiguous.[64] The Iowa Supreme Court found that the doctrine of reasonable expectations could be applied regardless of this finding.[65]

In 1981[66] the Iowa Supreme Court held in *Farm Bureau Mutual Insur-*

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60. *See* Keeton, *supra* note 34, at 968.

61. C & J Fertilizer, Inc. v. Allied Mut. Ins. Co., 227 N.W.2d 169 (Iowa 1975).

62. *Id.* at 177. The court relied on Keeton's principles and theory concerning the doctrine of reasonable expectations, and also on the RESTATEMENT (SECOND) OF CONTRACTS § 237:

> Although customers typically adhere to standardized agreements and are bound by them without even appearing to know the standard terms in detail, they are not bound to unknown terms which are beyond the range of reasonable expectation. A debtor who delivers a check to his creditor with the amount blank does not authorize the insertion of an infinite figure. Similarly, a party who adheres to the other party's standard terms does not assent to a term if the other party has reason to believe that the adhering party would not have accepted the agreement if he had known that the agreement contained the particular term. Such a belief or assumption may be shown by the prior negotiations or inferred from the circumstances. Reason to believe may be inferred from the fact that the term is bizarre or oppressive, from the fact that it eviscerates the non-standard terms explicitly agreed to, or from the fact that it eliminates the dominant purpose of the transaction. The inference is reinforced if the adhering party never had an opportunity to read the term, or if it is illegible or otherwise hidden from view. This rule is closely related to the policy against unconscionable terms and the rule of interpretation against the draftsman.

RESTATEMENT (SECOND) OF CONTRACTS § 237 comment f (1973). The court also utilized the theories of unconscionability and implied warranty.

63. C & J Fertilizer, Inc. v. Allied Mut. Ins. Co., 227 N.W.2d at 179-80.

64. *Id.* at 171.

65. *Id.* at 177. The dissent, however, was in accord with the court's decision in *Rodman*. *Id.* at 182 (LeGrand, J., dissenting).

66. For Iowa cases decided between 1975 and 1981 which utilize the doctrine of reasonable expectations in insurance law see: Litchsinn v. American Interinsurance Exch., 287 N.W.2d 156 (Iowa 1980) (the court held that where the language of the insurance policy would give an insured the impression that arbitration would resolve the controversy, such objective and reasonable expectations will be honored); Johnson v. Fireman's Fund Ins. Co., 272 N.W.2d 870 (Iowa 1978) (where the insurer imposed conditions which were not specified in the policy and failed to arbitrate where the insured had requested arbitration in writing pursuant to the applicable clause in the policy, the court held it was reasonable for the plaintiff-insured to think she

ance Co. v. Sandbulte that the reasonable expectations doctrine could not be applied to extend coverage under a farm liability policy to a motor vehicle accident on land not immediately adjacent to the insured's premises.[67] The court in its analysis cited both *Rodman* and *C & J Fertilizer* and quoted Keeton for the principle that the reasonable expectations of the insured are to be honored "even though painstaking study of policy provisions would have negated those expectations."[68] The court in *Sandbulte* set out and referred to section 237 of the Restatement (Second) of Contracts as though it embodied the prerequisites for application of the doctrine of reasonable expectations: "The doctrine will apply here if the exclusion (1) is bizarre or oppressive, (2) eviscerates terms explicitly agreed to, or (3) eliminates the dominant purpose of the transaction."[69]

The court set forth additional requirements which had to be met before application of the doctrine of reasonable expectations: "an ordinary layman would not misunderstand the policy's coverage as to this occurrence, and there were no circumstances attributable to the insurer which would foster coverage expectations . . . ."[70] While the court noted that *C & J Fertilizer* was a good illustration of the application of the doctrine, the court in *Sandbulte* did not seem to be willing to apply the doctrine as liberally as in *C & J Fertilizer*, as evidenced not so much by the result as by the elements and conditions[71] which the court required to justify application of the doctrine.

Six years later, in 1987, in *Cairns v. Grinnell Mutual Reinsurance Co.*, the court in analyzing the exclusionary provisions of a form liability policy as to coverage for automobiles operated by a farm employee held the exclusion to be unambiguous and did not apply the doctrine of reasonable expec-

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had done what was necessary to initiate arbitration; the insurer lost its alleged right to arbitration and the insured had the right to maintain the action); Gibson v. Milwaukee Mut. Ins. Co., 265 N.W.2d 742 (Iowa 1978) (the court construed an ambiguity in language concerning the term required for the policy to lapse strictly against the insurer and honored the insured's reasonable expectations concerning the term); State Farm Auto. Ins. Co. v. Malcolm, 259 N.W.2d 833 (Iowa 1977) (the court construed an exclusionary clause in an automobile liability policy in favor of the insured by construing the exclusion strictly against the insurer and honoring the insured's reasonable expectations); Steinbach v. Continental W. Ins. Co., 237 N.W.2d 780 (Iowa 1976) (the court held for the insured in interpreting a theft provision; the court construed the policy to effectuate the reasonable expectations of the average member of the public who accepts it).

67. Farm Bureau Mut. Ins. Co. v. Sandbulte, 302 N.W.2d 104 (Iowa 1981).

68. *Id.* at 112, (citing Rodman v. State Farm Mut. Ins. Co., 208 N.W.2d 903, 906 (Iowa 1973) (quoting R. Keeton, INSURANCE LAW BASIC TEXT § 6.3(a), at 351 (1971)).

69. *Id.* (citing RESTATEMENT (SECOND) OF CONTRACTS § 237 comment f (1973)).

70. *Id.* at 112-13, citing Rodman v. State Farm Mut. Ins. Co., 208 N.W.2d at 906-07.

71. While the bases of these elements and requirements—Keeton's philosophy and § 237 of the Restatement (Second) of Contracts—have been at the core of the Iowa Supreme Court's analyses from *Rodman* on, the court in *Sandbulte* adopted them as the *sine qua non* for application of the doctrine.

tations.[72] The Court in *Cairns* required the elements of the doctrine enunciated in *Sandbulte* and also increased the burden of the insured in such cases by concentrating heavily on strict interpretation of contracts;[73] referring to the application of the doctrine of reasonable expectations as allowing an insurance policy to be rewritten;[74] and establishing a burden of proof which the insured must meet to invoke the doctrine of reasonable expectations:[75] the insured must demonstrate evidence so overwhelming that the court can say that he has carried his burden as a matter of law.[76]

A review of the Iowa Supreme Court's treatment of the doctrine of reasonable expectations from its adoption in *Rodman*[77] to the present in *Lepic*[78] indicates a conservative trend in applying the doctrine for the purposes of construing insurance policy provisions. At the debut of the doctrine of reasonable expectations in *Rodman* and *C & J Fertilizer*, the court was liberal in its application of the concept: in *Rodman* the court adopted the broad, generous language of the Keeton theory;[79] and in *C & J Fertilizer* the court applied the liberal language adopted by the court in *Rodman* and found for an insured based partly on the doctrine of reasonable expectations,[80] though the policy language was clear and the insured knew he was not covered.[81] Though its application of the doctrine was not uniform, the Iowa Supreme Court did consistently apply the doctrine throughout the 1970s, finding for the insured on that basis.[82] In the 1980s, with *Sandbulte* and *Cairns*, the court appears to be pulling back from its liberal stance of the 1970s by requiring the establishment of certain elements in order for the doctrine to be invoked.[83] *Lepic* is the culmination of this trend. In *Lepic* the facts presented a situation in which the insured had a reasonably plausible position: the "each person" liability limitation phrase should be interpreted to mean "each person claiming damages pertaining to a bodily injury" and not "each person sustaining a bodily injury."[84] However, the court did not discuss or analyze at any length the possibility that the Lepics could recover under the doctrine of reasonable expectations.[85] The opinion set out rele-

72. Cairns v. Grinnell Mut. Reinsurance Co., 398 N.W.2d 821 (Iowa 1987).
73. *Id.* at 823.
74. *Id.* at 825.
75. *Id.* at 826.
76. *Id.*
77. *See supra* notes 54-60 and accompanying text.
78. *See supra* notes 1-32 and accompanying text.
79. *See supra* notes 54-60 and accompanying text.
80. The court also employed the theories of unconscionability and implied warranty. *See* C & J Fertilizer, Inc. v. Allied Mut. Ins. Co., 227 N.W.2d 169, 169 (Iowa 1975).
81. *See supra* notes 61-65 and accompanying text.
82. *See supra* note 66.
83. *See supra* notes 67-76 and accompanying text.
84. *See supra* notes 12-34 and accompanying text.
85. *See* Lepic v. Iowa Mut. Ins. Co., 402 N.W.2d 758, 761 (Iowa 1987).

vant case law on the subject of the doctrine of reasonable expectations,[86] yet concluded that the doctrine was inapplicable without analyzing the case law or considering the lack of requisite evidence.[87] It is not clear whether the court in *Lepic* overruled *Rodman* and *C & J Fertilizer*.[88] However, the court's lack of analysis or consideration of the doctrine of reasonable expectations certainly violated the spirit of *Rodman* and *C & J Fertilizer*. The court's approach in *Lepic*[89] clearly departed from that adopted in *Rodman*, in which the court had announced that in Iowa the doctrine of reasonable expectations would be more than a mere interpretive tool. The *Rodman* court had noted that the doctrine had broader and independent meaning: "It is clear the principle of reasonable expectations undergirds the congeries of rules applicable to construction of insurance contracts in Iowa."[90] The *Lepic*[91] opinion represents a more conservative trend. The court was not willing to apply the doctrine as broadly as before—and, indeed, it is not clear whether the court would be willing to apply it at all.

NOTE

Since this case note was written, the Iowa Supreme Court has had the opportunity to apply the doctrine of reasonable expectations. The court has chosen not to apply the doctrine on two occasions.[92] In *Grinnell Mutual Reinsurance Co. v. Voeltz*,[93] the court did cite the broad and liberal language of Keeton[94] and *C & J Fertilizer*.[95] However, it is unclear why the court cited this language or found it necessary to apply the doctrine at all, since the insureds were entitled to coverage under the terms of the policy.[96] This unnecessary application of the doctrine is something quite different from the court's willingness, in *C & J Fertilizer*,[97] to find coverage where the

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86. *See supra* note 17.

87. *See* Lepic v. Iowa Mut. Ins. Co., 402 N.W.2d at 761.

88. *Id.*

89. *Id.*

90. Rodman v. State Farm Mut. Ins. Co., 208 N.W.2d 903, 906 (Iowa 1973).

91. Lepic v. Iowa Mut. Ins. Co., 402 N.W.2d 758 (Iowa 1987).

92. Aid (Mut.) Ins. v. Steffen, 423 N.W.2d 189 (Iowa 1988) (the court found that the doctrine of reasonable expectations did not apply to provide coverage for patent litigation tort liability); Thomas v. United Fire & Casualty Co., 426 N.W.2d 396 (Iowa 1988) (the court found that policy provisions which barred actions on claims commenced more than twelve months after loss did not violate the doctrine of reasonable expectations).

93. Grinnell Mut. Reinsurance Co. v. Voeltz, 431 N.W.2d 783 (Iowa 1988).

94. *See supra* notes 45-47 and accompanying text.

95. C & J Fertilizer, Inc. v. Allied Mut. Ins. Co., 227 N.W.2d 169 (Iowa 1975).

96. Grinnell Mut. Reinsurance Co. v. Voeltz, 431 N.W.2d 783 (Iowa 1988) (business pursuit exclusion applied under the terms of the policy where the activity produced income in excess of $1000 and the insured earned only $500 in the year of the accident which was the subject of the claim).

97. C & J Fertilizer, Inc. v. Allied Mut. Ins. Co., 227 N.W.2d 169 (Iowa 1975).

policy language was clear and the insured knew he was not covered.[98] These recent cases support the conclusion that there is a conservative trend in the Iowa Supreme Court's application of the doctrine of reasonable expectations.

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98. *Id.*