UNINSURED MOTORIST COVERAGE—ARBITRATION UNDER AN ARBITRATION CLAUSE IN AN UNINSURED MOTORIST ENDORSEMENT IS NOT A CONDITION PRECEDENT TO BRING SUIT AND WHERE INSURED INVOKES ARBITRATION BY WRITTEN DEMAND, THE OBLIGATION RESTS WITH THE INSURER TO DO WHAT IS NECESSARY TO OBTAIN THE SERVICES OF THE AMERICAN ARBITRATION ASSOCIATION.—*Johnson v. Fireman's Fund Insurance Co.* (Iowa 1978).

Plaintiff, driver of a car owned by an automobile dealership, was injured in an accident caused by an uninsured motorist. The automobile plaintiff was driving was insured under a policy issued by defendant insurance company that contained an uninsured motorist endorsement.[1] The policy also contained a clause that called for arbitration[2] on written demand of either party,

---

1. Uninsured motorist endorsements appear in almost every automobile liability policy issued in the United States. A. WIDISS, A GUIDE TO UNINSURED MOTORIST COVERAGE 1 (1969) [hereinafter cited as WIDISS]. Statutes which require the endorsement to be included in all automobile liability policies have been adopted in almost every state. The following statutes have been enacted by various states: ALA. CODE tit. 32, § 32-7-23 (1975); ALASKA STAT. § 28.20.440(b)(3) (1978); ARIZ. REV. STAT. ANN. § 20-259.01 (1975); ARK. STAT. ANN. §§ 66-4003 to 4006 (1966 & Supp. 1977); CAL. INS. CODE §§ 11580.2-.5 (West 1972 & Supp. 1979); COLO. REV. STAT. § 10-4-319 (1973); CONN. GEN. STAT. ANN. § 38-175c (West Supp. 1979); DEL. CODE ANN. tit. 18, § 3902 (1974 & Supp. 1978); FLA. STAT. ANN. § 627.727 (West Supp. 1978); GA. CODE ANN. § 56.407.1 (Supp. 1979); HAW. REV. STAT. § 431-448 (1976); IDAHO CODE §§ 41-2502 to 2505 (1977); ILL. ANN. STAT. ch. 73, § 755a (Smith-Hurd Supp. 1979); IND. CODE ANN. § 27-1-13-7 (Burns 1975); IOWA CODE §§ 516A.1-.4 (1979); KAN. STAT. ANN. §§ 40-284 to 288 (1973); KY. REV. STAT. § 304.20-020 (Supp. 1978); LA. REV. STAT. ANN. § 22-1406 (West 1978 & Supp. 1979); ME. REV. STAT. tit. 24-A § 2902 (Supp. 1978-79); MD. ANN. CODE art. 48A, § 541(c) (1979); MASS. GEN. LAWS ANN. ch. 175, § 113L (West 1972 & Supp. 1979); MICH. COMP. LAWS §§ 500.3010-.3011 (1967); MINN. STAT. ANN. § 65B.49 Subd. 4 (West Supp. 1979); MISS. CODE ANN. §§ 83-11-101 to 111 (1973 & Supp. 1978); MO. ANN. STAT. § 379.203 (Vernon Supp. 1979); MONT. REV. CODES ANN. § 40-4403 (Supp. I 1977); NEB. REV. STAT. §§ 60-509.01 to .04 (1978); NEV. REV. STAT. § 690B.020 (1977); N.H. REV. STAT. ANN. § 268.15-a (1977); N.M. STAT. ANN. §§ 64-24-105 to 107 (1972); N.Y. INS. LAW §§ 600-626 (McKinney 1966 & Supp. 1978-79); N.C. GEN. STAT. § 20-279.21(b)(3) (1978); N.D. CENT. CODE §§ 26-02-42 to 44 (1978); OHIO REV. CODE ANN. § 3937.18 (Page Supp. 1978); OKLA. STAT. ANN. tit. 36, § 3636 (West Supp. 1978-79); OR. REV. STAT. § 743.789 (1977-78); PA. STAT. ANN. tit. 40, § 2000 (Purdon 1971); R.I. GEN. LAWS § 27-7-2.1 (Supp. 1978); S.D. COMPILED LAWS ANN. §§ 58-11-9 to 9.6 (1978); TENN. CODE ANN. §§ 56-1148 to 1149 (1968 & Supp. 1978); TEX. INS. CODE ANN. art. 5.06-1 (Vernon Supp. 1963-78); UTAH CODE ANN. § 41-12-21.1 (1970); VT. STAT. ANN. tit. 23 § 941 (Supp. 1978); VA. CODE § 38.1-381 (Supp. 1979); WASH. REV. CODE ANN. §§ 48.23.030 to .040 (Supp. 1978); W. VA. CODE §§ 33-6-31 - 31a (Supp. 1979); WIS. STAT. ANN. § 632.32(3) (West 1979); WYO. STAT. §§ 31-10-101 to 104 (1977).

2. The arbitration clause in the uninsured motorist endorsement read in part:

I. COVERAGE U - UNINSURED MOTORISTS

[F]or purposes of this coverage, determination as to whether the insured or such representative is legally entitled to recover such damages, and if so the amount thereof, shall be made by agreement between the insured or such representative and the company or, if they fail to agree, by arbitration . . . .

. . . .

VI. ADDITIONAL CONDITIONS.

F. Arbitration.

If any person making claim hereunder and the Company do not agree that such person is legally entitled to recover damages from the owner or operator of an uninsured

to be conducted in accordance with the rules of the American Arbitration Association[3] unless the parties agreed to another means.

Pursuant to the policy, plaintiff submitted a written demand for arbitration. However, defendant Fireman's Fund failed to put the arbitration process in motion. Subsequently, plaintiff brought an action seeking recovery from Fireman's Fund, alleging she was an insured under the policy covering the automobile dealership. She further alleged that she had demanded arbitration in accordance with the policy but defendant sought to impose the costs of arbitration on her.[4] Fireman's Fund responded with a motion to dismiss the complaint. Defendant argued that plaintiff failed to abide by and perform in accordance with the rules of the American Arbitration Association and that plaintiff was bound by the provisions of the policy under which she claimed benefits and accordingly had to pursue the initiation of the claim with the appropriate arbitration authority as a condition precedent to a cause of action.[5] The trial court sustained Fireman's Fund's motion to dismiss, ruling that commencing arbitration was a condition precedent to plaintiff's suit.[6] Plaintiff appealed from the dismissal, contending that she attempted to invoke arbitration but defendant did not perform its duty to arbitrate and she, therefore, was entitled to bring suit.[7] The Iowa Supreme Court[8] *held,* reversed and remanded, two justices concurring specially[9] and two justices dissenting.[10] When an insured invokes arbitration by written demand, under an arbitration clause of the type contested here,[11] the obligation rests with the insurer to initiate arbitration pursuant to the rules of the American Arbitration Association unless the parties agree to another means of arbitration

---

highway vehicle because of bodily injury to the insured, or do not agree as to the amount of payment which may be owing, under this insurance, then upon written demand of either, the matter or matters upon which such person and the Company do not agree shall be settled by arbitration, which shall be conducted in accordance with the rules of the American Arbitration Association unless other means of conducting the arbitration are agreed to between the insured and the Company, and judgment upon the award rendered by the arbitors may be entered in any Court having jurisdiction thereof. Such person and the Company each agree to consider itself bound and to be bound by any award made by the arbitors.

3. *See* WIDISS, *supra* note 1, at 285-290 (Supp. 1978) (accident claims rules for the American Arbitration Association).

4. Johnson v. Fireman's Fund Ins. Co., 272 N.W.2d 870, 873 (Iowa 1978). The provisions of the Fireman's Fund policy made no specific mention of who was to bear the cost of arbitration. *See* Appendix to Brief for Appellant at 12-25, Johnson v. Fireman's Fund Ins. Co., 272 N.W.2d 870 (Iowa 1978).

5. *Id.* at 872.

6. *Id.* at 871.

7. *Id.* at 872.

8. Justice McCormick wrote the majority opinion and was joined by Justices Rees, Allbee, McGivern and Larson.

9. Chief Justice Reynoldson wrote the special concurrence which was joined by Justice Harris.

10. Justice Uhlenhopp wrote the dissent which was joined by Justice LeGrand.

11. *See* note 2 *supra.*

and the arbitration provisions do not make arbitration a condition precedent to suit by an insured.[12] *Johnson v. Fireman's Fund Insurance Co.*, 272 N.W.2d 870 (Iowa 1978) (*en banc*).

The central issue confronting the court was whether the defendant's failure to set the arbitration mechanism in motion after the plaintiff demanded arbitration entitled plaintiff to maintain her suit. In order to reach its decision allowing plaintiff to continue her suit, the majority employed a two step approach. First, the court interpreted the language of the arbitration provisions in the uninsured motorist endorsement.[13] The court noted that the first provision required the parties to the insurance contract to submit the issue of an uninsured motorist's liability to arbitration when the insured and insurer were unable to agree.[14] Under the second provision, arbitration could be invoked upon written demand of either party.[15] Also, the insured and insurer agreed to be bound by any award made by arbiters.[16] The court found that these provisions did not make arbitration a condition precedent to suit, but instead, found that when arbitration is utilized, it becomes the sole method for resolving the dispute.[17]

In the second phase of its analysis, the court applied the arbitration provisions in light of the facts alleged by plaintiff and relied on established precedent to hold that plaintiff could maintain her suit against Fireman's Fund. The court, citing *Rodman v. State Farm Mutual Automobile Insurance Co.*,[18] stated that the language of the policy must be given its "ordinary meaning in accordance with the objectively reasonable expectations of the insured."[19] Further, the court stated that because an insurance policy is a contract of adhesion, its provisions must be construed in a light most favorable to the insured.[20] It was reasonable, the court found, for plaintiff to think she had done all she was required to do to initiate arbitration when she did what the policy said she should do.[21] The language of the policy did not require more from her. Additionally, the court held that the plaintiff had a

---

12. The majority, in making their decision, stated that:

> In this appeal plaintiff does not challenge the validity and enforceability of the arbitration clause of the Fireman's Fund policy. Instead she contends she attempted to invoke arbitration but Fireman's Fund did not perform its duty to arbitrate and she is therefore entitled to maintain her lawsuit. We have no occasion to determine in this case whether plaintiff could have been required to submit her claim to arbitration if she did not wish to do so.

272 N.W.2d at 872.

13. *Id.* at 872-73.
14. *Id.* For the text of this provision, *see* note 2 *supra*, part I.
15. 272 N.W.2d at 872. For the text of this provision, *see* note 2 *supra*, part VI.
16. *Id.*
17. 272 N.W.2d at 872-73.
18. 208 N.W.2d 903 (Iowa 1973).
19. 272 N.W.2d at 873.
20. *Id., citing* Connie's Constr. Co. v. Fireman's Fund Ins. Co., 227 N.W.2d 207, 210 (Iowa 1975).
21. *Id.* at 873-74.

right to rely on the defendant to fulfill its duty to invoke arbitration. Fireman's Fund had lost its asserted right to arbitrate because it breached its duty to set the arbitration process in motion upon request.[22]

Johnson is particularly significant because of the three-way split among the justices. While the issue of enforceability of the arbitration clauses in the Fireman's Fund policy was not raised by plaintiff in her appeal,[23] Justice Uhlenhopp took the opportunity in his dissent in *Johnson* to attack the Iowa common law rule which denies enforceability to such executory arbitration agreements. Justice Reynoldson's special concurrence was a response to the dissenters' arguments.[24]

Justice Uhlenhopp recognized that under Iowa common law, either party can withdraw from arbitration at any time before the arbiter renders a decision, and any agreement of the parties to make arbitration the binding and exclusive means of settling future disputes is not enforceable.[25] This doctrine reflects a history of judicial reluctance to compel parties to submit to arbitration and demonstrates the judicial attitude that resort to any substitutional forum which might oust the jurisdiction of the court is not to be encouraged.[26]

In support of abrogating the doctrine, Justice Uhlenhopp asserted that the terms of the Fireman's Fund policy required arbitration. Since an insurance policy is read giving ordinary meaning to its language,[27] a clear reading of the arbitration clause in the uninsured motorist endorsement would require use of arbitration to resolve disputed questions regarding liability and damages. Therefore, according to the policy provisions, arbitration should not be just a condition precedent to suit but the sole method for resolving the dispute.

Further, Justice Uhlenhopp recognized that there are two exceptions to the general rule denying enforceability to executory arbitration agreements.[28] First is the "existing dispute" exception, which involves an arbitration agreement made after the dispute arises. Such an agreement is enforceable.[29] How-

---

22. *Id.* at 874.

23. *Id.* at 875 (Reynoldson, C.J., concurring specially). *See* note 12 *supra.*

24. Chief Justice Reynoldson expressly states that his opinion is a direct response to the issues raised by the dissent. 272 N.W.2d at 874.

25. Joseph L. Wilmotte & Co. v. Rosenman Bros., 258 N.W.2d 317, 325 (Iowa 1977); *See also* Oskaloosa Savings Bank v. Mahaska County State Bank, 205 Iowa 1351, 1359, 219 N.W. 530, 533-34 (1928); Prader v. National Masonic Accident Ass'n, 95 Iowa 149, 162, 63 N.W. 601, 605 (1895).

26. Prader v. National Masonic Accident Ass'n, 95 Iowa 149, 161, 63 N.W. 601, 605 (1895); 14 COUCH ON INS. 2d, § 50.28 (1965); 12 DRAKE L. REV. 119, 126 (1963).

27. Rodman v. State Farm Mut. Ins. Co., 208 N.W.2d 903, 906 (Iowa 1973). *Cf.* Qualls v. Farm Bureau Mut. Ins. Co., 184 N.W.2d 710, 712 (Iowa 1971) (insurance contract interpreted from ordinary man's viewpoint, not a specialist or expert).

28. 272 N.W.2d at 883 (Uhlenhopp, J., dissenting).

29. *See* White Eagle Laundry Co. v. Slawek, 296 Ill. 240, ____, 129 N.E. 753, 755 (1921) (held that the common law rule did not apply to cases where a controversy has arisen and an agreement is made to submit the particular controversy to arbitration); Meyers v. Jenkins, 63 Ohio St. 101, 57 N.E. 1089 (1900); *see also* Wilson v. Gregg, 208 Okla. 291, 255 P.2d 517 (1952).

ever, in this case, as the dissent pointed out, the present policy and arbitration clause went into effect before the loss occurred.[30] Therefore, the "existing dispute" exception did not apply. Second is the exception which relates to agreements to arbitrate "special questions" or a "specific point." These agreements are valid and courts will enforce a contract clause which requires a finding by arbiters regarding a specific fact before suit may be brought.[31] Again, however, this exception did not apply because the arbitration agreement in the policy was not solely for arbitration of a specific fact. Rather, the arbitration here encompassed the whole subject of liability of the third person as well as damages.[32]

Because neither exception to the general common law rule denying enforceability to executory arbitration agreements was applicable in *Johnson*, the dissent, rather than attempting to place this case within the exceptions, directly confronted the unenforceability rule. As stated previously, a contract clause requiring submission of future disputes has historically been unenforceable. But as Justice Uhlenhopp noted, there are decisions upholding general arbitration clauses as a matter of common law in Colorado,[33] Minnesota[34] and Pennsylvania.[35] Further, it is noted in the dissent that in two recent Iowa cases, *Joseph L. Wilmotte & Co. v. Rosenman Brothers*[36] and *Heck v. Geo. A. Hormel Co.*,[37] there are indications of a trend favoring arbitration. Justice Uhlenhopp stated that in *Wilmotte* the Iowa Supreme Court applied New York statutory law under a conflict of laws rule and upheld arbitration, although the court did take note of the traditional common law rule against arbitration.[38] More recently the court in *Heck* upheld arbitration as a condi-

---

30. 272 N.W.2d at 883.

31. Eighmy v. Brotherhood of Ry. Trainmen, 113 Iowa 681, 683, 83 N.W. 1051, 1052 (1900); Fox v. Masons' Fraternal Accident Ass'n, 96 Wis. 390, ___, 71 N.W. 363, 365 (1897).

32. 272 N.W.2d at 883.

33. Dominion Ins. Co. v. Hart, 178 Colo. 451, ___, 498 P.2d 1138, 1140 (1972); Zahn v. District Court, 169 Colo. 405, ___, 457 P.2d 387, 388 (1969); Ezell v. Rocky Mountain Bean & Elevator Co., 76 Colo. 409, ___, 232 P. 680, 681 (1925). In *Ezell* the Colorado Supreme Court held that common law arbitration was favored by the law. The court said that where the Legislature had provided a method of arbitration, any objection that such arbitration ousted the courts of jurisdiction was without merit.

34. Grover-Dimond Assocs. v. American Arbitration Ass'n, 297 Minn. 324, ___, 211 N.W.2d 787, 788 (1973); Park Constr. Co. v. Independent School Dist., 209 Minn. 182, ___, 296 N.W. 475, 477 (1941) (common law arbitration was permissible because Legislature declared that nothing in the Statutes of Minnesota should preclude the arbitration of controversies according to the common law).

35. In Mendelson v. Shrager, 432 Pa. 383, 385, 248 A.2d 234, 235 (1968), the Pennsylvania Supreme Court stated: "Contracts that provide for arbitration are valid, enforceable, and irrevocable, save upon grounds as exist in law or equity for the revocation of any other type of contract. This is equally true of both common law arbitration and arbitration provided in the Act of 1927."

36. 258 N.W.2d 317 (Iowa 1977).

37. 260 N.W.2d 421 (Iowa 1977).

38. Johnson v. Fireman's Fund Ins. Co., 272 N.W.2d at 886.

tion precedent to suit, and made no mention of the common law rule.[39] Because several states have upheld executory arbitration agreements as a matter of common law[40] and the Iowa Supreme Court decisions showed a trend favoring arbitration, Justice Uhlenhopp concluded that Iowa should reverse its historical position and enforce clauses for arbitration of future disputes.[41]

As to the specific arbitration clauses involved in *Johnson*, the dissent urges that the use of standard form contracts does not hinder the enforceability of the clauses.[42] The test the dissent would employ to determine the enforceability of the arbitration provisions is given in the Restatement (Second) of Contracts.[43] The Restatement takes the position that when one party has reason to believe that the party manifesting assent to a contract would not do so if he knew the contract contained a particular term, the term is not a part of the agreement.[44] In applying this test the dissent questions whether Fireman's Fund had reason to believe Johnson would not have assented had she known of the arbitration clauses. In addressing the question, Justice Uhlenhopp stated that an answer usually depends on judicial attitude to arbitration clauses.[45] His opinion was that Fireman's Fund had no reason to think Johnson would not accept the policy.[46] Justice Uhlenhopp concluded that the clauses should be held valid and enforceable in the uninsured motorist setting.[47]

The Reynoldson concurrence, noting that the validity and enforceability of the arbitration clauses were not at issue, sought to answer the dissent's contention that the arbitration clauses should be enforced. The concern of Chief Justice Reynoldson was that the insurance policy involved in *Johnson* was a contract of adhesion. Where there is an arbitration clause in such a

---

39. *Id.*

40. The Colorado, Minnesota and Pennsylvania decisions cited by Justice Uhlenhopp stemmed from a legislative preference for arbitration as a matter of public policy. Ezell v. Rocky Mountain Bean & Elevator Co., 76 Colo. at ——, 232 P. at 681; Park Constr. Co. v. Independent School Dist., 209 Minn. at ——, 296 N.W.2d at 477; Mendelson v. Shrager, 432 Pa. at ——, 248 A.2d at 235. Justice Uhlenhopp asserts that hostility toward arbitration has long since disappeared and that the policy of the law to encourage arbitration allows for a faster and less expensive means of resolving disputes. 272 N.W.2d at 885. It is noteworthy that Chief Justice Reynoldson, in his concurrence, recognizes that Iowa has long favored arbitration of specific disputes for the same policy reasons mentioned by the dissent. The concern of the Chief Justice, however, is that the arbitration clause at issue in *Johnson* appears in a contract of adhesion. 272 N.W.2d at 874 (Reynoldson, C.J., concurring specially).

41. 272 N.W.2d at 886.

42. *Id.* at 887.

43. RESTATEMENT (SECOND) OF CONTRACTS § 237(3) (Tent. Draft Nos. 1-7, 1973).

44. *Id.*

45. 272 N.W.2d at 887.

46. *Id.*

47. The dissent would have the burden be upon the party seeking relief to commence arbitration proceedings. Since the insured in *Johnson* commenced suit rather than proceed with arbitration and since she failed to allege she went forward with the arbitration under the rules of the American Arbitration Association, Justice Uhlenhopp would find her petition deficient and dismiss the suit. *Id.* at 882-83.

contract, the parties may be forced to arbitrate disputes under provisions to which no real assent was given.[48]

It is well established that insurance contracts are contracts of adhesion.[49] Further, commentators have stated that applicants for insurance rarely read and even less frequently understand the language of their policy.[50] Thus, when an arbitration clause appears in the agreement, the applicant is not only probably unaware of the provision but would not comprehend the import of the clause even if he were to read it.[51] It was the concern of the concurrence that an insured may be forced to submit to arbitration under a clause he did not knowingly agree to and of which he was totally unaware. It was this concern that lead the Chief Justice to attack the dissent's arguments for enforceability of executory arbitration agreements.

The Chief Justice frames his arguments against the enforceability of arbitration clauses by examining two issues. First, he questions whether the requirement of a voluntary agreement to arbitrate is met and second, whether the reasonable expectations of the ordinary adherent have been frustrated by inclusion of the clauses in the uninsured motorist coverage.[52]

The first issue, whether there is a voluntary agreement between the parties, is of utmost importance in contractual agreements. Since every person is free to enter into contractual relationships, an agreement results only from the parties' voluntary entrance into the marketplace.[53] One commentator, in analyzing arbitration clauses in insurance contracts, has suggested several reasons for questioning whether arbitration terms in an uninsured motorist endorsement constitute a voluntary agreement.[54] First, the sale of automobile liability insurance is a "take it or leave it" proposition. There is virtually no bargaining between an insured and an insurer.[55] Second, the insured often has no opportunity to examine the policy until sometime after he has made application for coverage.[56] Third, since uninsured motorist coverage is subsidiary to the primary transaction of acquiring either liability or comprehensive coverage, the terms in the uninsured motorist portion of the policy are not the focus of the insured's interest and often go undiscovered.[57]

Armed with the argument that there is a probable lack of assent on the part of an insured to a mandatory arbitration clause, the concurrence opposes

---

48. *Id.* at 874.

49. Connie's Constr. Co. v. Fireman's Fund Ins. Co., 227 N.W.2d 207, 210 (Iowa 1975); Benzer v. Iowa Mut. Tornado Ins. Ass'n, 216 N.W.2d 385, 389 (Iowa 1974); 16 WILLISTON ON CONTRACTS 3d, § 1922B (1976) [hereinafter cited as WILLISTON]; *See* WIDISS, *supra* note 1, at § 6.8.

50. WILLISTON, *supra* note 49. *See* CORBIN ON CONTRACTS § 559 (1960).

51. WIDISS, *supra* note 1, at § 6.7.

52. 272 N.W.2d at 876-79.

53. Wright, *Arbitration Clauses in Adhesion Contracts*, 33 ARB. J. 41, 42 (1978).

54. *See* WIDISS, *supra* note 1, at § 6.7.

55. *Id.*

56. *Id.*

57. *Id.*

the dissent's proposed rule that arbitration clauses be enforceable regardless of the insured's lack of awareness of the arbitration provisions. According to Chief Justice Reynoldson, the essential condition of free exercise of choice by the parties in making a voluntary agreement cannot be satisfied by the dissent's reasoning. Such reasoning can only be grounded on the fiction that the adherent in an adhesion contract has read, understood and agreed to the provision which cuts him off from all judicial remedies.[58]

The second issue, whether the reasonable expectations of the ordinary adherent are frustrated by inclusion of an arbitration clause in their insurance policy, is an important consideration because, as Chief Justice Reynoldson argues, an Iowan reasonably expects the state's judicial resources to be available to him.[59] While courts have long looked to the language of a contract to find the meaning of the parties, they have also applied the adhesion contract doctrine to insurance policies, holding that in view of the disparate bargaining status of the parties, they must ascertain the meaning of the contract which the insured would reasonably expect.[60] This principle of reasonable expectations has been adopted by the Iowa court as a fundamental approach to insurance policy interpretation.[61]

An examination of Iowa case law reveals that the Iowa Supreme Court has held that the principle of reasonable expectations undergirds the rules applicable to construction of insurance contracts in Iowa.[62] Further, the court has stated that courts, in construing and applying a standardized contract, seek to effectuate the reasonable expectations of the average member of the public who accepts it.[63]

Marshalling these precedents, Chief Justice Reynoldson urged that the principle of reasonable expectations is applicable in the typical situation where the uninsured motorist coverage is delivered without explanation and is not read by the insured.[64] The dissent, on the other hand, would have the rule be that an adherent in an adhesion contract is bound by all the terms in the agreement except those which the maker has reason to believe the adherent would not assent to if he knew of the inclusion.[65] The Chief Justice further responded to the dissent's position by stressing that adoption of the dissent's rule would emasculate precedents in Iowa which state that a contract is construed strictly against its maker and in favor of an adherent in order to

58. 272 N.W.2d at 878.

59. *Id.* at 879.

60. Gray v. Zurich Ins. Co., 65 Cal.2d 263, ——, 419 P.2d 168, 171-72, 54 Cal. Rptr. 104, 107-08 (1968); Allen v. Metropolitan Life Ins. Co., 44 N.J. 294, ——, 208 A.2d 638, 644 (1965).

61. Rodman v. State Farm Mut. Auto. Ins., 208 N.W.2d 903, 906 (Iowa 1973) (interpreting an automobile insurance policy).

62. *Id.*

63. C & J Fertilizer, Inc. v. Allied Mut. Ins. Co., 227 N.W.2d 169, 172 (Iowa 1975) (action to recover for burglary loss under two insurance policies).

64. 272 N.W.2d at 879.

65. *Id.* at 887.

give effect to his reasonable expectations.[66] In rejecting the dissent's suggested rule, Chief Justice Reynoldson stated that the test is not whether the maker of an adhesion contract has reason to believe that an adherent would not assent to the terms of the agreement, but whether the contract gives effect to the adherent's reasonable expectations.[67]

In view of the foregoing discussion, it is suggested that the concurrence has taken the more enlightened approach. Chief Justice Reynoldson clearly does not advocate a blanket elimination of arbitration in settling contract disputes, for at the outset of his opinion, he notes that settlement of civil disputes by arbitration is a legally favored contractual proceeding. Further, he states that Iowa has always favored voluntary arbitration of specific disputes.[68] The objection raised by the concurrence, however, is that to enforce an arbitraton clause buried in an adhesion contract works an injustice on an unwary insured. It is clear, that by asserting that the arbitration clauses should be enforceable, the dissent would have the insured bound by a provision of which he is likely unaware and to which he did not voluntarily agree. An added complication of the dissent's position is that an insured's reasonable expectation of recourse to the judicial system would be cut off by allowing such clauses to be valid and enforceable. The better approach is the concurrence's reasoning, which recognizes that an insurance policy represents neither an agreement between the parties to submit their dispute to arbitration nor a knowledgeable waiver by the insured to forego his day in court.

Tim E. Jackson

---

66. *Id.* at 876.

67. *Id.*

68. *Id.* at 874. *See* First Nat'l Bank v. Clay, 231 Iowa 703, 713, 2 N.W.2d 85, 91 (1942); Iowa Code § 679 (1979); *see also* note 35 *supra.*

INSURANCE—AN INSURED MAY RECOVER UNDER A POLICY OF INSURANCE FOR DAMAGE TO OR THE DESTRUCTION OF AN INSURED BUILDING EVEN IF THE BUILDING IS REPAIRED OR REPLACED AT NO COST TO THE INSURED UNDER A BUILDER'S WARRANTY.—*Gustafson v. Central Iowa Mutual Insurance Association* (Iowa 1979).

The plaintiffs, Donald Stolte and W.R. Gustafson, were farmers residing in Boone County, Iowa who had obtained insurance from the defendants, Central Iowa Mutual Insurance Association and State Farm Fire and Casualty Co., covering their farm buildings against direct loss under a standard multiperil policy.[1] Both policies were in force at the time of the loss which was the subject of the lawsuit.[2]

In 1973 both Stolte and Gustafson contacted Morton Buildings, Inc., a company whose specialty is the construction of metal buildings for farm use.[3] In addition to providing the buildings, Morton furnished both plainitiffs with an express warranty which provided that Morton would replace the buildings free of charge if directly damaged by snow or wind loads within five years.[4] The State Farm policy issued to Stolte included the Morton shed on its schedule of covered buildings. Gustafson requested and secured a coverage change endorsement subsequent to the construction of the buildings which specifically included the two Morton sheds.[5]

On June 13, 1976, a tornado swept through Boone County extensively damaging the farms of Stolte and Gustafson and destroying the Morton buildings owned by both plaintiffs.[6] The plaintiffs notified Morton and their respective insurance carriers. Pursuant to the terms of the warranty, Morton replaced the buildings at no cost to the plaintiffs.[7] However, although indemnifying the plaintiffs in accordance with policy provisions for their other losses, the insurance carriers denied payment for the Morton buildings.[8]

As a result of these denials, Stolte and Gustafson both initiated separate lawsuits in the Boone County District Court.[9] Although not formally consolidated, the actions were submitted contemporaneously on a Joint Stipulation of Facts and Briefs to the trial court.[10] On June 2, 1978, judgment was entered in favor of the plaintiffs by the district court.[11] The cases were then consoli-

---

1. Gustafson v. Central Iowa Mut. Ins. Ass'n, 277 N.W.2d 609, 610 (Iowa 1979).
2. *Id.*
3. *Id.*
4. Briefs of the Appellants and Appellees, Appendix at 46. The complete warranty reads: "Morton Buildings, Inc. warrants farm buildings which it erects as follows: for a period of five (5) years to repair, or at its discretion, replace free of charge the building, framework, including roofing or side panels, if directly damaged by snow or wind loads." *Id.* at 46.
5. 277 N.W.2d at 610.
6. *Id.*
7. *Id.*
8. *Id.*
9. *Id.*
10. *Id.*
11. Brief of the Appellants at 1.