EXCLUSIONS FOR OWNED BUT NOT INSURED IN UNINSURED MOTORIST PROVISIONS—WHAT ARE STATES REALLY DRIVING AT IN THEIR DECISIONS?

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I. INTRODUCTION

Earl Clark owned an automobile and a motorcycle.[1] One day, while Earl was riding his motorcycle, an uninsured motorist negligently struck his motorcycle and killed him.[2] Earl had failed to insure his motorcycle, but had obtained insurance for his automobile.[3] His family attempted to collect uninsured motorist benefits under the policy issued on his automobile.[4] The insurance company refused to provide benefits, citing a policy provision which denied benefits for accidents involving vehicles owned by the insured but not covered by the policy.[5]

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1. Clark v. State Farm Mut. Auto. Ins. Co., 743 P.2d 1227, 1228 (Utah 1987).
2. *Id.*
3. *Id.*
4. *Id.*
5. *Id.*

The family argued the exception in the policy should be invalidated because a Utah statute provided a "personal right to uninsured motorist coverage."[6] The insurance company, however, successfully argued the insured should not be allowed to "purchase insurance on one vehicle and obtain coverage on all the other vehicles."[7]

There is no consensus verdict on this question. In more ways than one, it appears the jury—composed of courts and legislatures throughout the country—is hung.

First, jurisdictions are divided over whether an insured is entitled to uninsured motorist coverage for vehicles owned by the insured, but not insured under the policy.[8] While a majority of state courts and legislatures reject the validity of owned but not insured vehicle exclusions in uninsured motorist provisions, a solid minority upholds the validity of such exclusions.[9] Each jurisdiction casts its vote in favor of either the insured or the insurer, substantiating its vote with various reasons.

The second way the jury is hung is illustrated by the conflict between the courts and their respective state legislatures. The states' lower courts, highest courts, and legislatures constantly struggle to arrive at a verdict.

Part II of this Note presents a general overview of owned but not insured vehicle exclusions in the context of uninsured motorist provisions.[10] Part III sets forth the rationale underlying the states' decisions.[11] In Part IV, the decision-making process of selected states is examined in order to evaluate those states' analyses and conclusions.[12] Finally, after providing a better understanding of the controversy involved, this Note suggests upholding the validity of owned but not insured vehicle exclusions as the final verdict.[13]

II. OVERVIEW

A. *Owned But Not Insured Exclusions Defined*

Despite some policy variations, an owned but not insured exclusion in an uninsured motorist policy generally excludes uninsured motorist coverage for bodily injury sustained by a person covered under the policy while occupying a motor vehicle owned by an insured or relative living in the same household, but not insured for uninsured motorist coverage under the policy.[14] "Otherwise

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6. *Id.* (citing UTAH CODE ANN. 41-12-21.1 (1981) (recodified in UTAH CODE ANN. §§ 31A-22-302, 31A-22-305 (1986))).
7. *Id.* at 1229.
8. *See infra* notes 19-20 and accompanying text.
9. *See id.*
10. *See infra* notes 14-28 and accompanying text.
11. *See infra* notes 29-132 and accompanying text.
12. *See infra* notes 133-158 and accompanying text.
13. *See infra* note 159 and accompanying text.
14. 1 ALAN I. WIDISS, UNINSURED AND UNDERINSURED MOTORIST INSURANCE § 4.19, at 130 (1985).

stated, if an insured owns more than one vehicle, he has no uninsured motorist coverage when he is in the second vehicle unless he specifically insures the second vehicle for such coverage."[15] Therefore, if a person is in an accident with an uninsured motorist, and the person is in a vehicle owned by him but not insured, he would not be entitled to uninsured motorist coverage.[16] The insured may have purchased uninsured motorist insurance for the first vehicle, but that coverage does not extend to other vehicles not insured by the insurance company providing coverage on the first vehicle.[17]

B. *General Overview of the Controversy Involved*

The state courts that have ruled on the validity of whether owned but not insured exclusions in uninsured motorist provisions are divided.[18] The majority of the states have found these exclusions invalid for various reasons.[19] A minor-

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15. Gross v. Green Mountain Ins. Co., 506 A.2d 1139, 1141 (Me. 1986).

16. Frank v. Horizon Assurance Co., 553 A.2d 1199, 1204 (Del. 1989) (holding the exclusion is invalid as a matter of law because the provision is contrary to public policy).

17. *Id.*

18. *See infra* notes 19-20 and accompanying text.

19. Nationwide Mut. Ins. Co. v. Swisher, 731 F. Supp. 691, 696 (E.D. Pa. 1989), *superseded by statute as stated in* Nationwide Mut. Ins. Co. v. Barret, No. CIV.A. 89-6793, 1990 WL 63597 (E.D. Pa., May 11, 1990) (finding all insurance policies excluding coverage for occupying certain vehicles void as a matter of public policy); State Farm Auto. Ins. Co. v. Reaves, 292 So. 2d 95, 99 (Ala. 1974) (concluding the exception was void because it conflicted with the Alabama Uninsured Motorist Statute); Hillman v. Nationwide Mut. Fire Ins. Co., 758 P.2d 1248, 1251-52 (Alaska 1988) (holding the insurance provisions contravened state law); Calvert v. Farmers Ins. Co., 697 P.2d 684, 687 (Ariz. 1985) (holding legislative intent should be followed, and the legislative intent behind Arizona's statute conflicted with the uninsured motorist exclusion); Frank v. Horizon Assurance Co., 553 A.2d 1199, 1204 (Del. 1989) (finding that uninsured coverage shall not be undercut by restricted policy provisions, unless specifically authorized by law); Bass v. State Farm Mut. Auto. Ins. Co., 196 S.E.2d 485, 488 (Ga. Ct. App.) (holding under Georgia law, any insurance provision which does not provide payment to an injured insured as a result of fault from an uninsured motorist is void), *aff'd in part, rev'd in part on other grounds*, 201 S.E.2d 444 (Ga. 1973); Kau v. State Farm Mut. Auto. Ins. Co., 564 P.2d 443, 444 (Haw. 1977) (holding the statute must be liberally construed and a literal reading of the statute provided no room for the exclusion to exist); Squire v. Economy Fire & Casualty Co., 370 N.E.2d 1044, 1048-49 (Ill. 1977) (holding the insurance exclusion conflicted with the underlying purpose of the applicable Illinois statute); Lindahl v. Howe, 345 N.W.2d 548, 550-51 (Iowa 1984) (holding the exclusion was invalid because the state legislature had obviously intended to ensure protection to an insured motorist against motorists whose liability to the insured is not covered); Farmers Ins. Co. v. Gilbert, 791 P.2d 742, 748 (Kan. Ct. App.) (holding the exclusion was a narrow one since it only applied to uninsured vehicles), *aff'd*, 802 P.2d 556, 557 (Kan. 1990) (holding the uninsured motor vehicle exception can include underinsured motor vehicles, and therefore can invalidate the exception); Johnson v. Hanover Ins. Co., 508 N.E.2d 825, 848 (Mass. 1987) (finding owned but not insured exclusions invalid to the extent they fall below the statutory minimum); Lowery v. State Farm Mut. Auto. Ins. Co., 285 So. 2d 767, 777 (Miss. 1973) (holding the exclusionary clause in the present case violates public policy of Mississippi as manifested in the Mississippi Uninsured Motorist Act); Jacobson v. Implement Dealers Mut. Ins. Co., 640 P.2d 908, 911 (Mont. 1982) (exclusion cannot take effect when the insurance contract's language is inconspicuous and is not noticed by the average

ity of states, however, have upheld the validity of owned but not insured exclusions primarily because they are neither contrary to public policy nor in conflict with any state statute.[20] The gap, however, is narrowing based on recent

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policyholder); State Farm Mut. Auto. Ins. Co. v. Hinkel, 488 P.2d 1151, 1153 (Nev. 1971) (holding exclusion cannot exist unless insured actually waives part of his insurance); Beek v. Ohio Casualty Ins. Co., 342 A.2d 547, 549 (N.J. Super. Ct. App. Div. 1975) (holding the exclusionary clause the court relied on was "invalid and ineffective"), *aff'd*, 373 A.2d 654 (N.J. 1977) (per curiam); Chavez v. State Farm Mut. Auto. Ins. Co., 533 P.2d 100, 103 (N.M. 1975) (holding the statute did not intend for exclusionary clauses to limit coverage); Cothren v. Emcaso Ins. Co., 555 P.2d 1037, 1040 (Okla. 1976) (holding exclusions inconsistent with the purpose and philosophy of mandatory uninsured motorist coverage); Windrim v. Nationwide Mut. Ins. Co., 602 A.2d 1356, 1358 (Pa. Super. Ct.) (finding legislative intent not to deny uninsured motorist benefits to owners/operators of uninsured vehicles), *rev'd*, 641 A.2d 1154, 1157-58 (Pa. 1992) (holding exclusion in insurance policy is valid and enforceable when an individual is operating his own uninsured vehicle at the time of the accident); Hogan v. Home Ins. Co., 194 S.E.2d 890, 892 (S.C. 1973) (stating that a policy provision is clearly a limitation upon the broad coverage required by the statute and is void); Monteith v. Jefferson Ins. Co., 618 A.2d 488, 491 (Vt. 1992) (finding clause in policy denying coverage is inconsistent with Vermont law and is unenforceable); Doss v. State Farm Ins. Co., 786 P.2d 801, 804 (Wash. Ct. App. 1990) (holding validity of clause in uninsured motorist section of policy is governed by former statute because amendments may not be applied retroactively, therefore the clause is unenforceable); Bell v. State Farm Mut. Auto. Ins. Co., 207 S.E.2d 147, 150 (W. Va. 1974) (finding exclusionary clauses that are more restrictive than statute or add requirements not authorized by statute are repugnant to statute and therefore void); Welch v. State Farm Mut. Auto. Ins. Co., 361 N.W.2d 680, 685 (Wis. 1985) (indicating exclusionary clauses are contrary to the legislative intent embodied in Wisconsin's uninsured motorist statute).

20. Crawford v. Emcasco Ins. Co., 745 S.W.2d 132, 134 (Ark. 1988) (finding the legislature did not intend an insured to be allowed to extend insurance coverage on one vehicle to all of the insured's vehicles); Interinsurance Exch. of the Auto Club v. Alcivar, 156 Cal. Rptr. 914, 916-17 (Cal. Ct. App. 1979) (indicating the insurance policy exclusion contained language similar to the statute); Terranova v. State Farm Mut. Auto. Ins. Co., 800 P.2d 58, 60 (Colo. 1990) (finding uninsured motorist provision excluding coverage when the insured occupies an owned but not insured vehicle under that policy to be "clear and unambiguous" and not contrary to public policy); Williams-Diehl v. State Farm Fire & Casualty Co., 793 P.2d 587, 589 (Colo. Ct. App. 1989) (the statute "authorizes an insurer to deny coverage in the same situation when an 'owned-but-uninsured' exclusion would operate"); Travelers Ins. Co. v. Kulla, 579 A.2d 525, 529 (Conn. 1990) (stating the "person oriented" policy of the uninsured motorist statute does not apply to the owned but not insured exclusion); Hill v. Maryland Casualty Co., 620 A.2d 1336, 1337 (D.C. 1993) (finding the insurance policy unambiguously excluded vehicles not insured); New Hampshire Ins. Group v. Harbach, 439 So. 2d 1383, 1386 (Fla. 1983) (stating that Florida's former statute provided "no uninsured motorist protection when the vehicle involved in an accident was not covered by the insurance policy on which the uninsured motorist claim is made"); Dullenty v. Rocky Fire & Casualty Co., 721 P.2d 198, 200 (Idaho 1986) (determining coverage of vehicle owned but not insured was effectively excluded by clause excluding other vehicles owned by the insured); Safeco Ins. Co. v. Hubbard, 578 S.W.2d 49, 50 (Ky. 1979) (holding exclusion was reasonable), *overruled by* Chaffin v. Kentucky Farm Bureau Ins. Co., 789 S.W.2d 754 (Ky. 1990); Sandez v. State Farm Mut. Auto. Ins. Co., 620 So. 2d 441, 444 (La. Ct. App. 1993) (finding specific legislation supported the validity of the exclusion clause); Daigle v. Hartford Casualty Ins. Co., 573 A.2d 791, 792 (Me. 1990) (finding motorcycle owned but not insured was a "motor vehicle" owned by the insured for the purpose of the exclusion); Powell v. State Farm Mut. Auto. Ins. Co., 585 A.2d 286, 289-90 (Md. Ct. Spec. App. 1991) (upholding the exclusion as the policy prevents an insured from buying insurance for one car only and extending the insurance to other vehicles owned by the insured); Auto-Owners Ins. Co. v. Estate of Johnson, 459 N.W.2d 7, 8 (Mich. Ct. App. 1990) (holding owned

decisions.[21] The law on this issue is still in a transitional stage, and "jurisdictions in the minority have not diminished."[22]

Many of the state courts that have ruled on this issue have been overruled, and state legislatures have subsequently superseded their state courts' decisions by statute.[23] Therefore, one of the purposes of this Note is to provide not only the statistics addressing which states have adopted a favorable or unfavorable posi-

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vehicle exclusions "valid and enforceable" when the language of the provision is clear and unambiguous); Hanson v. American Family Mut. Ins. Co., 417 N.W.2d 94, 95-96 (Minn. 1987) (holding a motorcycle is included in the definition of uninsured motor vehicle); Herrick v. Liberty Mut. Fire Ins. Co., 274 N.W.2d 147, 149 (Neb. 1979) (holding that the uninsured motorist statute does not "protect uninsured motorists from another uninsured motorist"); Beliveau v. Norfolk & Dedham Mut. Fire Ins. Co., 411 A.2d 1101, 1103 (N.H. 1980) (stating "the household exclusion clause in the uninsured motorist provisions of this policy as applied to an owner-occupant of an uninsured vehicle is not repugnant to [the state's statute]"); Hedrick v. Motorists Mut. Ins. Co., 488 N.E.2d 840, 843 (Ohio 1986) (holding uninsured motorist coverage protects people not compensated because of the tortfeasor's lack of liability insurance); Martin v. Mid-Western Group Ins. Co., 639 N.E.2d 438, 441 (Ohio 1994)(holding that an automobile insurance policy which "eliminates uninsured motorist coverage" for persons injured in a vehicle owned by the insured but is not specifically listed in the policy violates state statute and thus is invalid); Mackie v. Unigard Ins. Co., 752 P.2d 1266, 1268 (Or. Ct. App. 1988) (determining definition of "occupying" in valid owned but not insured exclusion pursuant to the statute); Employers' Fire Ins. Co. v. Baker, 383 A.2d 1005, 1008 (R.I. 1978) (holding an insurance policy is a contract between the insured and the insurer, and nothing in plain language of the statute mandates extending insurance policy to other vehicles not covered under policy); Dockins v. Balboa Ins. Co., 764 S.W.2d 529, 532 (Tenn. 1989) (finding statutory amendments do not show legislative intent to transform uninsured motorist requirements into broad coverage effectively providing personal injury protection); Equitable Gen. Ins. Co. v. Williams, 620 S.W.2d 608, 611 (Tex. Civ. App. 1981) (holding an exclusionary clause is not an invalid denial or restriction of coverage); Clark v. State Farm Mut. Auto. Ins. Co., 743 P.2d 1227, 1229 (Utah 1987) (finding no legislative intent statute that would allow an individual to purchase insurance on one vehicle and obtain coverage on all other vehicles in his household).

21. Crawford v. Emcaso Ins. Co., 745 S.W.2d at 134.

22. Clampit v. State Farm Mut. Auto. Ins., 828 S.W.2d 593, 597 (Ark. 1992).

23. Rodriquez v. Maryland Indem. Ins. Co., 539 P.2d 196 (Ariz. Ct. App. 1975), *overruled by* Calvert v. Farmers Ins. Co., 697 P.2d 684, 687 (Ariz. 1985) (finding the statute is remedial and intended to protect victims of financially irresponsible drivers); Harvey v. Travelers Indem. Co., 449 A.2d 157 (Conn. 1982), *superseded by statute as stated in* Travelers Ins. Co. v. Kulla, 579 A.2d 525, 530 (Conn. 1990) (finding the statute requires the universial vehicle be casually connected to loss for which claimant seeks compensation); New Hampshire Ins. Group v. Harbach, 439 So. 2d 1383 (Fla. 1983), *superseded by amendment as stated in* Automobile Ins. Co. v. Beem, 469 So. 2d 138, 140 (Fla. Dist. Ct. App. 1985) (finding the Harbach decision had limited applicability since anti-stacking statute on which it was based was amended to omit reference to uninsured motorist protection); Mullis v. State Farm Mut. Auto. Ins. Co., 252 So. 2d 229 (Fla. 1971), *superseded by statute as stated in* Carbonell v. Automobile Ins. Co., 562 So. 2d 437, 438 (Fla. Dist. App. Ct. 1990) (finding the statute allows insurers to limit uninsured motorist coverage if certain notice requirements are met); Elledge v. Warren, 263 So. 2d 912 (La. Ct. App. 1968), *superseded by statute as stated in* Sandoz v. State Farm Mut. Auto. Ins. Co., 620 So. 2d 441, 444 (La. Ct. App. 1993) (finding the statute does not permit recovery if insured is occupying a vehicle not described by policy under which a claim is made); Nygaard v. State Farm Mut. Auto. Ins. Co., 221 N.W.2d 151 (Minn. 1974), *superseded by statute as stated in* Hanson v. American Family Mut. Ins. Co., 417 N.W.2d 94, 95 (Minn. 1987) (finding the statute alters principle that uninsured motorist protection follows the person and not the vehicle).

tion toward owned but not insured exclusions, but also the reasoning behind the decisions rendered.[24]

> Sheer numbers of decisions of other jurisdictions one way or the other on any given question are of course not controlling on this Court, and the decisions are persuasive only as they contain analysis and reasoning which recommends itself to this Court.
>
> Unfortunately, few of the opinions of other courts which have addressed the issue, regardless of the result reached, contain what we perceive as any in-depth analysis or reasoning.[25]

The current law of each jurisdiction is not the primary focus of this Note. A presentation of the analysis and reasoning behind courts' decisions enables other jurisdictions to compare this information with their own factual circumstances and respective statutes in order to deduce their own conclusions.

Furthermore, the controversy over the validity of owned but not insured exclusions continues.[26] The battle between jurisdictions, and between the state courts and their legislatures is far from over. Therefore, a study of the decision-making process of states that have made multiple changes in the law concerning the validity of exclusions allows other jurisdictions to re-evaluate their current position.

A comparison of the views expressed by legal scholars Alan Widiss and John and Jean Appleman clearly illustrates the debate over the validity of owned but not insured exclusions. Professor Widiss disfavors owned but not insured exclusions for several reasons:

> Several courts have upheld this clause "as a legitimate business purpose of the company." In other words, these decisions allow the insurer to withhold protection which would otherwise exist as a means of penalizing the claimant for owning and operating an uninsured vehicle—even though that status is completely unrelated to the claim under the uninsured motorist endorsement.
>
> It is difficult to accept the propriety of such a restriction on coverage. First, the importance or value of the imputed business purpose for this exclusion seems tenuous as applied to the purchaser who owns more than one vehicle. Acquisition of insurance for a second vehicle is relatively inexpensive; therefore permitting the insurer to withhold coverage for the small return seems of dubious merit. Second, the acceptance of this exclusion as a "legitimate business purpose" of the insurer with respect to vehicles owned by relatives (residing in the same household) only follows if one expects that such relatives in the same household would buy insurance

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24. *See infra* text accompanying notes 30-132.

25. Dullenty v. Rocky Mountain Fire & Casualty Co., 721 P.2d 198, 203 (Idaho 1986); *see also* Clampit v. State Farm Mut. Auto. Ins., 828 S.W.2d at 595-96 (stating that few of the opinions in other courts which have addressed the issue contain any in-depth analysis or reasoning).

26. *See supra* notes 18-20 and accompanying text.

> from the same [insurance] company. This seems an unwarranted assumption. Third, insofar as the uninsured motorist coverage is in theory predicated solely on the negligence of the unrelated uninsured motorist, there seems to be little reason to impose a limitation other than that of fault. Fourth, this exclusion directly conflicts with a strong public policy which favors indemnification of accident victims unless they are responsible for the accident.
>
> There seems to be a growing trend of decisions in which the courts have taken the position that such restrictions upon the coverage (so long as they are not specifically authorized by the state's uninsured motorist legislation) are against the public policy and therefore void.[27]

Appleman on the other hand explains why owned but not insured exclusions should be upheld:

> Most policies limit the basic UM coverage to the vehicle upon which it was purchased, except as to the carryover effect when operating, or riding in, a nonowned vehicle. It is scarcely the purpose of any insurer to write a single UM coverage upon one of a number of vehicles owned by an insured, or by others in the household, and extend the benefits of such coverage gratis upon all other vehicles—any more than it would write liability, collision, or comprehensive coverages upon one such vehicle and indemnify for such losses as to any other vehicle involved. Nor would any reasonable person so expect. It would be actuarially unsound. To give an extreme case . . . a city or large industry may have a fleet of several hundred vehicles—if it purchased UM coverage upon one such automobile, would it be reasonable to expect like coverage upon every vehicle in that fleet? Yet that is precisely what is expected, on a reduced scale, by those decisions which hold void an exception to coverage as to other vehicles owned by the insured upon which he elects not to carry UM coverage.[28]

III. ANALYSIS AND REASONING FOR EACH SIDE OF THE ISSUE

The majority of the states have ruled owned but not insured exclusions in uninsured motorist provisions are invalid.[29] The reasoning in these decisions and the applicable statutes and exclusions in the insurance policies vary. Therefore, it is important to distinguish the decisions with the factors of each case.

A. *Statutory Intent*

In 1957, New Hampshire was the first state to statutorily mandate uninsured motorist coverage in all liability insurance policies protecting all motor

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27. ALAN I. WIDISS, A GUIDE TO UNINSURED MOTORIST COVERAGE § 2.9, at 28 (1969); *cf.* JOHN A. APPLEMAN & JEAN A. APPLEMAN, INSURANCE LAW AND PRACTICE § 5078.15 (1981).

28. APPLEMAN & APPLEMAN, *supra* note 27.

29. *See supra* note 19 and accompanying text.

vehicles principally used or garaged in New Hampshire.[30] Forty-nine states have passed legislation requiring uninsured motorist coverage to be included in all automobile liability insurance policies.[31] Even though legislation for a standard coverage provision for the uninsured motorist endorsement exists in virtually every state, not all of the statutes nor the insurance policies conform to the terms of the standard endorsement.[32]

1. *Majority Viewpoint—Owned but Not Insured Exclusions Invalid*

Courts interpret the statutory intent of the legislators in order to determine the validity of owned but not insured exclusions. Some courts uphold the validity of the exclusion by interpreting the legislative intent of uninsured motorist statutes as a protective measure for victims of uninsured motorists.[33] In *Frank v. Horizon Assurance Co.*,[34] the court found "[t]he legislative purpose embodied in the requirement that uninsured motorist coverage be available to all members of the public is clear: the protection of innocent persons from the negligence of unknown or impecunious tortfeasors."[35] Similarly, in *Veach v. Farmers Insurance Co.*,[36] the Iowa Supreme Court found the purpose of uninsured motorist coverage was to "ensure minimum compensation to victims of uninsured motorists."[37]

Some states interpreted the statutory intent of the uninsured motorist statute, and the legislature subsequently amended the statute specifically to provide for that which the court prohibited.[38] For example, in *Elledge v. Warren*,[39] the court recognized "'the intent of our uninsured motorist statute and the policy endorsement issued thereunder is to afford protection to the insured when they become the innocent victims of the negligence of uninsured motorists.'"[40] The statute provided:

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30. 1 WIDISS, *supra* note 14, § 1.11, at 14.

31. *Id.*

32. *Id.*

33. *See* Frank v. Horizon Assurance Co., 553 A.2d 1199 (Del. 1989); Veach v. Farmers Ins. Co., 460 N.W.2d 845 (Iowa 1990); State Farm Mut. Auto. Ins. Co. v. Williams, 392 A.2d 281, 285-87 (Pa. 1978).

34. Frank v. Horizon Assurance Co., 553 A.2d 1199 (Del. 1989).

35. *Id.* at 1201.

36. Veach v. Farmers Ins. Co., 460 N.W.2d 845 (Iowa 1990).

37. *Id.* at 848. The court found it important to distinguish between uninsured motorist coverage and underinsured motorist coverage. *Id.* While the purpose of uninsured motorist coverage is to ensure minimum coverage for the victim, the goal of underinsured motorist coverage is to ensure full compensation for the victim. *Id.*

38. Elledge v. Warren, 263 So. 2d 912 (La. Ct. App.), *superseded by statute as stated in* Sandoz v. State Farm Mut. Auto. Ins. Co., 620 So. 2d 441 (La. Ct. App. 1993).

39. Elledge v. Warren, 263 So. 2d 912 (La. Ct. App.), *superseded by statute as stated in* Sandoz v. State Farm Mut. Auto. Ins. Co., 620 So. 2d 441 (La. Ct. App. 1993).

40. *Id.* at 917 (quoting Booth v. Freedman's Fund Ins. Co., 218 So. 2d 580, 583 (La. 1969)).

> No automobile liability insurance covering liability arising out of the ownership, maintenance, or use of any motor vehicle shall be delivered or issued for delivery in this state with respect to any motor vehicle registered or principally garaged in this state unless coverage is provided therein or supplemental thereto, in not less than the limits of bodily injury liability provided by the policy . . . for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured or underinsured motor vehicles because of bodily injury, sickness, or disease, including death, resulting therefrom; provided, however, that the coverage required under this Subsection shall not be applicable where any insured named in the policy shall reject in writing the coverage . . . or selects lower limits. Such coverage need not be provided in or supplemental to a renewal or substitute policy where the named insured has rejected the coverage or selected lower limits in connection with a policy previously issued to him by the same insurer.[41]

In 1988, the Louisiana Legislature specifically amended the statute to preclude an insured from receiving uninsured motorist coverage while occupying an owned but not insured vehicle.[42] The amendment provides:

> The uninsured motorist coverage does not apply to bodily injury, sickness, or disease, including death of an insured resulting therefrom, while occupying a motor vehicle owned by the insured if such motor vehicle is not described in the policy under which a claim is made, or is not a newly acquired or replacement motor vehicle covered under the terms of the policy.[43]

Some courts of the majority viewpoint interpret its uninsured motorist statute as prohibiting owned but not insured exclusions because the language in the statute fails to specifically allow such exclusions.[44] These courts are unwilling to permit these exclusions and find it contrary to the legislature's responsibility to provide for the authorization of owned but not insured exclusions.[45] In *Calvert v. Farmers Insurance Co.*,[46] the court recognized various exclusions the legislature authorized in the uninsured motorist statute, and determined "[i]f the Legislature had intended to include additional exclusions, such as an 'other vehicle' exclusion, it would have expressly done so."[47]

Finally, courts of the majority viewpoint prohibit owned but not insured exclusions for certain insureds and authorize such exclusions for other insureds

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41. LA. REV. STAT. ANN. § 22:1406(D)(1) (West 1972) (amended 1988).
42. *Id.* § 22:1406(D)(1)(e).
43. *Id.*
44. State Farm Auto. Ins. Co. v. Reaves, 292 So. 2d 95, 99-100 (Ala. 1974).
45. *Id.* at 100.
46. Calvert v. Farmers Ins. Co., 697 P.2d 684 (Ariz. 1985).
47. *Id.* at 687.

based on state statutes which define two classes of insureds.[48] To illustrate, in *Allstate Insurance Co. v. Meeks*,[49] the court found the legislature "intended to create two classes of insured persons with different benefits to each."[50] The court interpreted its applicable statute[51] and determined:

> It will be observed that the language of subsection (c) is plain and unambiguous. It first includes within the term "insured," "the named insured * * * while in a motor vehicle or otherwise." Here the language used does not limit or restrict the coverage to the named insured while he is in or operating the vehicle covered by the policy. On the contrary, the coverage extends to him while he is "in a motor vehicle," that is, in any motor vehicle, "or otherwise."
>
> Under the next language of subsection (c) the term "insured" includes "any person who uses, with the consent, expressed or implied, of the named insured, the motor vehicle to which the policy applies and a guest in such motor vehicle to which the policy applies." Here coverage to a permissive user and a guest is limited to the use of the "vehicle to which the policy applies."[52]

Therefore, there are circumstances, based on statutory language and interpretation, in which one category of insured is protected regardless of the vehicle the insured occupied at the time of the injury, and another category of insured is limited to protection when occupying the named vehicle in the policy.[53]

2. *Minority Viewpoint—Owned but Not Insured Exclusions Valid*

Courts in the minority interpret the statutory intent of uninsured motorist statutes differently and conclude the legislature did not intend to invalidate owned but not insured exclusions.[54] While majority courts find "[i]t is not the intent of the legislature to require the [insurer] to offer protection with one hand and then take a part of it away with the other,"[55] minority courts find it is not the

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48. Gulf Am. Fire & Casualty Co. v. McNeal, 154 S.E.2d 411, 416 (Ga. 1967); Lowery v. State Farm Mut. Auto. Ins. Co., 285 So. 2d 767, 771 (Miss. 1973); Hogan v. Home Ins. Co., 194 S.E.2d 890, 892 (S.C. 1973); Allstate Ins. Co. v. Meeks, 153 S.E.2d 222, 223-24 (Va. 1967).

49. Allstate Ins. Co. v. Meeks, 153 S.E.2d 222 (Va. 1967).

50. *Id.* at 223-24.

51. VA. CODE ANN. § 38.1-381(b), (c) (repealed 1953). The statute defined an insured as:

> [T]he named insured and, while resident of the same household, the spouse of any such named insured, and relatives of either, while in a motor vehicle or otherwise, and any person who uses, with the consent, expressed or implied, of the named insured, the motor vehicle to which the policy applies . . . or the personal representative of any of the above.

52. Allstate Ins. Co. v. Meeks, 153 S.E.2d at 223 (quoting VA. CODE ANN. § 38.1-381(b), (c) (repealed 1953)).

53. *See supra* text accompanying notes 48-52.

54. Pennsylvania Nat'l Mut. Casualty Ins. Co. v. Gartelman, 416 A.2d 734, 736 (Md. 1980); Clark v. State Farm Mut. Auto. Ins. Co., 743 P.2d 1227, 1229 (Utah 1987).

55. State Farm Mut. Auto. Ins. Co. v. Hinkel, 488 P.2d 1151, 1153 (Nev. 1971).

intent of the legislature "to allow an individual to purchase insurance on one vehicle and obtain coverage on all the other vehicles in his household."[56]

It is important to look at the particular state's statute involved in order to understand the court's interpretation. Some state statutes include provisions that expressly authorize owned but not insured exclusions,[57] whereas, other statutes impliedly authorize owned but not insured exclusions.[58] For example, in *Pennsylvania National Mutual Casualty Insurance Co. v. Gartelman*,[59] the applicable uninsured motorist statute provides uninsured motorist "claims may be maintained provided that: 'The claimant was not, at the time of the accident, operating or riding in an uninsured motor vehicle owned by him and is not the personal representative of the person so operating or riding in such a vehicle.'"[60] The court interpreted this statute as expressly excluding an insured who was injured while occupying an uninsured vehicle which he owned from coverage.[61] The statute did not, however, preclude an insured from coverage when injured in an uninsured vehicle which he does not own.[62] The court stated the purpose of the statute is to encourage owners of uninsured vehicles to insure their vehicles.[63]

In comparison, in *Lumbermens Mutual Casualty Co. v. Stern*,[64] the applicable Florida statute provided:

> If an insured or named insured is protected by any type of motor vehicle insurance policy for liability, uninsured motorist personal injury protection, or other coverage, the policy shall provide that the insured or named insured is protected only to the extent of the coverage he has on the vehicle involved in the accident. However, if none of the insured's or named insured's vehicles is involved in the accident, coverage is available only to the extent of coverage on any one of the vehicles with applicable coverage. Coverage on any other vehicles shall not be added to or stacked upon that coverage. This section shall not apply: to reduce the coverage available by reason of insurance policies insuring different named insureds.[65]

The court interpreted this uninsured motorist statute to "clearly evince[] a two-fold purpose: (1) to prohibit the stacking of insurance coverages; and (2) to restrict the insured to the coverage he has on the vehicle involved in the accident."[66]

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56. Clark v. State Farm Mut. Auto. Ins. Co., 743 P.2d at 1229.

57. *See* Pennsylvania Nat'l Mut. Casualty Ins. Co. v. Gartelman, 416 A.2d at 736; CAL. INS. CODE §11580.2(c) (West 1994).

58. Lumbermens Mut. Casualty Co. v. Stern, 433 So. 2d 48 (Fla. Dist. Ct. App. 1983).

59. Pennsylvania Nat'l Mut. Casualty Ins. Co. v. Gartelman, 416 A.2d 734 (Md. 1980).

60. *Id.* at 737 (quoting MD. CODE ANN. art. 48A, § 243H(a)(1)(i) (1957)).

61. *Id.* at 738.

62. *Id.* at 739.

63. *Id.* at 737-38.

64. Lumbermens Mut. Casualty Co. v. Stern, 433 So. 2d 48, 49 (Fla. Dist. Ct. App. 1983).

65. *Id.* (quoting FLA. STAT. ch. 627.4132 (1977)). *Cf.* LA. REV. STAT. ANN. § 22:1406(D)(1) (West 1994), *supra* text accompanying notes 41-43.

66. *Id.* at 49.

Some minority states, however, have statutes similar to those of majority states, yet the minority courts found the legislature did not intend to invalidate owned but not insured exclusions.[67] For instance, in *Dullenty v. Rocky Mountain Fire & Casualty Co.*,[68] Idaho's uninsured motorist statute closely resembled Louisiana's uninsured motorist statute discussed in *Elledge*.[69] The *Elledge* court found the purpose of the statute invalidated owned but not insured exclusions.[70] In *Dullenty*, however, the court found "no legislative intent one way or the other" expressed the issue of whether owned but not insured exclusions should be enforced.[71] The court concluded the legislature would have specified that exclusionary clauses are unenforceable if it so intended.[72] As a result, the court upheld the validity of owned but not insured exclusions.[73]

B. *Coverage as Applied to Insured or as Applied to Vehicle*

Another line of reasoning used to determine the validity of owned but not insured exclusions is whether the insurance coverage applies to the individual insured or to the vehicle itself. Many courts invalidate owned but not insured exclusions based on the theory that uninsured motorist insurance applies to the insured rather than the vehicle.[74] Thus, it does not matter which vehicle the

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67. Dullenty v. Rocky Mountain Fire & Casualty Co., 721 P.2d 198, 202 (Idaho 1986).

68. Dullenty v. Rocky Mountain Fire & Casualty Co., 721 P.2d 198 (Idaho 1986).

69. *Id.* at 205; Elledge v. Warren, 263 So. 2d 912, 917 (La. Ct. App. 1972), *superseded by statute as stated in* Sandoz v. State Farm Mut. Auto. Ins. Co., 620 So. 2d 441, 444 (La. Ct. App. 1993). The Idaho statute provides in part:

> No policy insuring against loss resulting from liability imposed by law for bodily injury or death suffered by any natural person arising out of the ownership, maintenance or use of a motor vehicle shall be delivered or issued for delivery in this state with respect to any motor vehicle registered or principally garaged in this state unless coverage is provided therein or supplemental thereto, in limits for bodily injury or death as set forth in section 49-1505 . . . for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles . . . provided, however, that the named insured shall have the right to reject such coverage, which rejection must be in writing; and provided further, such coverage need not be provided in or supplemental to a renewal policy where the named insured had rejected the coverage in connection with a policy previously issued to him by the same insurer.

IDAHO CODE § 41.2502 (1991); *cf.* LA. REV. STAT. ANN. § 22:1406(D)(1) (West 1991), *supra* text accompanying notes 41-43.

70. Elledge v. Warren, 263 So. 2d at 917-18.

71. Dullenty v. Rocky Mountain Fire & Cas. Co., 721 P.2d at 205.

72. *Id.* at 206.

73. *Id.* at 206-07.

74. *See* Nationwide Mut. Ins. Co. v. Swisher, 731 F. Supp. 691, 696 (E.D. Pa. 1989), *superseded by statute as stated in* Nationwide Mut. Ins. Co. v. Barrett, No. CIV.A. 89-6793, 1990 WL 63597 (E.D. Pa., May 11, 1990); Hillman v. Nationwide Mut. Fire Ins. Co., 758 P.2d 1248, 1251-52 (Alaska 1988); Bradley v. Mid-Century Ins. Co., 294 N.W.2d 141, 149-52 (Mich. 1980); Elledge v. Warren, 263 So. 2d 912, 918-19 (La. Ct. App. 1972), *superseded by statute as stated in*

insured occupied at the time of the accident, the insured would still be covered because uninsured motorist coverage is "personal and portable."[75]

These courts claim the policy underlying the uninsured motorist statutes is to protect an insured from uninsured motorists at all times.[76] Therefore, "[t]he only relation that the insured must have to automobiles at the time of the accident is that he be injured by an automobile driven by an uninsured motorist."[77] Otherwise, a person who is hit by an uninsured motorist while occupying someone else's vehicle can receive coverage, but cannot receive coverage while occupying the person's own vehicle because the vehicle is not insured.[78] Some courts have even stated that a person is insured if the person is injured by an uninsured motorist regardless of whether the person is "in an owned vehicle named in the policy, in an owned vehicle not named in the policy, in an unowned vehicle, on a motorcycle, on a bicycle, whether afoot or on horseback or even on a pogo stick."[79] In *Motorists Mutual Insurance Co. v. Bittler*,[80] the court even held coverage extended to an insured "while sitting in his rocking chair on his front porch."[81]

Other majority courts hold uninsured motorist coverage applies to the person rather than the vehicle based on its uninsured motorist statute.[82] For example, in *Calvert v. Farmers Insurance Co.*,[83] the court found "nothing in our uninsured motorist statute which limits coverage depending on the location or status of the insured. Thus, our uninsured motorist protection is portable. . . . Any gaps in uninsured motorist protection dependent on location of the insured should be sanctioned by the Legislature and not by this Court."[84]

In contrast, minority courts uphold the validity of owned but not insured exclusions based on the theory that coverage applies to the vehicle itself and does not extend to the insured when the insured is not occupying the insured vehicle.[85] Therefore, "an insurer is permitted to limit uninsured motorist coverage to those vehicles owned by the insured which are actually covered under the policy."[86] In

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Sandoz v. State Farm Mut. Auto. Ins. Co., 620 So. 2d 441, 444 (La. Ct. App. 1993); Smith v. Nationwide Mut. Ins. Co., 400 S.E.2d 44, 50-51 (N.C. 1991).

75. Bradley v. Mid-Century Ins. Co., 294 N.W.2d at 152. *But see* Auto-Owners Ins. Co. v. Estate of Johnson, 459 N.W.2d 7, 8 (Mich. Ct. App. 1990).

76. Jacobson v. Implement Dealers Mut. Ins. Co., 640 P.2d 908, 911 (Mont. 1982).

77. Elledge v. Warren, 263 So. 2d at 918 (citations omitted), *superseded by statute as stated in* Sandoz v. State Farm Mut. Auto. Ins. Co., 620 So. 2d 441 (La. Ct. App. 1993).

78. Dullenty v. Rocky Mountain Fire & Casualty Co., 692 P.2d 1209, 1211 (Idaho Ct. App. 1984), *rev'd*, 721 P.2d 198 (Idaho1986).

79. Bradley v. Mid-Century Ins. Co., 294 N.W.2d at 141, 152 (Mich. 1980).

80. Motorists Mut. Ins. Co. v. Bittler, 235 N.E.2d 745 (Ohio Ct. App. 1968).

81. *Id.* at 751.

82. *See, e.g.*, Calvert v. Farmers Ins. Co., 697 P.2d 684 (Ariz. 1985).

83. Calvert v. Farmers Ins. Co., 697 P.2d 684 (Ariz. 1985).

84. *Id.* at 689.

85. *See* Rodriquez v. Maryland Indem. Ins. Co., 539 P.2d 196, 197-98 (Ariz. Ct. App. 1975), *overruled by* Calvert v. Farmers Ins. Co., 697 P.2d 684 (Ariz. 1985); Crawford v. Emcasco Ins. Co., 745 S.W.2d 132, 134 (Ark. 1988); Employers' Fire Ins. Co. v. Baker, 383 A.2d 1005, 1008-09 (R.I. 1978); Clark v. State Farm Mut. Auto. Ins. Co., 743 P.2d 1227, 1229-30 (Utah 1987).

86. Employers' Fire Ins. Co. v. Baker, 383 A.2d at 1008.

Clark v. State Farm Mutual Automobile Insurance Co.,[87] however, the court explained the coverage applied to the vehicle rather than the insured because the applicable uninsured motorist statute provided the insured with the option to reject such coverage.[88]

C. *Contract Interpretation*

Insurance policies are generally construed in favor of the insured, and exclusions in insurance policies are not favored.[89] Majority jurisdictions hold owned but not insured exclusions cannot be enforced because the provisions are not clearly stated.[90] Thus, the uninsured policy should be strictly construed in favor of the insured.[91] If "[t]he exclusion clause in the [insurance] . . . policy is lost in the myriad of verbiage that makes up the insurance contract,"[92] then it is unenforceable.[93]

Minority jurisdiction courts, however, hold the owned but not insured provisions are clearly stated and should be enforced according to contract law.[94] "If the language of an exclusionary clause in an insurance policy is clear and unambiguous, the well established rule of construction directing adoption of that construction most favorable to the insured, is not applicable."[95] The location and format of the exclusionary clause in the insurance policy is sometimes taken into consideration to determine whether the exclusion is unambiguously and unequivocally valid.[96] For example, in *Gross v. Green Mountain Insurance Co.*,[97] the court upheld the validity of an owned but not insured exclusion, relying heavily on the fact that the exclusion was one of the first six exclusions immediately following the general policy provisions and the exclusion was clearly expressed in bold-face print.[98]

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87. Clark v. State Farm Mut. Auto. Ins. Co., 743 P.2d 1227 (Utah 1987).
88. *Id.* at 1229.
89. APPLEMAN & APPLEMAN, *supra* note 27, § 7483 (1976).
90. Boucher v. Employers Mut. Casualty Co., 431 A.2d 137, 138-39 (N.H. 1981).
91. *Id.* at 138-39.
92. Jacobson v. Implement Dealers Mut. Ins. Co., 640 P.2d 908, 912 (Mont. 1982).
93. *Id.*
94. Hansen v. State Farm Mut. Auto. Ins. Co., 735 P.2d 974, 978 (Idaho 1987); Auto-Owners Ins. Co. v. Estate of Johnson, 459 N.W.2d 7, 8 (Mich. Ct. App. 1990); Employers' Fire Ins. Co. v. Baker, 383 A.2d 1005, 1008 (R.I. 1978).
95. Equitable Gen. Ins. Co. v. Williams, 620 S.W.2d 608, 609 (Tex. Civ. App. 1981); *see also* Automobile Club Ins. Ass'n v. Page, 413 N.W.2d 472, 474 (Mich. Ct. App. 1987) ("Owned vehicle exclusion clauses are valid so long as they are clear and unambiguous, employing easily understood terms and plain language") (citing Raska v. Farm Bureau Mut. Ins. Co., 314 N.W.2d 440 (Mich. 1982); Graves v. Tenn. Farmers Mut. Ins. Co., 671 S.W. 2d 841, 843 (Tenn. Ct. App. 1984) (affirming trial court's summary judgment excluding coverage because policy exclusion was clear and unambiguous).
96. Gross v. Green Mountain Ins. Co., 506 A.2d 1139, 1143 (Me. 1986).
97. Gross v. Green Mountain Ins. Co., 506 A.2d 1139 (Me. 1986).
98. *Id.* at 1141.

D. *Public Policy*

1. *Majority Viewpoint—Owned but Not Insured Exclusions Invalid*

Most of the majority jurisdiction courts rely on public policy arguments in their decisions to invalidate owned but not insured exclusions.[99] They hold that public policy favors compensation for victims of uninsured motorists.[100]

In *Mason v. State Farm Mutual Automobile Insurance Co.*,[101] the court held:

> [I]n the area of uninsured motorist coverage the ". . . statute establishes a public policy that every insured is entitled to recover damages he or she would have been able to recover if the uninsured had maintained a policy of liability insurance in a solvent company." . . . This public policy is predicated upon a determination that ". . . every policy issued have at least the minimum limits for uninsured motorist protection in order to afford protection to victims of financially irresponsible drivers."[102]

As a matter of public policy, persons injured as a result of the negligence of an uninsured motorist should be entitled to uniform and specific benefits.[103]

Majority jurisdictions have also held that owned but not insured exclusionary provisions are against public policy because it is unfair that a third party is able to receive coverage in an insured's vehicle when an insured is not able to receive coverage on his own vehicle.[104] Furthermore, if the negligent party was insured, his insurance company would be liable for his negligence regardless of whether the person hit was a pedestrian or an occupant of a certain vehicle.[105]

2. *Minority Viewpoint—Owned but Not Insured Exclusions Valid*

Minority jurisdictions hold that exclusionary provisions are valid on the basis that such exclusions do not violate public policy.[106] These courts consider it unfair to the insurance company to force it to provide coverage for a person

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99. Harvey v. Travelers Indem. Co., 449 A.2d 157, 160 (Conn. 1982), *superseded by statute as stated in* Travelers Ins. Co. v. Kulla, 579 A.2d 525 (Conn. 1990); *see* Mason v. State Farm Mut. Auto. Ins. Co., 714 P.2d 441, 443-45 (Ariz. Ct. App. 1986); Dessel v. Farm & City Ins. Co., 494 N.W.2d 662, 663-64 (Iowa 1993).

100. Harvey v. Travelers Indem. Co., 449 A.2d at 161.

101. Mason v. State Farm Mut. Auto. Ins. Co., 714 P.2d 441 (Ariz. Ct. App. 1986).

102. *Id.* at 444 (quoting Calvert v. Farmers Ins. Co., 697 P.2d 684, 687 (Ariz. 1985)).

103. Automobile Ins. Co. v. Beem, 469 So. 2d 138, 139 (Fla. Dist. Ct. App. 1985).

104. Calvert v. Farmers Ins. Co., 697 P.2d 684, 686 (Ariz. 1985); Harvey v. Travelers Indem. Co., 449 A.2d 157, 160 (Conn. 1982).

105. Mullis v. State Farm Mut. Auto. Ins. Co., 252 So. 2d 229, 236 (Fla. 1971), *superseded by statute as stated in* Carbonell v. Automobile Ins. Co. of Hartford, 562 So. 2d 437 (Fla. Dist. Ct. App. 1990).

106. *See* Dullenty v. Rocky Mountain Fire & Cas. Co., 721 P.2d 198 (Idaho 1986); Powell v. State Farm Mut. Auto. Ins. Co., 585 A.2d 286 (Md. Ct. Spec. App. 1991).

using a vehicle for which he failed to purchase insurance coverage.[107] In *Powell v. State Farm Mutual Automobile Insurance Co.*,[108] the court explained:

> The obvious purpose of the policy exclusion as to uninsured vehicles is to prohibit a person from purchasing insurance for one car only and utilizing that coverage as to other vehicles owned by the insured through the "in any accident" provision of the policy. This type of prohibition is not against public policy. To apply its language as the appellant urges would invite multi-vehicle families to insure only one vehicle. It would play havoc with premium determinations and otherwise be detrimental to the process of providing liability protection to the motorists, and others, of Maryland. Appellant's interpretation of the clause, if adopted, would be, as we see it, contrary to public policy.[109]

In effect, the insurance company would be giving the insured a "free ride" by providing the insured with insurance coverage for several vehicles even though the insured only paid premiums on one vehicle.[110] The courts emphasize "rewarding a plaintiff who himself is operating an uninsured vehicle [would be] contrary to legislative policy."[111]

Some courts even hold that owned but not insured exclusions promote public policy. In *Powell*, the court stated the enforcement of exclusionary clauses would actually promote public policy because it "will encourage families to obtain coverage for *all* of their vehicles and thus maximize compliance with the purpose of the statute."[112]

Finally, courts upholding the validity of owned but not insured exclusions state the provisions are not contrary to public policy because the insured chose not to insure all of the insured's vehicles. In *Lumbermens*,[113] the court emphasized "if an insured is injured while occupying a vehicle which he owns but chose not to insure, he may not now seek uninsured motorist recovery from his insurer where, as here, the insurance policy specifically excludes coverage for non-owned vehicles."[114]

E. *Risk to Insurance Companies*

Minority courts favoring owned but not insured exclusions hold the absence of such exclusions imposes unfair risks upon insurance companies to

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107. *See, e.g.*, Powell v. State Farm Mut. Auto. Ins. Co., 585 A.2d at 290.
108. Powell v. State Farm Mut. Auto. Ins. Co., 585 A.2d 286 (Md. Ct. Spec. App. 1991).
109. *Id.* at 290.
110. Clampit v. State Farm Mut. Auto. Ins., 828 S.W.2d 593, 596 (Ark. 1992) (quoting Dullenty v. Rocky Mountain Fire & Casualty Co., 721 P.2d at 198).
111. *Id.*
112. Powell v. State Farm Mut. Auto. Ins. Co., 585 A.2d at 290-91.
113. Lumbermens Mut. Casualty Co. v. Stern, 433 So. 2d 48 (Fla. Dist. Ct. App. 1983).
114. *Id.* at 49.

extend coverage beyond insured vehicles under the policy.[115] Consequently, this holding disturbs the premium structure of insurance companies.[116]

In *Dullenty*,[117] the court explained the theory:

> We view the business of insurance as relatively simple in concept but complex in its detail. One purchases insurance as a hedge against risk. Thereby that risk is transferred partly or wholly to an insurance carrier. An insurance carrier will only remain in business if it is able to adequately assess the reality and the magnitude of the risk, and through the underwriting process charge premiums which will adequately compensate the carrier for the risks assumed. If a carrier fails to adequately assess or charge for the risks assumed, it will not be long in business.[118]

The court further stated that the reason insurance companies are willing to extend coverage to an insured while "riding a horse, camel, pogo stick, or while a pedestrian or while sitting on one's front porch"[119] is because the risks are relatively slight.[120] Similarly, insurance companies are also more willing to provide coverage to an insured occupying an unowned vehicle rather than an insured occupying an owned but uninsured vehicle because the insured is "more likely to be occupying an owned vehicle than he is to be occupying a vehicle owned by someone else."[121]

These courts realize that preventing insurance companies from inserting owned but not insured exclusions into the policy results in allowing an insured to receive coverage for several vehicles, but only pay premiums on one vehicle.[122] Thus, the unknown risks to the insurer dramatically increase because it is unable to predict the number of vehicles for which it may be liable to provide coverage.[123] Furthermore, "[i]t would play havoc with premium determinations and otherwise be detrimental to the process of providing liability protection to the motorists."[124]

Majority courts and those who disfavor owned but not insured exclusions respond to this line of reasoning by holding the costs to insurance companies are minimal[125] and do not place an unreasonable burden on the insurer.[126] In

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115. Crawford v. Emcasco Ins. Co., 745 S.W.2d 132, 134 (Ark. 1988); Dullenty v. Rocky Mountain Fire & Casualty Co., 721 P.2d 198, 206 (Idaho 1986).

116. Petrich v. Hartford Fire Ins. Co., 427 N.W.2d 244, 246 (Minn. 1988).

117. Dullenty v. Rocky Mountain Fire & Casualty Co., 721 P.2d at 206.

118. *Id.*

119. *Id.*

120. *Id.*

121. *Id.*

122. Powell v. State Farm Mut. Auto. Ins. Co., 585 A.2d 286, 292 (Md. Ct. Spec. App. 1991).

123. *Id.*

124. *Id.* at 290.

125. WIDISS, *supra* note 27, § 2.9.

126. State Farm Auto. Ins. Co. v. Reaves, 292 So. 2d 95, 100 (Ala. 1974).

Jacobson v. Implement Dealers Mutual Insurance Co.,[127] the court rejected the insurer's argument that its premiums are subject to risks:

> The type of premium charged for uninsured motorist protection illustrates the coverage afforded. The rate is a flat rate, and coverage is available to everyone at the same rate. The rate is not related to risk. [T]he fact that [the insured] had purchased uninsured motorist coverage for only one vehicle and paid a premium on this vehicle does not give rise to the exclusion of coverage on any other owned vehicles.[128]

F. *Prevention of Duplication*

Some courts distinguish between owned but not insured exclusions in uninsured motorist provisions and the same exclusions in underinsured motorist provisions in statutory interpretation of the validity of such exclusions. In *Lindahl v. Howe*,[129] the court stated, "we believe our legislature intended only to authorize insurers to exclude coverage for contingencies in which duplication actually occurs."[130] The court, therefore, invalidated owned but not insured exclusions in the uninsured motorist context because such exclusions failed to provide any compensation to the victim rather than merely avoid duplication of other insurance benefits.[131] The court explained it would defeat the purpose of the statute if "an insured who is injured by the tort of an uninsured motorist could be denied the coverage mandated by [the Iowa Code] even when no other source of compensation exists."[132]

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127. Jacobson v. Implement Dealers Mut. Ins. Co., 640 P.2d 908 (Mont. 1982).

128. *Id.* at 911.

129. Lindahl v. Howe, 345 N.W.2d 548 (Iowa 1984).

130. *Id.* at 551.

131. *Id. But see* Kluiter v. State Farm Mut. Auto. Ins. Co., 417 N.W.2d 74, 76 (Iowa 1987) (holding owned but not insured exclusions in the underinsured motorist context are enforceable because they prevent an insured from receiving duplicate coverage); *see also* Williams v. State Farm Mut. Auto. Ins. Co., 992 F.2d 781, 784 (8th Cir. 1993) (upholding owned but not insured exclusion in uninsured motorist context because exclusion only precluded insured from recovering in excess of minimum level of liability required by Iowa law rather than precluding insured from any recovery).

132. Lindahl v. Howe, 345 N.W.2d at 551-52. Four justices dissented in *Lindahl*, disagreeing with the majority as to the legislative intent:

> I cannot agree with the majority since I find nothing in [the] Iowa Code . . . that would prohibit an insurer from excluding from coverage any damages arising out of the use of vehicles that the insured owns but does not choose to insure. In effect, the majority opinion provides gratuitous insurance to all uninsured vehicles that a policy holder may own. I cannot perceive any intent by the legislature to compel this kind of unlimited gratuitous coverage.

Id. at 552 (Schultz, J., dissenting).

IV. DECISION-MAKING PROCESS

Several states have encountered multiple changes in their laws concerning the validity of owned but not insured exclusions.[133] State courts and legislatures are in a constant struggle, subjecting the law to numerous changes and revisions.[134] Therefore, it is beneficial to evaluate the decision-making process of a few states in order to gain an understanding of the rationale behind the ever-changing law.

For example, the Louisiana Legislature revised its uninsured motorist statute in response to inconsistent interpretations of the statute among the lower courts.[135] In *Rushing v. Allstate Insurance Co.*,[136] the insurer denied the insured coverage for injuries sustained in a collision with an uninsured motorist based upon an owned but not insured exclusion in the policy.[137] At the time of the collision, the plaintiff was occupying a vehicle he owned but had not insured.[138] The First Circuit Court of Appeals of Louisiana upheld the validity of the exclusion because no provision in the uninsured motorist statute[139] precluded such provisions.[140]

Shortly thereafter, in *Elledge v. Warren*,[141] the Third Circuit Court of Appeals of Louisiana interpreted the same uninsured motorist statute,[142] to determine the validity of an owned but not insured exclusion.[143] This court struck the exclusionary provision, finding it contrary to the statutory intent to protect an insured from the negligence of uninsured motorists at all times.[144]

In 1988, the Louisiana legislature reacted to the inconsistent developments of the law by amending its uninsured motorist statute to specifically authorize owned but not insured exclusions.[145] Thus, the amendment legislatively overruled *Elledge*,[146] which is a case frequently cited by many jurisdictions in support of their own position on owned but not insured exclusions.[147]

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133. *See supra* note 23 and accompanying text.
134. *See id.*
135. LA. REV. STAT. ANN. § 22: 1406 (D)(1)(f) (West 1994).
136. Rushing v. Allstate Ins. Co., 216 So. 2d 875 (La. Ct. App. 1968).
137. *Id.* at 876.
138. *Id.*
139. LA. REV. STAT. ANN. § 22:1406(D)(1) (West 1994); *see supra* note 41 and accompanying text.
140. Rushing v. Allstate Ins. Co., 216 So. 2d at 876.
141. Elledge v. Warren, 263 So. 2d 912 (La. Ct. App. 1972), *superseded by statute as stated in* Sandoz v. State Farm Mut. Auto. Ins. Co., 620 So. 2d 441, 444 (La. Ct. App. 1993).
142. LA. REV. STAT. ANN. § 22:1406(D)(1) (West 1994); *see supra* text accompanying note 41.
143. Elledge v. Warren, 263 So. 2d at 914.
144. *Id.* at 917 (citing Booth v. Freeman's Fund Ins. Co., 218 So. 2d 580, 583 (Ga. 1969)).
145. LA. REV. STAT. ANN. § 22:1406(D)(1)(e) (West 1994).
146. Elledge v. Warren, 263 So. 2d 912 (La. Ct. App. 1972), *superseded by statute as stated in* Sandoz v. State Farm Mut. Auto. Ins. Co., 620 So. 2d 441, 444 (La. Ct. App. 1993).
147. *See, e.g.*, Hillman v. Nationwide Mut. Fire Ins. Co., 758 P.2d 1248, 1252 (Alaska 1988) (citing Elledge v. Warren, 263 So. 2d 912 (La. Ct. App. 1972)); Jacobson v. Implement

Arizona is another state that has received attention for its responsive changes in the law concerning the validity of owned but not insured exclusions. In *Rodriquez v. Maryland Indemnity Insurance Co.*,[148] the court relied on state precedent[149] and upheld the validity of owned but not insured exclusions.[150] The court found "there was nothing in the law of Arizona . . . that required insurance companies to provide uninsured motorist coverage under one policy to additional vehicles owned by the insured where he elected not to pay the premium for such coverage."[151]

As a result, in *Calvert v. Farmers Insurance Co.*,[152] the Arizona Supreme Court "granted review . . . to settle a conflict in the Court of Appeals decisions concerning the validity of 'other vehicle' exclusion clauses in uninsured motorist coverage."[153] The court interpreted the legislative intent of its uninsured motorist statute and concluded owned but not insured exclusions are invalid because the statute requires mandatory coverage for those injured by negligent uninsured motorists.[154] Thus, the court effectively overruled the *Rodriquez*,[155] *Chambers*,[156] and *Owens*[157] cases in its decision to uphold the validity of owned but not insured exclusions.[158]

V. CONCLUSION

It is clear the debate is not over. A jurisdiction may currently rest in a state of tranquility with a firm decision regarding the issue. Legislatures, however, are constantly reevaluating the law, which, in turn means courts are constantly reinterpreting the law. It is interesting to note that some state decisions rely upon language from cases from other jurisdictions, and those cases from other jurisdictions have since been reevaluated and amended.[159]

Dealers Mut. Ins. Co., 640 P.2d 908, 910-11 (Mont. 1982) (citing Elledge v. Warren, 263 So. 2d 912 (La. Ct. App. 1972)).

148. Rodriquez v. Maryland Indem. Ins. Co., 539 P.2d 196 (Ariz. Ct. App. 1975), *overruled by* Calvert v. Farmers Ins. Co., 697 P.2d 684 (Ariz. 1985).

149. Chambers v. Owens, 525 P.2d 306 (Ariz. Ct. App. 1974), *overruled by* Calvert v. Farmers Ins. Co., 697 P.2d 684 (Ariz. 1985); Owens v. Allied Mut. Ins. Co., 487 P.2d 402 (Ariz. Ct. App. 1971), *overruled by* Calvert v. Farmers Ins. Co., 697 P.2d 684 (Ariz. 1985).

150. Rodriquez v. Maryland Indem. Ins. Co., 539 P.2d at 198.

151. *Id.*

152. Calvert v. Farmers Ins. Co., 697 P.2d 684 (Ariz. 1985).

153. *Id.* at 685.

154. *Id.* at 687.

155. Rodriquez v. Maryland Indem. Ins. Co., 539 P.2d 196 (Ariz. Ct. App. 1975), *overruled by* Calvert v. Farmers Ins. Co., 697 P.2d 684 (Ariz. 1985).

156. Chambers v. Owens, 525 P.2d 306 (Ariz. Ct. App. 1974), *overruled by* Calvert v. Farmers Ins. Co., 697 P.2d 684 (Ariz. 1985).

157. Owens v. Allied Mut. Ins. Co., 487 P.2d 402 (Ariz. Ct. App. 1971), *overruled by* Calvert v. Farmers Ins. Co., 697 P.2d 684 (Ariz. 1985).

158. Calvert v. Farmers Ins. Co., 697 P.2d at 690.

159. *See, e.g.*, Hillman v. Nationwide Mut. Fire Ins. Co., 758 P.2d 1248, 1251-52 (Alaska 1988) (citing Elledge v. Warren, 263 So. 2d 912 (La. Ct. App. 1972); Mullis v. State Farm Mut. Auto. Ins. Co., 252 So. 2d 229 (Fla. 1971)); Jacobson v. Implement Dealers Mut. Ins. Co., 640 P.2d 908, 910-11 (Mont. 1982) (citing Elledge v. Warren, 263 So. 2d 912 (La. Ct. App. 1972); Mullis v.

Even though state variations in statutes and decisions will probably always interfere with the possibility of achieving conformity, the final verdict which should be sought is clear: An insured should not be entitled to receive uninsured motorist coverage while occupying a vehicle that he failed to insure. How can he be referred to as a victim of the negligence of an uninsured motorist when he should also be found negligent for failing to provide coverage for his own vehicle? Although there are undoubtedly situations in which the insured should be entitled to coverage, the jury should reach a verdict and find that a negligent uninsured motorist should not be entitled to collect benefits for the negligence of another uninsured motorist.

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State Farm Mut. Auto. Ins. Co., 252 So. 2d 229 (Fla. 1971)); Crawford v. Emcasco Ins. Co., 745 S.W.2d 132, 134 (Ark. 1988) (citing Rodriquez v. Maryland Indem. Ins. Co., 539 P.2d 196 (Ariz. Ct. App. 1975), *overruled by* Calvert v. Farmers Ins. Co., 697 P.2d 684 (Ariz. 1985)).