# NOTES

## FAMILY EXCLUSION CLAUSES VOID IN AUTOMOBILE INSURANCE POLICIES

### I. INTRODUCTION

Today, the general policy of blanket intrafamily tort immunity is no longer being applied by a majority of state courts.[1] As a result of this policy decision by the courts, intrafamily tort immunity is allowed only in narrow areas.[2] One of the exceptions where suits are allowed is when a family member incurred an injury in an automobile accident caused by another family member or themselves.[3] Opponents to these exceptions, especially the automobile negligence exception, are the insurance companies.[4] The availability of liability insurance to family members means an increase in financial payout by the insurance industry.[5]

As a consequence of the abolition of intrafamily tort immunity, insurance companies began inserting household exclusion clauses in automobile insurance policies to limit their liability.[6] This clause prevents an injured person related or living in the same household of the negligent driver, from receiving protection financially from an insurance company under the auto-

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1. *See, e.g.*, Farmers Ins. Group v. Reed, 712 P.2d 550, 551 (Idaho 1985) Unah v. Martin, 676 P.2d 1366, 1367 n.2 (Okla. 1984). *See also* Hollister, *Parent-Child Immunity: A Doctrine In Search of Justification*, 50 FORDHAM L. REV. 489, 512-16 (1982) [hereinafter cited as Hollister]; *Family Member Exclusion In Auto Policy Insurance Invalid*, 4 LAW. ALERT 405 (1985).

2. Farmers Ins. Group v. Reed, 712 P.2d 550, 551 (Idaho 1985). Exceptions include: (1) against the estate of another family member, (2) the parent is acting in his business capacity, (3) where a willful or malicious tort is involved, (4) where the suit is for partnership accounting, (5) for depletion of assets, (6) contract, (7) property disputes, (8) automobile negligence. *Id. See also* Hollister, *supra* note 1 at 509; Comment, *The Demise of Parent-Child Tort Immunity*, 12 WILLAMETTE L. J. 605, 609-14 (1975).

3. Farmers Ins. Group v. Reed, 712 P.2d at 551.

4. *Family Members Exclusion In Auto Policy Insurance Invalid*, 4 LAW. ALERT 405 (1985); Comment, *Family Exclusion Clauses: Whatever Happened to the Abrogation of Intrafamily Immunity?* 21 SAN DIEGO L. REV. 415 (1984); Note, *The Household Exclusion Clause - Returning to the Days of Family Immunity*, 7 HAMLINE L. REV. 507 (1983).

5. *See supra* note 4.

6. *Id.* An example of a household family exclusion policy for automobile insurance policy states: "This policy does not apply: . . . (t) under Coverage A, to bodily injury to (1) the spouse or any parent, son or daughter of the insured, or (2) of the named insured." *Id.*

mobile insurance policy.[7] The family exclusion clause has created a conflict in many states.[8] This conflict results from having states choose between allowing intrafamily suits or having the family member exclusion policy which disallows suits between family members. A number of state courts are striking down "family exclusion clauses" in automobile insurance policies because of public policy reasons and basic contract principles.[9]

## II. Historical Background of Intrafamily Immunity

To understand the recent trend of state supreme court decisions striking down family exclusion clauses in automobile insurance policies, one must look at the way the family immunity clause is used and its history in the judicial system.

Family immunity can be used as a defense in a lawsuit in three different situations: (1) spouse sues a spouse, (2) child sues a parent, and (3) parent sues a child.[10] The first situation is spousal immunity and the later two situations are parental immunity. Thus, if a negligent act occurs between family members and there is a lawsuit for damages by the injured family member, the defendant can raise the defense of family immunity; there would be no compensation for the innocent injured family member.[11]

The origin of spousal immunity is from common law.[12] The woman's existence during her marriage became part of her husband's; thus, she lost her legal identity.[13] In order for the wife to sue an individual, her husband had to be joined in the suit; thus, because her husband could not bring a suit against himself, the wife was not able to sue him.[14] Those restrictions were alleviated by the Married Woman's Act which gave women property rights; however, personal injury actions between spouses had not been widely adopted by the courts and, thus, they followed the common law doctrine.[15] Iowa, however, abrogated the doctrine of spousal immunity in *Shook*

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7. Mutual of Enumclaw Ins. Co. v. Wiscomb, 643 P.2d 441, 444 (Wash. 1982).

8. *Family Members Exclusion In Auto Policy Insurance Invalid*, 4 Law. Alert 405 (1985).

9. Meyer v. State Farm Mut. Auto. Ins. Co., 689 P.2d 585 (Colo. 1984); Farmers Ins. Group v. Reed, 712 P.2d 550 (Idaho 1985); Estep v. State Farm Mut. Auto. Ins. Co., 703 P.2d 882 (N.M. 1985); Winn v. Gilroy, 681 P.2d 776 (Or. 1984); Allstate Ins. Co. v. Wyoming Ins. Dept., 672 P.2d 810 (Wyo. 1983).

10. Note, *The Household Exclusion Clause - Returning to the Days of Family Immunity*, 7 Hamline L. Rev. 507, 510 (1983) (citing W. Prosser, Handbook of the Law of Torts § 122, at 859-60 (4th ed. 1971)) [hereinafter cited as Note, *The Household Exclusion Clause*]; Maliner, *Intrafamily Immunity Doctrine: The Breached Wall*, 5 Forum 58 (1969).

11. Hollister, *supra* note 1, at 489.

12. *See supra* note 10.

13. Note, *The Household Exclusion Clause*, *supra* note 10, at 510.

14. *Id.*

15. *Id.*

*v. Crabb*.[16] In *Shook*, Kathryn Madison Crabb died in a plane crash in which her husband was piloting the plane.[17] The executor of the estate of Kathryn Madison Crabb brought an action for wrongful death against her husband's estate alleging he caused the negligent operation of the plane.[18] The court stated "[w]hile the state has an interest in encouraging marital harmony, to deny a forum for the redress of a wrong would do little to advance the compatibility of married couples."[19] Moreover, the court discussed the presence of insurance and stated, "[i]f insurance is carried, the possibility of resultant discord is minimized as the recovery would in most cases be paid by the carrier."[20] Finally, the court held that when an act pertains to personal injuries resulting from spousal negligence or intentional tort, the doctrine of interspousal immunity is abrogated.[21]

The development of parent-child immunity doctrine came from the American court system.[22] It originated with the case of *Hewellette v. George*[23] where the Supreme Court of Mississippi stated:

> The peace of society, and of the families composing society and a sound public policy, designed to subserve the repose of families and the best interest of society, forbid to the minor child a right to appear in court in the assertion of a claim to civil redress for personal injuries suffered at the hands of the parent.[24]

Thus, the plaintiff's verdict was set aside. The court in *Hewellette* relied solely on public policy existing in the 19th century.[25] The decision was followed in 1903 by *McKelvey v. McKelvey*[26] and later by *Roller v. Roller*.[27] In accordance with these courts, most jurisdictions have adopted some type of parent-child immunity and have given several policy reasons for upholding parental immunity.[28]

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16. 281 N.W.2d 616 (Iowa 1979).
17. *Id.* at 617.
18. *Id.* at 616.
19. *Id.* at 619.
20. *Id.* at 620.
21. *Id.* at 619.
22. Hewellette v. George, 68 Miss. 703, 9 So. 885 (1891). *See also* Hollister, *supra* note 1, at 493; Horne, *The Vestiges of Child-Parent Tort Immunity*, 6 U.C. DAVIS L. REV. 195, 195-96 (1973).
23. 68 Miss. 703, 9 So. 885 (1891).
24. 68 Miss. at _, 9 So. at 887.
25. *See* Cowgill v. Boock, 189 Or. 282, 218 P.2d 445 (1950).
26. 111 Tenn. 388, 77 S.W. 664 (1903).
27. 37 Wash. 242, 79 P. 788 (1905).
28. Unah v. Martin, 676 P.2d 1366, 1368 (Okla. 1984). In *Nocktonick v. Nocktonick*, 227 Kan. 758, 611 P.2d 135 (1980), five frequently cited justifications for upholding parental immunity are identified: (1) disturbance of domestic harmony and tranquility; (2) interference with parental care, discipline, and control; (3) depletion of family assets in favor of the claimant at the expense of other children in the family; (4) the possibility of inheritance by the parent of the amount received in damages by the child; and (5) the dangers of fraud and collusion be-

Iowa adopted the commitment of intrafamily immunity in *Barlow v. Iblings*.[29] In *Barlow*, a six-year-old was left alone by his father in a cafe kitchen with an electric meat grinder.[30] The son cut off his fingers and brought a cause of action against his father.[31] The Iowa Supreme Court held that "[h]aving recognized and adopted the family immunity doctrine in Iowa . . . [the doctrine] . . . must extend to other places where that personal relationship exists and is maintained . . . ."[32] Furthermore, the court concluded: "[d]omestic tranquility, proper parental discipline and control, family unity, and social responsibility are ample grounds to sustain the policy and the doctrine."[33] Thus, the motion to dismiss was sustained.[34]

The first erosion of parent-child immunity occurred in *Goller v. White*[35] in which the Wisconsin Supreme Court held that parent immunity was no longer required in certain situations to preserve family tranquility; thus, the court went on to hold litigation was not barred for property or contractual claims of the child.[36] Furthermore, an important factor which led to the change of attitude was the presence of liability insurance.[37] In Iowa, the abrogation of absolute parental immunity occurred in *Turner v. Turner*,[38] where children were passengers in a motor vehicle driven by their father, the named defendant, "who drove the vehicle negligently, recklessly and while intoxicated, causing it to overturn."[39] The children sought damages for their resulting injuries.[40] The court held that the parent immunity doctrine was a price too high to pay because of the plaintiffs' special status, therefore such children were not barred by the immunity doctrine from suing their father.[41] Today, there are several exceptions adopted by the states which allow intrafamily lawsuits; one exception is the automobile accident exception.[42]

## III. Family Exclusion Clause

As mentioned previously, as a result of the abrogation of intrafamily tort immunity, insurance companies have inserted family exclusion clauses

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tween parent and child. *Id.* at 137.

29. 261 Iowa 713, 156 N.W.2d 105 (1968).
30. *Id.* at 714, 156 N.W.2d at 105.
31. *Id.* at 714, 156 N.W.2d at 106.
32. *Id.* at 727, 156 N.W.2d at 112.
33. *Id.* at 718, 156 N.W.2d at 107-08.
34. *Id.* at 727, 156 N.W.2d at 113.
35. 20 Wis. 2d 402, 122 N.W.2d 193 (1963).
36. *Id.* at __, 122 N.W.2d at 196-98.
37. Note, *The Household Exclusion Clause*, *supra* note 10, at 508.
38. 304 N.W.2d 786 (Iowa 1981).
39. *Id.* at 786.
40. *Id.*
41. *Id.* at 788-89.
42. *See supra* note 2. Over forty states now have all family members sue each other for negligence. 4 Law. Alert 405 (1985).

in automobile and homeowner policies to limit their liability.[43] However, a number of state supreme courts are striking down the "family exclusion clause" in automobile insurance policies.[44] The list includes North Dakota,[45] Kentucky,[46] Washington,[47] Wyoming,[48] Ohio,[49] Oklahoma,[50] Oregon,[51] Colorado,[52] Idaho,[53] and most recently, New Mexico.[54]

It appears that one of the first state supreme courts to void family exclusion clauses was North Dakota in *Hughes v. State Farm Mutual Automobile Insurance Co.*[55] In *Hughes*, the husband sought a judgment declaring State Farm liable under the insurance policy for liability incurred by him for injuries sustained by his wife in a snowmobile accident.[56] The recreation vehicle insurance policy, however, excluded coverage for bodily injury of insured or any family or household member.[57] Nevertheless, the court held the family exclusion clause void because it was in direct violation of a statute which expressly required coverage for bodily injury of a named insured and any other person driving a vehicle with permission of the named insured and, thus, such policy was to have an omnibus clause.[58] Additionally, the *Hughes* court reasoned that such an exclusion clause was violative of public policy.[59]

Similarly, the Supreme Court of Washington considered the issue of voiding family exclusion clauses in *Mutual of Enumclaw Insurance Co. v. Wiscomb*.[60] In *Wiscomb*, the wife of the insured was injured because a vehicle driven by her husband collided with the motorcycle she was driving.[61] The husband's automobile insurance policy had a family exclusion clause.[62] The court began its opinion by analyzing the Washington Financial Respon-

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43. Note, *The Household Exclusion Clause*, *supra* note 10, at 507. Comment, *Family Exclusion Clauses: Whatever Happened to the Abrogation of Intrafamily Immunity?*, 21 SAN DIEGO L. REV. 414, 415 (1984).

44. *Family Members Exclusion In Auto Policy Insurance Invalid*, 4 LAW. ALERT (1984).

45. Hughes v. State Farm Mut. Auto. Ins. Co., 236 N.W.2d 870 (N.D. 1975).

46. Bishop v. Allstate Ins. Co., 623 S.W.2d 865 (Ky. 1981).

47. Mutual of Enumclaw Ins. Co. v. Wiscomb, 97 Wash. 2d 203, 643 P.2d 441 (1982).

48. Allstate Ins. Co. v. Wyoming Ins. Dep't., 672 P.2d 810 (Wyo. 1983).

49. Dorsey v. State Farm Mut. Auto. Ins. Co., 9 Ohio St. 3d 27, 457 N.E.2d 1169 (1984).

50. Unah v. Martin, 676 P.2d 1366 (Okla. 1984).

51. Winn v. Gilroy, 296 Or. 718, 681 P.2d 776 (1984).

52. Meyer v. State Farm Mut. Auto. Ins. Co., 689 P.2d 585 (Colo. 1984).

53. Farmers Ins. Group v. Reed, 109 Idaho 849, 712 P.2d 550 (1985).

54. Estep v. State Farm Mut. Auto. Ins. Co., 103 N.M. 105, 703 P.2d 882 (1985).

55. 236 N.W.2d 870 (N.D. 1975).

56. *Id.* at 874.

57. *Id.* at 875.

58. *Id.* at 884-86.

59. *Id.* at 886.

60. 97 Wash. 2d 203, 643 P.2d 441 (1982).

61. *Id.* at 442.

62. *Id.*

sibility Act.[63] The *Wiscomb* court commented that "[w]hile the Act does not require mandatory insurance, it nevertheless conveys a strong public policy . . . in favor of assuring monetary protection and compensation to those persons who suffer injuries through the negligent use of public highways by others."[64] Thus, such an act was intended by the Washington Legislature to provide adequate compensation to the injured in automobile accidents.[65] Consequently, the court went on to note that the family exclusion clause pervades the state's insurance legislation.[66] The *Wiscomb* court stated: "This clause prevents a specific class of innocent victims, those persons related to and living with the negligent driver, from receiving financial protection under an insurance policy containing such a clause. In essence, this clause excludes from protection an entire class of innocent victims for no good reason."[67] The *Wiscomb* court concluded that a "[f]amily or household exclusion clause violated this state's public policy of assuring compensation to the victims of negligent and careless drivers" and, thus, there was no hesitance by the court to strike the family exclusion clause.[68]

Furthermore, Montana struck down a household exclusion clause on the basis of abrogating the parental immunity doctrine and on an adhesion contract principle in *Transamerica Insurance Co. v. Royle*.[69] The *Royle* court, in deciding the issue of parent-child immunity, in effect ruled on the issue of the validity of the exclusion clause and stated that if they recognize parent immunity, the exclusion clause is valid and vice-versa.[70] The court reviewed the history of family immunity and concluded "[s]uch an action does not undermine parental authority and discipline, nor does it threaten [to] substitute judicial discretion for parental discretion in the care and rearing of minor children"[71] and limited their holding to an action brought by a minor child under the age of emancipation suing a parent who operated the motor vehicle negligently.[72] Additionally, the court held the household exclusion invalid because it failed to "honor the reasonable expectations" of the buyer of the insurance policy; thus, it was an adhesion contract and, therefore, there was no hesitance by the court to strike the family exclusion clause.[73]

In *Meyer v. State Farm Mutual*,[74] the Colorado Supreme Court struck down a household exclusion clause contained in respective automobile liabil-

63. *Id.* at 442-43.
64. *Id.* at 442.
65. *Id.* at 443.
66. *Id.* at 444.
67. *Id.*
68. *Id.* at 446.
69. 202 Mont. 173, 656 P.2d 820 (1983).
70. *Id.* at 822.
71. *Id.* at 824.
72. *Id.*
73. *Id.*
74. 689 P.2d 585 (Colo. 1984).

ity policies. In *Meyer*, the court combined three lower level court decisions involving a parent-child suit, an interspousal suit and an insured individual, in which the court decided the validity of the household exclusion clauses.[75] The *Meyer* court stated, "[T]he household exclusion is invalid. The exclusion is neither authorized by statute nor in harmony with the legislative purpose mandating liability insurance . . . ."[76] The court stated that the exclusion is invalid because it violates public policy.[77]

Furthermore, the Idaho Supreme Court has recently decided the issue of family exclusion policies in the case of *Reed v. Hamilton Insurance Group*.[78] In *Reed*, the daughter of Thomas and Betty Reed, Cindi, allowed Darrel Hamilton, a minor, to operate a pickup truck in which he caused an accident.[79] The passengers at the time were Cindi and Kevin, a brother of Darrel.[80] Kevin was killed in the accident.[81] Parents of Darrel and Kevin filed an action against the Reeds, Cindi, and their son seeking expenses and damages.[82] The court analyzed the validity of the family exclusion policy and held that the mandatory insurance statute and public policy voided the clause.[83] The court stated, "[U]nless the defendant can show that something shields it from the statutory obligation, 'imposed by law' to pay damages caused by the policy holder to 'any person,' the household exclusion clause is flatly and unmistakably in violation of Idaho's compulsory insurance law."[84] Also, the court opined that two factors which support intrafamily immunity: (1) preservation of family harmony; and, (2) prevention of collusion or fraud, were no longer applicable with regard to automobile negligence actions.[85] The court considered a previous case, where the presence of liability insurance was viewed as a significant factor in whether the court continued to deprive unemancipated minors the right enjoyed by all other individuals.[86] Thus, the court held that an intrafamily action may be maintained, however, limiting the coverage of the automobile liability insurance policy.[87]

Lastly, the most recent case in the area of family exclusion clauses in automobile insurance policies is *Estep v. State Farm Mutual Automobile*

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75. *Id.* at 587-88.
76. *Id.* at 592.
77. *Id.* at 593.
78. 109 Idaho 849, 712 P.2d 550 (1985).
79. *Id.* at _, 712 P.2d at 550.
80. *Id.*
81. *Id.*
82. *Id.* at _, 712 P.2d at 551.
83. *Id.*
84. *Id.* at _, 712 P.2d at 552.
85. *Id.*
86. *Id.*
87. *Id.* at _, 712 P.2d at 553.

*Insurance Co.*[88] *Estep* involved an interspousal suit where the husband operated a vehicle with negligence causing his death and injuries to his wife.[89] The New Mexico Supreme Court approached the case by looking at the insurance policy as a contract and stated that "exclusionary clauses in insurance policies require a narrow construction, particularly when the insurer has expressed coverage through broad promises."[90] The *Estep* court also reviewed the automobile liability statutes, and finding no definition of either "owner's liability policy," or "automobile liability policy" held that the same definition should be given them as is given to "motor vehicle liability policy," which is defined in the statute.[91] When read together, the practical effect of the statutes is to give owners of motor vehicles the ability to compensate innocent victims for injuries caused by negligent drivers.[92] The legislative intent was to require and encourage citizens to be financially responsible for automobile accidents, and thus the "insured" and "household" exclusions contained in motor vehicle liability policies were held invalid.[93]

## IV. Reasoning of the Courts

The state supreme courts in holding family exclusion clauses in automobile insurance policies as invalid have looked at a number of different factors in making their conclusions, which can be seen in the above cases.[94] These factors include: (1) public policy in allowing family members to sue each other, (2) public policy in mandating liability insurance, and (3) principles involved in contractual analysis.[95]

Thus, the first justification for voiding family exclusion clauses by some states is whether there is the existence of family immunity.[96] If the court recognizes family immunity, then the exclusion clause is valid; if the court does not recognize family immunity, then the exclusion law is invalid.[97]

Traditionally, the factors which have supported intrafamily immunity

88. 103 N.M. 105, 703 P.2d 882 (1985).
89. *Id.* at _, 703 P.2d at 884.
90. *Id.*
91. *Id.* at _, 703 P.2d at 885.
92. *Id.*
93. *Id.* at _, 703 P.2d at 888.
94. *Family Member Exclusion In Auto Policy Insurance Invalid*, 4 Law. Alert 405 (1985).
95. *See, e.g.*, Farmers Ins. Group v. Reed, 109 Idaho 849, 712 P.2d 550 (1985); Transamerica Ins. Co. v. Royle, 202 Mont. 173, 656 P.2d 820 (1983); Dorsey v. State Farm Mut. Auto. Ins. Co., 9 Ohio St. 3d 27, 457 N.E.2d 1169 (1984); Unah v. Martin, 676 P.2d 1366 (Okla. 1984) and Winn v. Gilroy, 296 Or. 718, 681 P.2d 776 (1984).
96. *See, e.g.*, Meyer v. State Farm Mut. Auto. Ins. Co., 689 P.2d 585 (Colo. 1984); Bishop v. Allstate Ins. Co., 623 S.W.2d 865 (Ky. 1981); Transamerica Ins. Co. v. Royle, 656 P.2d 820 (Mont. 1983); Hughes v. State Farm Mut. Auto. Ins. Co., 236 N.W.2d 870 (N.D. 1976); Unah v. Martin, 676 P.2d 1366 (Okla. 1984); Farmers Ins. Group v. Reed, 109 Idaho 849, 712 P.2d 550 (1985); Mutual of Enumclaw Ins. Co. v. Wiscomb, 97 Wash. 2d 203, 643 P.2d 441 (1982).
97. *See, e.g.*, Transamerica Ins. Co. v. Royle, 202 Mont. 173, _, 656 P.2d 820, 822 (1983).

in automobile negligence actions are preservation of family harmony and prevention of collusion or fraud.[98] These two factors are no longer applicable and are being disregarded by the courts.[99]

The courts state that the presence of mandatory automobile liability insurance will help family harmony rather than disrupt it.[100] The Oklahoma Supreme Court in *Unah v. Martin*[101] stated: "Disruption of domestic tranquility is much less likely where the minor child can be compensated for his losses under the parent's liability coverage, which additionally eases any financial strain on the family resulting from the accident."[102]

Thus the existence of liability insurance has been held to be a proper factor to consider in determining if parent or family immunity is applicable to the situation.[103] The Supreme Court of Montana stated, "The existence of liability insurance prevents family discord and depletion of family assets in automobile negligence cases contrary to the original policies."[104]

The second reason, prevention of fraud or collusion, has been disposed of by the courts and they will not let insurance companies be protected by the interspousal immunity shield: "Implicit in respondent's argument is that the judicial system is inadequate to safeguard against collusion in tort actions between spouses. We reject this contention, for courts in this state presently weed out fraud and collusion in other cases not involving actions between spouses."[105] Thus, it is up to the judicial branch to prevent fraud and collusion. Consequently, holding the family immunity shield as invalid against public policy has given the courts reason to strike down family exclusion clauses.

The second major reason for voiding family exclusion clauses is the existence of recent state statutes which mandate or have a strong public policy toward obtaining automobile insurance in the states' no-fault insurance laws.[106] The effect of the statutory language is that the owner of a vehicle must comply with the laws requiring insurance for bodily injury suffered by 'any person.' This warranty is called the conformity clause.[107] The reasoning behind the legislatures' enacting mandatory liability insurance is that there is "strong public policy of assuring protection to the innocent victims of au-

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98. *See Family Members Exclusion In Auto Policy Insurance Invalid*, 4 LAW. ALERT 405 (1985). *See also supra* note 57.

99. *See, e.g.*, Farmers Ins. Group v. Reed, 109 Idaho 849, 712 P.2d 550 (1985).

100. *Id.* at _, 712 P.2d at 552.

101. 676 P.2d 1366 (Okla. 1984).

102. *Id.* at 136.

103. *Id.*

104. Transamerica Ins. Co. v. Royle, 202 Mont. 173, _, 656 P.2d 820, 832 (1983).

105. Reed v. Farmers Ins. Group, 109 Idaho at _, 712 P.2d at 553 (citing Rogers v. Yellowstone Park, 197 Idaho 14, _, 539 P.2d 566, 569 (1975).

106. *See supra* note 96. *See also Family Members Exclusion In Auto Policy Insurance Invalid*, 4 LAW. ALERT 405 (1985).

107. *Id.*

tomobile accidents."[108]

Consequently, the exclusionary clauses in an insurance contract which reduce or eliminate coverage to victims directly contradict the state statutes which are to insure 'any person.'[109] "The family or household exclusion clause strikes at the heart of public policy."[110] The Washington Supreme Court stated:

> [t]he family or household exclusion, by contrast, is directed at a class of innocent victims who have no control over the vehicle's operation and who cannot be said to increase the nature of the insurer's risk. An exclusion which denies coverage when certain victims are injured is violative of public policy.[111]

Therefore, the courts have decided that legislatures expressly and by their intent have outlawed the "household exclusion" clauses by their mandatory liability auto insurance and, thus, states have struck down the family exclusion clauses.[112]

The final factor which courts have looked at to strike down the family exclusion clauses is by the use of basic contract principles holding that insurance contracts are contracts of adhesion.[113] For insurance companies, it is risky to predict if the courts will honor expectations in insurance policies that are stated in policy provisions.[114] The courts are rewriting insurance contracts on public policy grounds.[115] The policy behind invalidating contracts of adhesion is that there exists an unequal bargaining position between the insurer and customer and the insurance company sells policies on a "take it or leave it" basis.[116] The standard rule for an adhesion contract is that they require that all ambiguities be resolved against the insurer.[117] However, courts have set no specific rules or guidelines for interpretation and, consequently, the courts may look beyond the expressed language in the contract.[118] For instance, courts may use public policy as a basis for

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108. Mutual of Enumclaw Ins. Co. v. Wiscomb, 97 Wash. 2d 203, _, 643 P.2d 441, 443 (1982).

109.. *Family Members Exclusion in Auto Policy Insurance Invalid*, 4 LAW. ALERT 405 (1985). *See also supra* note 95.

110. Mutual of Enumclaw Ins. Co. v. Wiscomb, 97 Wash. 2d 203, _, 643 P.2d 441, 444 (Wash. 1982).

111. *Id.*

112. *See supra* note 96.

113. Keeton, *Honoring Reasonable Expectations In the Interest of Life and Health Insurance Contracts*, 1971 A.B.A. INS. SEC. 213, 213 (1971) [hereinafter cited as Keeton].

114. *Id.*

115. *Id.*

116. Shinevar, *A Reasonable Approach to the Doctrine of Reasonable Expectations as Applied to Insurance Contracts*, 13 U. MICH. J.L. REF. 603, 604 (1980).

117. *Id.*

118. *Id.* at 605-06.

striking down family exclusion clauses.[119]

The *Hughes* court applied this adhesion contract analysis in their decision voiding a family exclusion clause.[120] The court stated:

> It is elementary in insurance law that any ambiguity or uncertainty in an insurance policy is to be resolved against the insurer . . . If semantically permissible, the contract will be given such construction as will fairly achieve its object securing indemnity to the insured for the losses to which the insurance relates . . . . If the insurer uses language which is uncertain any reasonable doubt will be resolved against it; if the doubt relates to extent or fact of coverage, whether as to peril insured against . . . , the amount of liability . . . , or the person or persons protected . . . , the language will be understood in its most inclusive sense, for the benefit of the insured.[121]

Furthermore, the *Wiscomb* court noted that there was no insurance policy without the exclusion clause available in the state of Washington and thus there was no freedom to contract.[122] The insured, therefore, had not truly bargained for such an exclusion.[123]

The adhesion contract rule coexists with the doctrine of "reasonable expectation." The principle behind the doctrine of "reasonable expectation" is the "objectively reasonable expectations of applicants and intended beneficiaries regarding the terms of insurance contracts will be honored even though painstaking study of the policy provisions would have negated those expectations."[124]

The standard of reasonableness used by the courts is defined as the "expectations from the layman's point of view."[125] Therefore, the household exclusion is invalid due to its failure to "honor the reasonable expectations" of the buyer of the policy.[126]

Although some courts are invalidating family exclusion clauses, a majority of jurisdictions have upheld the exclusionary clauses on the basis of freedom of contract, or possible fraudulent or collusive claims.[127] Iowa follows the majority rule.[128] For instance, in *Walker v. American Family Mutual*

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119. *See, e.g.*, Mutual of Enumclaw Ins. Co. v. Wiscomb, 97 Wash. 2d 203, 643 P.2d 441 (1982).

120. Hughes v. State Farm Mut. Auto. Ins. Co., 236 N.W.2d 870, 885 (N.D. 1976).

121. *Id.* (quoting Continental Cas. Co. v. Phoenix Constr. Co., 46 Cal. 2d 423, 296 P.2d 801 (1956)).

122. Mutual of Enumclaw Ins. Co. v. Wiscomb, 97 Wash. 2d 203, _, 643 P.2d 441, 446 (1982).

123. *Id.*

124. Transamerica Ins. Co. v. Royle, 202 Mont. 173, _, 656 P.2d 820, 824 (1983) (citing Keeton, *Insurance Rights at Variance with Policy Provisions*, 83 HARV. L. REV. 961, 967 (1970)).

125. Keeton, *supra* note 113, at 216.

126. *Id.*

127. Estep v. State Farm Mut. Auto. Ins. Co., 103 N.M. 105, _, 703 P.2d 882, 886 (1985).

128. *See, e.g.*, Rodman v. State Farm Mut. Auto. Ins. Co., 208 N.W.2d 903 (Iowa 1973).

*Insurance Co.*,[129] the Iowa Supreme Court continued to uphold the family exclusion clause in an automobile insurance policy. The *Walker* court balanced public policy with the freedom to contract and stated, "the power to invalidate a contract on public policy grounds must be used cautiously and exercised only in cases free from doubt."[130] The court, when looking at their insurance statutes, opined that they had a financial responsibility law and not a compulsory insurance law.[131] Furthermore, the court looked at the state case law and stated, "the freedom of individuals to contract is not taken lightly by this court."[132] The court found that Iowa statutes and case law did not invalidate the exclusionary clause and, thus, public policy did not override the freedom to contract.[133]

Moreover, the California Supreme Court upheld family exclusion clauses in *Farmers Insurance Exchange v. Cocking*[134] which involved an interspousal suit. In *Cocking*, the court interpreted California Insurance Code section 11580.1(c) which "authorizes automobile liability insurers to exclude from coverage an insured's bodily injury liability to any other person insured under the policy."[135] Thus, the statute allowed family exclusion clauses.[136] The court determined that the statute did not violate public policy because the injured party retained an unrestricted right to sue the negligent insured and section 11580.1(c) expressed the public policy of the state.[137] Furthermore, the court noted the legislative classification was rationally related to a legitimate state purpose.[138] Those purposes being a legitimate interest by the insurers to minimize future losses based on fraud or collusion and maintaining the freedom to contract principle.[139]

Furthermore, in *United Farm Bureau Mutual Insurance Co. v. Hanley*,[140] an Indiana case, the insurer under an automobile policy brought an action for a declaratory judgment to enforce a household exclusion clause against the named insured and his son, a passenger in an automobile involved in an accident while driven by another son.[141] The court discussed the issue of whether the household exclusion clause was contrary to the Indiana Uninsured Motorist Statute.[142] The court held that the son could not

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129. 340 N.W.2d 599 (Iowa 1983).
130. *Id.* at 601.
131. *Id.* at 601-02.
132. *Id.* at 602 (quoting Skyline Harvestore Systems v. Centennial Ins. Co., 331 N.W.2d 106, 109 (Iowa 1983)).
133. *Id.* at 602.
134. 29 Cal. 3d 383, 628 P.2d 1, 173 Cal. Rptr. 846 (1981).
135. *Id.* at 386, 682 P.2d at 2, 173 Cal. Rptr. at 847.
136. *Id.*
137. *Id.* at 387-88, 682 P.2d at 3, 173 Cal. Rptr. at 847-48.
138. *Id.* at 389, 682 P.2d at 4, 173 Cal. Rptr. at 849.
139. *Id.*
140. 172 Ind. App. 322, 360 N.E.2d 247 (1977).
141. *Id.* at _, 360 N.E.2d at 248.
142. *Id.* at _, 360 N.E.2d at 250-53.

recover under the theory of the automobile being an "uninsured automobile" because the uninsured motorist statute "was designed to protect insured persons against injury by an uninsured wrongdoer, not a tortfeasor who is fully insured except as to himself or members of his family."[143] Consequently, the household exclusion clause did not violate the uninsured motorist statute.[144]

## V. Conclusion

Although insurance companies want courts to uphold exclusion clauses on the basis that the insured entered into the contract freely and to prevent fraud and collusion, this reasoning is not realistic. The existence of automobile liability insurance enhances family harmony in an intrafamily suit and the insurance company should compensate any injured victims, including family members. The courts that have upheld family exclusion clauses have created a conflict with the principles involved in tort law and public policy. These states should take note of the recent trend by the state supreme courts of striking down family exclusion clauses.

The mandatory coverage, however, may cause a substantial increase in premiums. This increase in the cost of liability insurance may result in the number of uninsured drivers which would cause harm to the general public. Nevertheless, balancing the evil with the good, it is best to strike down the family exclusion clauses to insure compensation for the innocent accident victim who is a family member or living in the same household of the negligent driver. Therefore, public policy and insurance contract construction mandate that courts or legislatures strike down family exclusion clauses in automobile insurance policies.

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143. *Id.* at _, 360 N.E.2d at 253.
144. *Id.*