(2) A Connecticut requirement that a motorist report an accident even where he did not carry the mandatory no-fault coverage has been held to violate the fifth amendment;[182]

(3) Differentiation between soft-tissue injuries or non-serious fractures and serious fractures denies equal protection according to a Florida court,[183] although courts in New Jersey and New York disagreed;[184]

(4) A no-fault scheme that limits the right of recovery even for those persons who are not entitled to no-fault benefits has been held in violation of Illinois constitutional guarantees;[185]

(5) It was held that arbitration requirements in no-fault legislation violate the right to a jury trial;[186] and

(6) Courts in Michigan and Florida have declared that limitations on property damage actions violate due process and equal protection[187] and provisions of a state constitution guaranteeing redress for any injury.[188]

Despite the decisions upholding the general nature of no-fault insurance, no-fault advocates face a major problem which has not yet been thoroughly considered by the courts. As noted by feminist Ingrid Bergis: "I am very wary of conclusions that precede the experience."[189] All of the no-fault decisions to date have "preceded the experience" and for this reason the courts have placed great reliance on legislative determinations of the necessity for no-fault insurance.

In the future, however, courts will be able to analyze no-fault on the basis of several years experience. There are indications that the experience has been both good and bad. A New Jersey court has already concluded, for example, that no-fault has not been successful in lowering insurance costs and relieving court congestion.[190] On the other hand, the Michigan insurance commissioner concluded that, after three years in operation, the Michigan statute has been successful in achieving legislative goals.[191] If future courts decide that, on the basis of performance, no-fault legislation is a failure, those courts must then decide whether an alternative to the tort system is necessary. Although a New York court has seriously questioned whether a substitute remedy is required,[192] the question is ultimately one for the Supreme Court.

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182. *See* note 66-68 *supra* and accompanying text.
183. *See* note 110 *supra* and accompanying text.
184. *See* notes 113-16 *supra* and accompanying text.
185. *See* notes 136-37 *supra* and accompanying text.
186. *See* notes 146-48 *supra* and accompanying text.
187. *See* notes 171-72 *supra* and accompanying text.
188. *See* notes 166-70 *supra* and accompanying text.
189. J. O'Connell, *No-Fault Insurance for Injuries Arising From Medical Treatment: A Proposal For Elective Coverage*, 24 EMORY L.J. 21, 34 (1975).
190. *See* note 90 *supra* and accompanying text.
191. MICHIGAN DEPARTMENT OF COMMERCE, NO-FAULT INSURANCE AFTER THREE YEARS (1976).
192. *See* notes 82-86 *supra* and accompanying text.

Notes

DEFINING "RELATIVE," "MEMBER OF THE HOUSEHOLD," "MEMBER OF THE FAMILY" OR "RESIDENT" WITHIN THE MEANING OF HOMEOWNER'S AND AUTOMOBILE LIABILITY POLICIES

The definition and application of such terms as "relative," "member of the household," "member of the family," and "resident" are important in determining the scope of coverage under homeowner's and automobile liability policies. This importance arises since coverage under these policies, while extending primarily to the named insured, often extends to "members of the household" and to others.[1] "Members of the family" are often excluded from certain types of coverage under automobile liability insurance,[2] consequently, these terms must be construed to make the ultimate determination of who is covered under the varying provisions of these liability policies.

I. General Principles of Insurance Law Construction

Because contracts of insurance are contracts of adhesion, courts generally apply somewhat different rules of construction than are used with ordinary contracts.[3] The Iowa Supreme Court has said that insurance policy language must be interpreted from a reasonable rather than a hypertechnical viewpoint,[4] and additionally held that if there is any ambiguity or reasonable doubt as to the meaning of the policy, it is to be construed strictly against the insurer and in favor of the insured.[5]

The current premise underlying insurance contract construction involves the evolving doctrine of "reasonable expectations." This doctrine appears to be an extension of the rule that insurance contracts should be interpreted from the viewpoint of an ordinary person, and not from the viewpoint of a specialist or expert.[6] The doctrine has been stated as follows: "The objectively reason-

1. Homeowner's Number 2 Policy, Iowa National Mutual Insurance Company.
2. *See, e.g.*, Pamperin v. Milwaukee Mut. Ins. Co., 55 Wis. 2d 27, —, 197 N.W.2d 783, 785 (1972).
3. C & J Fertilizer, Inc. v. Allied Mut. Ins. Co., 227 N.W.2d 169 (Iowa 1975).
4. Steel Prod. Co., Inc. v. Miller Nat'l Ins. Co., 209 N.W.2d 32, 36 (Iowa 1973).
5. *See, e.g.*, Brush v. Washington Nat'l Ins. Co., 230 Iowa 872, 299 N.W. 403 (1941); Henson v. State Farm Fire & Cas. Co., 252 N.W.2d 200 (N.D. 1977); Wisconsin Builders, Inc. v. General Ins. Co. of America, 65 Wis. 2d 91, 221 N.W.2d 832 (1974). A related rule that was articulated in *Henson* is that if there is language in the policy which will support an interpretation which will impose liability on the insurer and language which will not, the former interpretation will be adopted.
6. *See* City of Spencer v. Hawkeye Sec. Ins. Co., 216 N.W.2d 406 (Iowa 1974). In addition to interpreting the policy from the viewpoint of the ordinary person, the court noted that the courts may also look at the surrounding circumstances, the situation of the parties and the objects they were striving to attain. *Id.* at 408-09.

able 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."[7] The difference between the rule that insurance contracts be interpreted from a reasonable person's viewpoint and the doctrine of reasonable expectations, at least in Iowa, was articulated by the court in *Rodman v. State Farm Mutual Automobile Insurance Co.*[8] The court noted that unlike the former rule, the latter doctrine is applied not only when the policy language is deemed ambiguous, but is also used as an independent and fundamental approach to insurance policy interpretation.[9] This doctrine underlies, implicitly or explicitly, many of the decisions interpreting such terms as "residents" and "members of the household,"[10] as the courts strive to effect the reasonable expectations of the insured concerning familial relationships.

II. The Homeowner's Policy

In the standard Homeowner's Number 2 policy (HO-2), an insured is defined as:

> (1) The named insured in the policy declarations, and
>
> (2) If residents of the named insured's household, his spouse, the relatives of either, and any other person under the age of twenty-one in the care of any insured.[11]

Thus, for someone other than the named insured to be covered by the policy he must first be a resident of the household. The resident must additionally be either a relative of the named insured, his spouse, or a person under twenty-one under the care of either the named insured or any one else who qualifies as an insured.

Under some older policies, coverage was extended only to relatives of the named insured. A policy of this type was involved in *Liprie v. Michigan Millers Mutual Insurance Co.*,[12] with the issue being whether the named insured's daughter-in-law, who was a resident of the named insured's household, was a "relative" of the named insured within the meaning of the policy. The Louisiana court held that a daughter-in-law was a "relative" of the named in-

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7. Keeton, Insurance Law—Basic Text, § 6.3(a) (1971). *See also*, Gray v. Zurich Ins. Co., 65 Cal. 2d 263, 419 P.2d 168, 54 Cal. Rptr. 104 (1966); Gerhardt v. Continental Ins. Cos., 48 N.J. 291, 225 A.2d 328 (1966).

8. 208 N.W.2d 903 (Iowa 1973).

9. Rodman v. State Farm Mut. Auto. Ins. Co., 208 N.W.2d 903 (Iowa 1973). The court later stated, however, that the doctrine is not without limit:

> We refuse to extend application of the principle of reasonable expectations to cases where an ordinary person would not misunderstand his coverage from a reading of the policy unless there are other circumstances attributable to the insurer which cause such expectations.

Id. at 908.

10. *See* sections II and III *infra*.

11. Homeowner's Number 2 Policy, Iowa National Mutual Insurance Company. Some general liability policies have the same or a similar definition of "insured" and thus what is said will apply to these policies.

12. 143 So. 2d 597 (La. 1962).

sured.[13] The language used most often today includes "the relatives of either" the named insured or his spouse, thus preventing problems such as those arising in *Liprie* from being continually litigated.

The primary issue, therefore, is whether a certain person is a "resident of the named insured's household," and thus within the coverage of the policy. In one case,[14] the named insured owned two dwellings on the same lot, and after his wife had obtained a court order for separate maintenance for herself and support for the minor son of the couple, the wife and son moved into one of the two dwellings on the property. The named insured continued to live in the other dwelling on the property, to support the wife and son and to maintain both dwellings, with the minor son visiting back and forth continuously between the two homes. The New Jersey court held that the policy covered the wife's liability under a judgment entered against her for negligence in leaving a gun in a room of her dwelling, where the minor son obtained it and shot another.[15] Thus, whatever the term "resident of the named insured's household" means, it is clear that it does not necessarily mean that the persons live under the same roof.

The fact situation in the New Jersey[16] case would have presented an even more interesting problem if the parties had not been only legally separated but instead had been divorced, since the court would have then had to find that the mother was still the "spouse" of the named insured within the meaning of the policy, as well as finding that she was a "member of the household." The correct approach would appear to be that when a divorce decree is finalized, the wife is no longer the spouse of the "named insured" and thus would not be covered regardless of the living arrangement. It is doubtful that the most liberal interpretation of the doctrine of reasonable expectations would hold that one who is divorced remains a "spouse" of the other for insurance purposes, even though for other legal purposes they are no longer husband and wife. However, the situation would be different if the divorce decree was merely pending and not final.[17]

Another New Jersey case, *Solomen v. Continental Insurance Co.*,[18] illustrates that the definition of "residents of the household" will not be extended to unreasonable extremes. In *Solomen*, a son of the named insureds who had previously lived with the insureds, was conducting a gun shop business in an outbuilding. The New Jersey court held that since the son was not living with the named insureds at the time the shop caught fire, he was not a member of the named insureds' household and consequently was not covered by the

13. Liprie v. Michigan Millers Mut. Ins. Co., 143 So. 2d 597 (La. 1962).
14. Mazzilli v. Accident & Cas. Ins. Co. of Wintherthur, 35 N.J. 1, 170 A.2d 800 (1961).
15. *Id.*
16. *Id.*
17. *See* text accompanying notes 42-46 *infra.*
18. 122 N.J. Super. 125, 299 A.2d 413 (1972).

policy.[19] One does not become a "resident of the household" merely by conducting a business on the premises. The *Solomen* decision thus implies that in order to be a "resident of the household" for purposes of homeowner's insurance, a person must dwell on the property for living purposes.

Is a temporary visitor, even if a relative, a resident of the named insured's household? The Michigan court answered this question in the negative in *Stadelmann v. Glen Falls Insurance Co.*[20] In *Stadelmann*, the visitor was a relative from a foreign country who was living with the immediate family of the named insured for six weeks. The court seemed to base its decision primarily on the fact that the visitor was part of a household in her native country, other than the household of the named insured.[21] The court also emphasized the temporary nature of her visit.[22] The reasoning adopted by the *Stadelmann* court seems to be a viable approach as courts have indicated that under some circumstances a person may be a resident of more than one household.[23] Yet this principle should be circumscribed by the premise that visits of a temporary duration are insufficient to provide the person with resident status for insurance purposes.

A context wherein a person was found to be a resident of two households arose in *Miller v. United States Fidelity & Guaranty Co.*[24] The facts in *Miller* involved a child of divorced parents who regularly resided in his mother's home during the week and in his father's home on weekends. The court found that the child was a resident of both households and within the coverage of each of his parents' separate homeowner's policies, even though the custody decree formally gave custody to the mother with only visitation rights by the father.[25] The court noted that a person has only one domicile but may have more than one residence.[26] The parents intended that the child be a resident of both

19. Solomen v. Continental Ins. Co., 122 N.J. Super. 125, 299 A.2d 413 (1972).

20. 5 Mich. App. 536, 147 N.W.2d 460 (1967).

21. The visitor was a sister of the named insured's spouse, and the named insured paid one-half of her travel fare from Germany and all of her living expenses while she stayed with the named insured. Stadelmann v. Glen Falls Ins. Co., 5 Mich. App. 536, 538, 147 N.W.2d 460, 463 (1967).

22. *Id.*

23. For example, in Mazzilli v. Accident & Cas. Ins. Co. of Wintherthur, 35 N.J. 1, 170 A.2d 800 (1961), the wife who was separated from her husband was found to still be a member of her husband's household. It is obvious that the wife would also have been a member of her own separate household.

24. Miller v. United States Fidelity & Guar. Co., 127 N.J. Super. 37, 316 A.2d 51 (1974).

25. *Id.*

26. *Id.* at 39, 316 A.2d at 54-55. In a prior case the New Jersey Supreme Court defined the terms "residence" and "domicile" and pointed out the underlying difference as follows:

> Domicile has been variously defined as the place where a person "has his true, fixed, permanent home, and principal establishment, and to which, whenever he is absent, he has the intention of returning," Story, Conflict of Laws (8th ed.), § 41, p. 40, or "the habitation fixed in any place, without any present intention of removing therefrom,". . . .
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> * * *
>
> Residence, on the other hand, though parallel in many respects to domicile, is something quite different in that the elements of permanency, continuity and kinship with the physical, cultural, social and political attributes which inhere in

households, and the custody decree was found not to be controlling for insurance purposes.[27]

Another problem arises with college students—are they still "residents" of their parents' household and thus covered under their parents' policy? If a college student, while away at college, uses his parents' address and stays at their home while not in school, he will probably be found to be a "resident of the household."[28] Likewise, armed forces personnel have been found to be residents of their parents' household where they have left all their personal belongings in their parents' house and returned there when on leave.[29] However, these decisions involved persons who were drafted into the armed forces. As residence implies an intent to maintain a dwelling, a voluntary departure from a residence may negate a finding that a person has retained the dwelling as a residence. With today's volunteer military, a person entering the armed forces may no longer be considered a resident of his parents' household since he is voluntarily leaving the household to accept employment.

A final area to explore in dealing with the homeowner's policy is the situation where the named insured and a married son or daughter, with or without family, lives in the same dwelling. The issue to be resolved is whether the younger family is actually in residence at the named insured's household. The answers to several questions would be useful in determining whether the son's or daughter's family would be an insured under the policy:

(1) Do they pay rent or share the expenses?
(2) Are there separate laundry and cooking facilities?
(3) How are household expenses met?
(4) Who pays the utilities for all?
(5) Who provides groceries, and who prepares meals?
(6) Are living quarters defined for both parents and children?[30]

To the extent that the two families are in effect integrated as one unit, there would undoubtedly be coverage. However, if the younger family pays rent and

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> a "home" according to our accepted understanding, are missing. Intention adequately manifested is the catalyst which converts a residence from a mere place in which a person lives to a domicile. Where a person has two homes in which he lives and between which he divides his time, it is still his intention which creates one or the other as his domicile, 1 Beale, Conflict of Laws, § 10.3—not the same intention necessary to create a domicile out of a mere residence but such additional intention manifested by a desire to exercise at one of the places the rights growing out of a true domicile and to become subject to the accompanying obligations.

State v. Benny, 20 N.J. 238, 250-51, 119 A.2d 155, 161-62 (1955). *See also* Edmundson v. Miley Trailer Co., 211 N.W.2d 269, 270-71 (Iowa 1973).

27. Miller v. United States Fidelity & Guar. Co., 127 N.J. Super. 37, 316 A.2d 51 (1974).

28. Montgomery v. Hawkeye Sec. Ins. Co., 52 Mich. App. 457, 217 N.W.2d 449 (1974). In *Montgomery*, the insurer was held to have a duty to defend a college student, under his father's policy, in a civil action for assault.

29. Beck v. Pennsylvania Nat'l Mut. Cas. Ins. Co., 429 F.2d 813 (5th Cir. 1970); American Universal Ins. Co. v. Thompson, 62 Wash. 2d 595, 384 P.2d 367 (1963) (applying California law).

30. G. GUINANE, HOMEOWNERS GUIDE (1970).

their separate household expenses and live in clearly defined living quarters, these factors would indicate that there are two separate households with the younger family not being residents of the named insured's household.

Most of the cases construing these pertinent clauses have evolved in situations involving automobile insurance. To a large extent, however, the cases should be interchangeable, since one would not expect the definitions of such terms to change merely because a different type of policy is involved.[31]

III. Automobile Insurance

The discussion dealing with homeowner's insurance has provided a flavor for what does not constitute a "resident" or "member of the household." Generally, the cases involving automobile policies have gone into greater depth, but even these have failed to formulate a definition of the terms involved that can be applied to all circumstances. The definitions of such terms depend on the facts of each case.[32]

The automobile cases most often involve construction of a clause that excludes the named insured, his spouse and any relatives of the named insured who is a resident of the same household from coverage for bodily injury. Thus, with this exclusion, the purported member of the household would be trying to show that he was *not* a member of that household so that he could receive compensation for bodily injuries suffered. Other cases involve auto policy provisions where, like the homeowner's policy, coverage extends to relatives or spouses who are "residents of the household."

Problems again arise as to whether a spouse who is seeking a divorce can still be considered a resident of her husband's household. The Wisconsin court dealt with this issue in *Belling v. Harn*.[33] In *Belling*, Michael and Ruth Harn were married in 1958, and in 1964 Ruth commenced a divorce action. When Michael was served with a summons in October of 1964, he voluntarily left the family home and rented a room elsewhere.[34] In 1963, Michael had obtained automobile liability insurance. In 1964, after the divorce proceedings had been commenced, Ruth purchased a car and at her request Michael added this car to his insurance policy. The insurance agent was aware of the pending divorce action when the additional coverage was sold.[35] In 1965, Ruth was involved in an accident, which occurred prior to the divorce decree being rendered.

The issue in *Belling* was whether or not the wife was a resident of the same household as her husband at the time of the accident.[36] The policy included

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31. This is assuming that a certain policy has not defined the term explicitly in a manner different from that espoused in the cases.
32. Van Overbeke v. State Farm Mut. Auto. Ins. Co., 227 N.W.2d 807 (Minn. 1975).
33. 65 Wis. 2d 108, 221 N.W.2d 888 (1974).
34. Belling v. Harn, 65 Wis. 2d 108, 109, 221 N.W.2d 888, 889 (1974).
35. The court did not base its decision on this point although it might have used an estoppel theory to find that Ruth was covered by the policy.
36. Belling v. Harn, 65 Wis. 2d 108, 110, 221 N.W.2d 888, 890 (1974).

as an "insured" a spouse, if the spouse was a "resident of the same household." If Ruth fit within this definition, she was covered under the policy.

The *Belling* court found that the divorce proceedings had not created two households, since the divorce was not yet finalized when the accident occurred.[37] The decision was largely based upon Wisconsin divorce statutes that called for a "cooling off" period after service to facilitate reconciliation and required a reconciliation effort be made.[38] The laws were designed to promote the best interests of marriage and the family. The court reasoned that these, and other laws providing for temporary maintenance and custody orders, should not be construed

> to defeat the benefits of the family relationship in regard to automobile insurance protection while the divorce action is pending. The living separate and apart of the parties may or may not prove that "absence makes the heart grow fonder," but we hold that such separate living of the spouses following the instituting of divorce proceedings is not a factor to be given any great weight in determining whether such spouses remain members or residents of a single household.[39]

In a prior case, *National Farmers Union Property & Casualty Co. v. Maca*,[40] the Wisconsin court articulated three factors to be used in considering whether a person is a resident of the household: (1) Living under the same roof; (2) in a close, intimate and informal relationship; and (3) where the intended duration is likely to be substantial, where it is consistent with the informality of the relationship, and from which it is reasonable to conclude that the parties would consider the relationship in contracting about such things as insurance or in their conduct in reliance thereon.[41]

The *Belling* court continued to apply the tests articulated in *Maca* but noted that no single factor in the *Maca* test was determinative.[42] The court, overruling a prior decision,[43] expressly held that separation of spouses during a pending divorce proceeding is not a factor to be considered to any extent in determining whether one of the parties is a resident of the household, even if the parties are living apart at the time.[44] Such a separation was viewed by the court as temporary in nature since the separation is designed to facilitate reconciliation.[45]

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37. *Id.*
38. *Id.* at 111, 221 N.W.2d at 892.
39. *Id.*
40. 26 Wis. 2d 399, 132 N.W.2d 517 (1965).
41. National Farmers Union Property & Cas. Co. v. Maca, 26 Wis. 2d 399, —, 132 N.W.2d 517, 521-22 (1965). *See also* Belling v. Harn, 65 Wis. 2d 108, 110, 221 N.W.2d 888, 891 (1974).
42. The court noted the tests applied in *Maca* and said:
> If reasonableness of expectation that the wife was to be covered was the sole test, there would be no question in the case before us for here the husband secured the coverage for the wife's automobile because he was concerned about coverage for her and the children.

Belling v. Harn, 65 Wis. 2d 108, 110, 221 N.W.2d 888, 891 (1974).
43. The case that was overruled is Doern v. Crawford, 30 Wis. 2d 206, 140 N.W.2d 193 (1966).
44. Belling v. Harn, 65 Wis. 2d 108, 221 N.W.2d 888 (1974).
45. The court cited no authority in support of this.

The decision in *Belling* is sound because when divorce proceedings are initiated the parties are often in limbo. The parties would reasonably expect coverage to continue until the divorce is final, and would, when contracting about insurance, expect to be considered as residents of the same household.[46]

The *Maca* case, which developed the three-part test, was a case involving a policy covering farm accidents except for those causing bodily injury to the named insured, his spouse and any relative of the named insured who was a resident of the same household.[47] The named insured's thirty-two year old son was injured while operating a corn picker on his father's farm, and he sued his father. If the son was a resident of the household, the insurance policy would not cover his injury.

The son had lived with the father for five months prior to the accident, but both maintained that the situation was temporary.[48] Although the son was employed outside of the farm, at the time he was seeking other employment which, if secured, would cause him to move from the farm. Even though the son had no intent to remain at the farm, the court refused to equate residence and domicile.[49] While one cannot be domiciled in a place without the intent to remain, one may be a resident of a place without this intent.[50] The court went on to say that:

> We think that one is not a resident of the household or member of the family if, even though he has no other place of abode, he comes under the family roof for a definite short period or for an indefinite period under such circumstances that an early termination is highly probable. If, however, the circumstances of his stay are otherwise consistent with a family or household relationship, and his stay is likely to be of substantial duration, the fact that he attempts to find employment, gaining which he would live elsewhere, would not, in our opinion, prevent his being a resident of the household or a member of the family.[51]

The court found that the intended duration of the stay and the intimacy of the relationship was such that it was reasonable to expect the parties to take the relationship into consideration in contracting about such matters as insurance or in their conduct in reliance thereon.[52] Because of these expectations, the *Maca* court found that the son was not a resident of the household, and thus within the policy's protection.

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46. Another case in this area is Lumbermans Mut. Cas. Co. v. Continental Cas. Co., 387 P.2d 104 (Alas. 1963). In this case, the wife, who was still residing at the family home, had instituted a divorce action, and was then killed in an automobile accident. She was found to be a resident of the same household as her husband, even though the husband ate and slept away from home. The court noted that the husband did visit home regularly and a reconciliation attempt was in progress.
47. National Farmers Union Property & Cas. Co. v. Maca, 26 Wis. 2d 399, 132 N.W. 2d 517 (1965).
48. *Id.*
49. *Id.*
50. *Id.*
51. *Id.* at 407-08, 132 N.W.2d at 521-22.
52. *Id.* at 406, 132 N.W.2d at 521.

The Wisconsin court also dealt with *Maca* and its standards in *Pamperin v. Milwaukee Mutual Insurance Co.*[53] A twenty-year old single woman, after a summer session at college, went to stay with her uncle and to take care of his children due to an illness in the family. She moved into the house planning to return to school in the fall.[54] The uncle's policy insured against liability when a relative who was a resident of the household drove a non-owned automobile.[55] About ten days after moving in, the woman was involved in an automobile accident, driving a car owned by her mother.

The jury found that the woman was a resident of her uncle's household,[56] but the Wisconsin Supreme Court reversed. The court noted that, as used in insurance policies, a resident of a household is a phrase used to describe persons living together as a family and deal with each other in a close and informal relationship.[57] However, merely because people live under the same roof does not mean that they are residents or members of the same household.[58] A key factor to examine is the intended duration of the relationship. On this point, the court stated:

> Thus, while the intended duration does not require the permanency generally associated with the establishment of a legal domicile, something more is required than a temporary sojourn. In this connection the subjective or declared intent of the individual, while a fact to be considered, is not controlling, but the intended duration oftentimes must be determined only after a thorough examination of all the relevant facts and circumstances surrounding the relationship.[59]

The *Pamperin* court considered the three factors noted in *Maca*,[60] one of which is the intended duration of the relationship, and found that as a matter of law the woman was not a resident of the household.[61] The court noted that since she was returning to school in the fall, an early termination of the relationship was highly probable. In addition, she did not transfer her possessions to her uncle's home nor did she reside there continuously for a substantial period prior to the accident. The court also found that she did not live there under such circumstances that would cause insurance matters to be considered by the parties.[62]

The *Pamperin* case is analogous to the homeowner's policy case of *Stadelmann v. Glen Falls*,[63] which involved the foreign visitor. In both cases, it can be argued that under the doctrine of reasonable expectations the named insured

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53. 55 Wis. 2d 27, 197 N.W.2d 783 (1972).
54. Pamperin v. Milwaukee Mut. Ins. Co., 55 Wis. 2d 27, 30, 197 N.W.2d 783, 786 (1972).
55. *Id.* at 29, 197 N.W.2d at 785.
56. *Id.*
57. *Id.* at 31, 197 N.W.2d at 787.
58. *Id.*
59. *Id.* at 31-32, 197 N.W.2d at 787-88.
60. *Id.* at 32, 197 N.W.2d at 789.
61. *Id.*
62. *Id.*
63. 5 Mich. App. 536, 147 N.W.2d 460 (1967). *See* text accompanying notes 20-22 *supra.*

would expect relative-visitors staying for a substantial period of time, for example, more than one month, to be covered under his automobile and homeowner's policies. In *Pamperin* especially, the doctrine arguably would apply to afford coverage because a person might reasonably expect a relative who has come to help out in time of sickness for a substantial period to be covered by his liability policies. Even if the *Pamperin* court could agree with this statement, the issue of what constitutes a substantial time would remain.

Another context in which these interpretation problems arise is where nonmarried individuals reside in the same dwelling. In *Bartholet v. Berkness*,[64] two men, unmarried and unrelated, were dwelling in the same living quarters. The men shared expenses but they had separate and independent social lives. The issue was whether they were members of the same "household" within the meaning of an automobile policy exclusion, which provided that the policy in question did not apply to a temporary substitute automobile owned by a member of the same household.[65] The purpose of such a clause is to prevent a situation in which members of one household may have two or more automobiles which are used interchangeably but with only one particular automobile insured.[66]

The court noted that the term "household" should not be given a construction of undue narrowness and should include such persons as domestic servants or attendants.[67] Normally there is some blood relationship among members of a household, but this of course is not always necessary. The court did not consider the two men to be members of the same household, as the court was not willing to apply such a liberal definition of the term. The court stated:

> Under any definition of the term . . . we are unable to say that two bachelors, sharing the same living quarters under such conditions as exist here, are members of the same household. The most that can be said is that they were unrelated friends who resided in the same dwelling. It is obvious from the fact situation that the arrangement was one which served the convenience and economy of the parties and that each went his own way without regard to any social or family obligation to the other.[68]

In this case the ruling was to the advantage of the two men, since the one involved in the accident would be covered under the other's policy if he were not a member of the same household. However, one can envision situations where two single, unrelated men living together would constitute one household, and the dissent by Justice Otis appears to have adopted the more realistic approach:

> The policy excludes members of the same household and not merely members of the same family. The purpose is to prevent those living in close proximity who have easy access to one another's vehicles from having more than one car covered by only one premium. The jury

64. 189 N.W.2d 410 (Minn. 1971).
65. Bartholet v. Berkness, 189 N.W.2d 410 (Minn. 1971).
66. *Id.*
67. *Id.*
68. *Id.* at 412.

> has found that the automobile owner and the insured constitute one household and there was ample evidence to sustain the verdict.[69]

A related problem was presented by *Henderson v. State Farm Mutual Automobile Insurance Co.*[70] In *Henderson*, the plaintiff and Penelope had lived together in Illinois for several years as husband and wife, even though they were never legally married.[71] The couple had three children during their period of cohabitation. The automobile policy involved did not apply to bodily injury to the insured or any member of the family of the insured residing in the same household as the insured.[72] There was no dispute that the plaintiff was residing in the same household as Penelope, who owned the policy; the issue was whether the plaintiff was a member of Penelope's family.[73] The court found that "family" generally means a relationship by blood or marriage, neither of which was involved here. Thus, the court held that the policy exclusion did not apply to plaintiff, noting that no reasonable man would give the term "family" a construction like the one defendant argued applied.[74]

The South Carolina Supreme Court has said that such an exclusionary clause does apply to putative spouses.[75] This was found to be the case even though the relationship was adulterous; the court stated that the exclusionary clause is preventive: the " 'insured is more likely to concede by admission or nonresistance blame for hurting a member of his household than for doing harm to others.' "[76] The South Carolina case was distinguished by the Maryland court in *Hicks v. Hatem*;[77] the court reasoned that South Carolina recognized common-law marriages thereby lending credence to the establishment of familial status, while Maryland did not. Since in Maryland a putative spouse could have no legal status, such a person was said not to have status as a "family" member.

The *Henderson* court's reasoning for not including putative spouses as members of the family was that:

> If we were to construe the word 'family' as urged by State Farm [the defendant], it would result in giving controlling weight to the purpose State Farm now claims it had in mind when it wrote the contract of insurance and thus ignore the ordinary meaning of the words it chose to express that purpose. This would be applying in reverse the rule that an insurace policy must be construed in accordance with the principle that the test is not what the insurer intended its words to mean,

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69. *Id.* at 413.
70. 59 Wis. 2d 451, 208 N.W.2d 423 (1973).
71. The court did not discuss the issue of whether the period of cohabitation constituted a common-law marriage.
72. Henderson v. State Farm Mut. Auto. Ins. Co., 59 Wis. 2d 451, 452, 208 N.W.2d 423, 424 (1973).
73. *Id.* at 453, 208 N.W.2d at 425.
74. *Id.* at 455, 208 N.W.2d at 427.
75. Hunter v. Southern Farm Bureau Cas. Ins. Co., 241 S.C. 446, 129 S.E.2d 59 (1962).
76. *Id.* at 450, 129 S.E.2d at 61, *quoting* Cartier v. Cartier, 84 N.H. 526, 153 A. 6 (1931).
77. 265 Md. 260, 289 A.2d 325 (1972).

> but what a reasonable person would understand them to mean. Moreover, this court has held that whatever ambiguity exists in a policy of liability insurance must be resolved in favor of the insured.[78]

Because of the rule that ambiguities are resolved in favor of the insured,[79] it is quite possible that under the same fact pattern a person may be found to be a member of the family or resident of the household if such a finding will bring him within policy coverage but the same person may be found not to be a member of the family or a resident of the household if such a finding will deny him coverage because of a policy exclusion. This would give the person seeking coverage the best of both worlds, with the outcome possibly depending on whether a policy inclusion provision or exclusion provision was involved.

An Iowa case dealing with the subject of who is a member of the household is *Goodsell v. State Automobile & Casualty Underwriters.*[80] In *Goodsell,* an unmarried twenty-year old daughter who had left home to take a three-month training course with an airline in the hope of securing employment on completion of the course was found to still be a resident of her father's household prior to the ultimate outcome of her training.[81] This is similar to the cases involving college students[82] and is also analogous to the situation where an unemancipated child leaves his parents' home to temporarily live and work elsewhere. In such a situation, the child is still deemed to be a resident of his parents' household.[83] The *Goodsell* holding is therefore consistent with the general judicial approach in this area.

Van Overbeke v. State Farm Mutual Automobile Insurance Co.[84] offers a final illustration as to the approach the courts have taken in construing automo-

78. Henderson v. State Farm Mut. Auto. Ins. Co., 59 Wis. 2d 451, 455, 208 N.W.2d 423, 427 (1973).

79. *See* note 5 *supra.*

80. 261 Iowa 135, 153 N.W.2d 458 (1967).

81. Goodsell v. State Auto. & Cas. Underwriters, 261 Iowa 135, 153 N.W.2d 458 (1967).

82. Crossett v. St. Louis Fire & Marine Ins. Co., 289 Ala. 598, 269 So. 2d 869 (1972); American States Ins. Co. v. Walker, 26 Utah 2d 161, 486 P.2d 1042 (1971).

In *Crossett,* a university student residing in a university dormitory over 100 miles from his parents' home was found to be a "resident of the household" and thus he was covered under his parents' policy for an accident that occurred at school. The student had a room in the family home, came home on weekends, kept personal belongings there, and his father paid his school expenses and provided him with money for incidentals. The student listed his parents' address on his driver's license and registered for the draft near his parents' home. Crossett v. St. Louis Fire & Marine Ins. Co., 289 Ala. 598, 269 So. 2d 869 (1972).

Walker did not involve a college student, but a student who was studying to be an X-ray technician. She was studying in Utah but was still found to be a resident of her parents' household in Idaho because she kept some personal belongings at the household and her parents augmented her income. She considered herself to be a resident of Idaho and had her driver's license issued by that state although her income tax return listed Utah as her residence. In addition, the agent of the insurer stated that she would be covered by her father's policy when she left Idaho for training in Utah. American States Ins. Co. v. Walker, 26 Utah 2d 161, 486 P.2d 1042 (1971).

83. Taylor v. State Farm Mut. Auto. Ins. Co., 171 So.2d 816 (La. App. 1965). Here, the insured's 19-year-old unemancipated son was found to be a resident of the insured's household even though he had left the insured's Arkansas home for an indefinite length of time to live and work with his uncle in Louisiana on a share-the-expense basis.

84. 227 N.W.2d 807 (Minn. 1975).

bile insurance clauses relating to residents and familial relationships. In *Van Overbeke*, the plaintiff was involved in an accident while driving a car owned by his brother. Plaintiff's policy provided coverage while driving a "non-owned" automobile. The policy defined such an automobile as "not (1) owned by . . . the named insured, his spouse, or any relative of either residing in the same household, other than a temporary substitute automobile."[85] The defendant insurer contended that the plaintiff and his brother resided in the same household. The brother resided at the parents' address. The defendant insurance company contended that the plaintiff also resided there because this was the address he gave on the policy application and this was his mailing address.[86] The court recited the statement that household is generally synonymous with family and includes those who dwell together as a family under the same roof.[87] The court then noted that the determination of a person's household is to be made according to the facts of each case. The court said:

> There is ample evidence to support the trial court's finding that plaintiff was emancipated. . . . He had rented an apartment in Mankato [the plaintiff's parents did not reside in Mankato], provided for all of his own financial needs with no assistance from his parents, was employed in Mankato as well as attending school, and intended Mankato to be his residence. The fact that he continued to use the address of his parents from time to time, while a factor for consideration, does not refute the trial court's finding. It is common for young, single persons to continue to use their parents' address for some purpose, such as a permanent mailing address.[88]

Thus, the *Van Overbeke* court rejected the insurer's contention that the plaintiff and his brother resided in the same household, holding that the plaintiff was covered under the policy.

It is difficult to formulate any general rule from the cases, whether it is a homeowner's or automobile policy involved, because the decisions turn largely on the facts of the particular case. The *Maca*[89] court, with its three part test, has perhaps most clearly articulated the primary factors used to determine who is a "resident of the household." However, the court in *Maca* noted that no one of the three factors is determinative and that other factors may come into play.[90]

IV. Conclusion

The decision in *C & J Fertilizer, Inc. v. Allied Mutual Insurance Co.*[91] concerns the doctrine of reasonable expectations as generally applied to insur-

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85. Van Overbeke v. State Farm Mut. Auto. Ins. Co., 227 N.W.2d 807, 808 (Minn. 1975).
86. *Id.* at 810.
87. *Id.*
88. *Id.*
89. National Farmers Union Property & Cas. Co. v. Maca, 26 Wis. 2d 399, 132 N.W. 2d 517 (1965).
90. *Id.*
91. 227 N.W.2d 169 (Iowa 1975).

ance contracts; combined with the principles of analogous decisions in the area, it may have an impact on future cases interpreting such terms as "members of the household." In *C & J Fertilizer, Inc.* the court applied the doctrine of reasonable expectations and said that the insured could recover for a burglary loss even though the insurance policy definition of "burglary" required the exterior of the premises to bear visible marks of force and violence and even though only an interior door of the insured's warehouse was damaged.[92] The court ruled in this manner since the most the insured might have reasonably anticipated was a policy requirement of visual evidence indicating that the burglary was an "outside" rather than an "inside" job and since the exclusion in issue, masked as a definition, made the insurer's obligation to pay turn on the skill of the burglar, and not on the event over which the parties bargained for coverage.[93]

C & J Fertilizer, Inc. is important for it seems to extend beyond *Rodman*[94] the doctrine to apply to cases where an ordinary lay person would not have misunderstood the coverage had he read the policy.[95] The result in *C & J Fertilizer, Inc.* appears to be that even though on its face a policy may be clear and unambiguous, if a term within it is susceptible to a common meaning other than that which it is defined to mean in the policy, then some special effort on the insurer's part will be necessary before that term will be given its meaning as defined in the policy.[96] It has been recognized that:

> It appears that merely defining terms, in many situations, will no longer be sufficient to bind insureds where they may be able to give a more common definition to a term. This will require insurers to seek out the possibly confusing terms in their policies and in some manner either through representations of their agents or through marketing methods make the potential insureds more aware of the policy limits to prevent expectations from occurring which the insurers did not intend.[97]

While *C & J Fertilizer, Inc.*[98] may have extended the *Rodman*[99] "reasonable expectations" doctrine beyond a point where most courts have yet to venture, the trend is clearly in that direction.[100] Such reasoning as that expressed in *C & J Fertilizer, Inc.* may very well broaden the meaning of such terms as "household." Since such terms have a much more expansive meaning today than in the past, with the term today encompassing more than a "blood relation-

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92. C & J Fertilizer, Inc. v. Allied Mut. Ins. Co., 227 N.W.2d 169 (Iowa 1975).
93. *Id.*
94. Rodman v. State Farm Mut. Auto. Ins. Co., 208 N.W.2d 903 (Iowa 1973).
95. C & J Fertilizer, Inc. v. Allied Mut. Ins. Co., 227 N.W.2d 169 (Iowa 1975).
96. Note, *Reasonable Expectations: The Insurer's Dilemma*, 24 DRAKE L. REV. 853, 863 (1975).
97. *Id.*
98. C & J Fertilizer, Inc. v. Allied Mut. Ins. Co., 227 N.W.2d 169 (Iowa 1975).
99. Rodman v. State Farm Mut. Auto. Ins. Co., 208 N.W.2d 903 (Iowa 1973).
100. *See* KEETON, INSURANCE LAW—BASIC TEXT, § 6.3(a) (1971). *See also* Gray v. Zurich Ins. Co., 65 Cal. 2d 263, 419 P.2d 168, 54 Cal. Rptr. 104 (1966); Gerhardt v. Continental Ins. Co., 48 N.J. 291, 225 A.2d 328 (1966).

ship," insurers should carefully explain just who is covered under their policies in an attempt to limit such a broad construction. The trend is clearly towards a more expansive meaning of "member of household" and other related terms when it is to the benefit of someone seeking to come within a policy's coverage. However, care must be exercised so that coverage is not extended by the courts to cover all of the parties' expectations of coverage; only their "reasonable expectations" should be recognized.

Gary D. Stump

PENDING CRIME VICTIM COMPENSATION LEGISLATION IN IOWA: AN ANALYSIS

A bill for "[a]n Act relating to the compensation of the victims of crimes"[1] will probably be considered by the Iowa legislature during the second regular session of the 67th General Assembly.[2] This Note will examine the specific provisions of that bill in light of similar legislation currently in force in other states. The introductory material which follows briefly sets forth the history of, as well as the theoretical justifications for and alternatives to, criminal victim compensation.

I. INTRODUCTION

A. *History and Rationale*

"As all commentators writing about victim compensation like to point out, the Code of Hammurabi contained provisions for a system of victim compensation, some thirty-seven centuries before the first American program was enacted."[3] The recent resurgence of interest in compensation of victims of crimes has often been attributed to British social historian Margery Fry's 1957 article entitled "Justice for Victims."[4] Modern legislation in New Zealand (1963) and Great Britain (1964) preceded California's 1965 legislation, which was the first

1. H.F. 138, 67th G.A., 2d Sess. (1977).
2. Telephone conversation of May 27, 1977, with Representative Joan Lipsky (R., Cedar Rapids) [hereinafter cited as LIPSKY CONVERSATION]. Representatives Lipsky and Reid W. Crawford (R., Ames) are the sponsors of H.F. 138.
3. McAdam, *Emerging Issue: An Analysis of Victim Compensation in America*, 8 URBAN LAWYER 346 (1976) [hereinafter cited as McAdam]. *See* Drobny, *Compensation to Victims of Crime: An Analysis*, 16 ST. LOUIS L.J. 201, 201 04 (1971) [hereinafter cited as Drobny], for a brief history of crime victim compensation.
4. *See, e.g.*, Polish, *Rehabilitation of the Victims of Crime: An Overview*, 21 U.C.L.A. L. REV. 317, 318 n.5 (1973) [hereinafter cited as Polish]. "Justice for Victims" is reprinted in *Compensation for Victims of Criminal Violence: A Round Table*, 8 JUR. PUB. L. 191, 191-94 (1959).