and reliability of the United States mail system,[48] no doubt *Merryweather* is an attempt to prevent an insured from falling victim not only to the capriciousness of his insurance company but to the breakdowns of the postal service as well.

That the purpose and policy evinced by the Iowa court in *Merryweather* are laudable and necessary is uncontrovertible by those concerned as to the bargaining position of an individual policyholder vis-à-vis his insurance company. It is far from clear, however, that the Iowa legislature is of the same philosophy and it is unfortunate that the *Merryweather* decision is as vulnerable as it is to criticism on the grounds of faulty statutory construction and misinterpreted legislative intent.

AMANDA M. DORR

48. "[T]he recent and continuing breakdowns in United States mail deliveries assumes proportions of national disaster." Eves v. Iowa Employment Security Comm'n, 211 N.W.2d 324, 326 (Iowa 1973).

LIFE INSURANCE—INCONTESTABLE CLAUSE IN GROUP LIFE INSURANCE POLICY BARS INSURER FROM DEFENDING AGAINST CLAIM ON GROUND DECEDENT WAS NOT AN ELIGIBLE EMPLOYEE FOR INSURANCE UNDER TERMS OF THE POLICY.—*Freed v. Bankers Life Insurance Co.* (Iowa 1974).

Defendant company issued a policy of group life insurance to Johnson County Broadcasting Corporation on the lives of all participating full-time employees of that company. Under the policy an individual certificate was delivered to Scott Swisher as his "Personal Insurance." Premiums were paid on Swisher's insurance from the date the policy became effective until his death. On Swisher's death defendant refused to pay the proceeds of the policy on the ground that he was not a full-time employee as defined by the policy at the time it was issued or at any time thereafter. It was conceded that the policy had been in force for a sufficient period prior to Swisher's death to cause the incontestability features of the policy[1] to become fixed. An application for adjudication of law points[2] was made under which a single legal question was tendered. The question was whether the incontestable clause precluded the insurer from defending against a claim on the ground that the decedent was not an eligible employee under the terms of the policy. The trial court ruled against the insurer in not allowing the defense. The Iowa supreme court, *held*, affirmed unanimously, the incontestable clause in a group life insurance policy bars the insurer from defending against a claim on the ground that the decedent was not an employee eligible for insurance under the terms of the policy. *Freed v. Bankers Life Insurance Co.*, 216 N.W.2d 357 (Iowa 1974).

In *Freed*, the Iowa court was faced with a case of first impression[3] involving the interpretation of a statutorily required[4] incontestable clause in a group

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1. The incontestable clause included in the group policy read as follows:
The validity of the various provisions of this policy will not be contested by the Insurance Company after one year from the date of issue except for non-payment of premiums. No statement made by any Insured Person relating to his insurability shall be used in contesting the validity of the insurance with respect to which such statement was made after such insurance has been in force prior to the contest for a period of one year during the Insured Person's lifetime, nor unless it is contained in a written application signed by him.
Freed v. Bankers Life Ins. Co., 216 N.W.2d 357, 358 (Iowa 1974).

2. IOWA R. CIV. P. 105. This rule states: "The court may in its discretion, and must on application of either party, made after issues joined and before trial, separately hear and determine any point of law raised in any pleading which goes to the whole or any material part of the case."

3. Freed v. Bankers Life Ins. Co., 216 N.W.2d 357 (Iowa 1974).

4. IOWA CODE § 509.2 (1973). The section provides:
No policy of group life insurance shall be delivered in this state unless it contains in substance the following provisions, or provisions which in the opinion of the commissioner are more favorable to the persons insured or at least as favorable to the persons insured, and more favorable to the policyholder.
. . . .
(2) A provision that the validity shall not be contested, except for nonpayment of premiums, after it has been in force for two years from its date of issue; and

life insurance policy. The clause in the policy issued by the defedant was found to adopt the literal language of the Iowa statute.[5] Hence, the court was left free to direct its efforts to the determination of a test which would enable it to conclude what defenses an incontestable clause would preclude.

As a general rule the courts have decided that an incontestable clause bars only defenses of *invalidity* and has no effect on those of no *coverage*.[6] This proposition is supported in *Metropolitan Life Insurance Co. v. Conway*,[7] a case which has been central to most discussions of the incontestable clause.[8] In *Conway*, Mr. Justice Cardozo, then Chief Judge of the New York Court of Appeals, stated:

> The provision that a policy shall be incontestable after it has been in force during the lifetime of the insured for a period of two years is not a mandate as to coverage, a definition of the hazards to be borne by the insurer. It means only this, that within the limits of the coverage the policy shall stand, unaffected by any defense that it was invalid in its inception, or thereafter became invalid by reason of a condition broken.[9]

The *Conway* decision, which has been cited by virtually all text and case authorities on the subject,[10] has not been uniformly interpreted.[11] In support of this, the court in *Freed* cites to two recent disagreeing decisions[12] which it says are impossible to reconcile or distinguish and yet each of which draw solace from the language of *Conway*.[13]

A discussion of these cases will be central to the scope of this casenote. However, first it is necessary to consider prior holdings which have laid the groundwork from which the courts have become so hopelessly split.[14]

Most courts which discuss the incontestable clause cite to the distinction

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that no statement made by any person insured under the policy relating to his insurability shall be used in contesting the validity of the insurance with respect to which such statement was made after such insurance has been in force prior to the contest for a period of two years during such person's lifetime, nor unless it is contained in a written instrument signed by him.

5. Freed v. Bankers Life Ins. Co., 216 N.W.2d 357, 358 (Iowa 1974).

6. *E.g.*, Metropolitan Life Ins. Co. v. Shalloway, 151 F.2d 548 (5th Cir. 1945) (the enforcement of a provision relating to a misstatement of the insured's age was found not to contest the policy's validity and thus was not barred by the incontestable clause); New York Life Ins. Co. v. Hollender, 38 Cal. 2d 73, 237 P.2d 510 (1931). *But see* Bernier v. Pacific Mut. Life Ins. Co., 173 La. 1078, 1086-87, 139 So. 629, 632 (1932). This latter case expressed the view that an insurer is barred by an incontestable clause from raising any defense not plainly excepted from that provision.

7. 252 N.Y. 449, 169 N.E. 642 (1930).

8. Young, *Incontestable as to What?*, 1964 U. ILL. L.F. 323, 326.

9. Metropolitan Life Ins. Co. v. Conway, 252 N.Y. 449, 169 N.E. 642 (1930).

10. Freed v. Bankers Life Ins. Co., 216 N.W.2d 357, 359 (Iowa 1974).

11. *Cf.* R. KEETON, INSURANCE LAW § 6.5(d), at 396 (1971) (refers to the opinions of the cases that have interpreted the incontestable clause as leaving much room for debate).

12. Freed v. Bankers Life Ins. Co., 216 N.W.2d 357, 359 (Iowa 1974), *citing* Crawford v. Equitable Life Assurance Soc'y of the United States, 56 Ill. 2d 41, 305 N.E.2d 144 (1973) *and* Simpson v. Phoenix Mut. Life Ins. Co., 24 N.Y.2d 262, 247 N.E.2d 655, 299 N.Y.S.2d 835 (1969).

13. Freed v. Bankers Life Ins. Co., 216 N.W.2d 357, 359 (Iowa 1974).

14. Gill v. General American Life Ins. Co., 434 F.2d 1057, 1058 (8th Cir. 1970). *See* Annot., 26 A.L.R.3d 632 (1969).

in *Conway*,[15] but it appears that they differ strongly in their interpretation of the words *coverage* and *invalidity*. The precise meaning of these words is necessary for the decision's application.[16] In one case the contention was raised that the employment status of the decedent was a hazard from which the loss occurred and therefore it should control as to whether the decedent was ever within the coverage of the policy.[17] In that case the United States Court of Appeals for the Ninth Circuit emphasized that such a contention failed to correctly interpret the distinction in *Conway* between a contest of the initial validity of the policy and a contest of the coverage of the hazards against which the policyholder was insured.[18] Here it was recognized that the attributes of an insured are not related to coverage and are thus precluded as a defense by the policy's incontestable provision.[19]

Another interpretation has been that contesting the employee's eligibility for insurance under a group policy does not raise an issue of invalidity but simply shows the failure of the employee to satisfy the policy provisions.[20] This proposition has been accepted by some courts based on the rationale that questions of invalidity create grounds for avoiding the *entire* policy while those of coverage merely go to the defense of enforcing the policy according to its terms.[21] Thus, where an insured's employment status does not conform with the terms of the policy it is possible that a court may allow this to be raised as a defense since it can be described as relating to the enforcement rather than to the policy's avoidance.[22]

In *Washington National Insurance Co. v. Burch*,[23] the Court of Appeals for the Fifth Circuit, applying the law of Georgia, held that an insured's employment status could be raised as a defense to show lack of coverage. The *Burch* case dealt with a defense that the insured was not in the proper classification in accordance with a schedule included in the policy.[24] The court stated that while there are cases to the contrary, "it is settled law" that the incontestable

15. Freed v. Bankers Life Ins. Co., 216 N.W.2d 357 (Iowa 1974).

16. In *Conway* the court said that the incontestable clause is not a mandate as to *coverage*, which implies that a defense termed as relating to coverage is not precluded by the provision. Defenses precluded by the incontestable clause are those which relate to the policy's *validity*.

17. John Hancock Mut. Life Ins. Co. v. Dorman, 108 F.2d 220, 223 (9th Cir. 1940).

18. *Id.*

19. *Id.* at 224-25.

20. Fisher v. United States Life Ins. Co., 249 F.2d 879 (4th Cir. 1957). The court in *Fisher* held that employment status is related to policy coverage when it stated that the incontestable clause "was never intended to enlarge the coverage of the policy, to compel an insurance company to insure lives it never intended to cover or to accept risks or hazards clearly excluded by the terms of the policy." *Id.* at 882.

21. Rasmussen v. Equitable Life Assurance Soc'y of the United States, 293 Mich. 482, 292 N.W. 377 (1940). *See* Note, *Incontestable Clauses in Group Life Insurance Policies—Precluded Defenses*, 73 DICK. L. REV. 165 (1968).

22. This argument could be supported by *Conway* since it implies that one's employment status is a hazard which relates to coverage and therefore cannot be forced upon the insurer by the incontestable clause.

23. 270 F.2d 300 (5th Cir. 1959).

24. *Id.*

clause does not preclude the insurer from showing that such a claim is outside the coverage of the policy.[25]

In light of these few decisions it can be concluded that the courts have not been in agreement as to the effect of the incontestable clause on precluding defenses. In *Freed* the Iowa supreme court advanced a step toward mitigation of this dilemma by adopting the logical test espoused in *Simpson v. Phoenix Mutual Life Insurance Co.*[26]

In *Simpson* the New York court of appeals did not discard *Conway* but rather put it into its proper perspective. The court in *Simpson* recognized that *Conway* was not dispositive of the issue at hand.[27] It referred to the famous passage from *Conway*[28] and stated that it established a frame of reference for decisions but did not unequivocally indicate which particular risks are conditions of insurance and those hazards which are limitations of the risk.[29]

The *Simpson* decision, however, has been viewed as a basic departure from the distinction drawn in *Conway* between matters concerning validity, to which the incontestable clause applies, and risks assumed, to which it does not.[30] In *Crawford v. Equitable Life Assurance Society of the United States*[31] the Illinois supreme court said that "*Simpson* takes the position that some matters which relate only to the risk assumed [coverage] are nevertheless covered by the incontestable clause, namely those risks which could have been discovered at the time the contract was entered into."[32]

Here again it seems logical to conclude that the courts are arguing as to what is the meaning of *coverage*, to which the court in *Conway* had alluded in its distinction.[33] However, now the term is referred to by such phrases as "risk assumed"[34] and "limitation on the risk."[35]

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25. *Id.* at 302. The federal court in *Burch* was supposedly applying the law of Georgia, however, its decision conflicted with the court of appeals of that state. The differing state decision was *Equitable Life Assurance Society v. Florence*, 47 Ga. App. 711, 171 S.E. 317 (1933) in which the court expressed the view that an incontestable clause is not a meaningless provision and that its purpose is to annul all warranties and conditions that might defeat the right of the assured after the lapse of a stipulated time.

26. 24 N.Y.2d 262, 247 N.E.2d 655, 299 N.Y.S.2d 835 (1969).

27. *Id.* at 267, 247 N.E. at 657, 299 N.Y.S.2d at 839.

28. *See* text accompanying note 9, *supra.*

29. Simpson v. Phoenix Mut. Life Ins. Co., 24 N.Y.2d 262, 267, 247 N.E.2d 655, 657, 299 N.Y.S.2d 835, 839 (1969). In referring to the passage from *Conway*, the *Simpson* court stated: "The quoted passage establishes a frame of reference for decision but does not unequivocally indicate which particular risks are conditions of insurance and thus borne by the insurer, if not discovered and contested within two years of issuance of the policy, and those hazards considered limitations on the risk an insurer is willing to assume and, therefore, not barred by the lapse of time." *Id.*

30. Crawford v. Equitable Life Assurance Soc'y of the United States, 56 Ill. 2d 41, 305 N.E.2d 144 (1973).

31. *Id.*

32. *Id.* at 51, 305 N.E.2d at 150.

33. *See* note 16 *supra.*

34. Crawford v. Equitable Life Assurance Soc'y of the United States, 56 Ill. 2d 41, 51, 305 N.E.2d 144, 150 (1973).

35. Simpson v. Phoenix Mut. Life Ins. Co., 24 N.Y.2d 262, 267, 247 N.E.2d 655, 657, 299 N.Y.S.2d 835, 839 (1969).

The problem[36] in the recent decisions of *Crawford* and *Simpson* which causes them to be irreconcilable,[37] is not new, but there appears to be a definite willingness to search out the policy considerations behind the incontestable clause,[38] a willingness which was lacking in many of the earlier decisions.[39] An analysis in light of these considerations will allow the *Crawford* and *Simpson* cases to be distinguished.

In making the decision that the question of eligibility is one which relates to the risk assumed and that a defense based on lack of eligibility is therefore not foreclosed by the incontestable clause,[40] the court in *Crawford* placed emphasis on the difference between individual and group policies.[41] The court's first point of distinction was in the fact that the individual policy identifies the individual by name while the master policy in group insurance does not.[42] It concluded that defining who is in the class therefore goes to coverage under a group policy.[43] This analysis however implies that the individual application of insurance filed by the employee is not a part of the contract, which is a view contrary to authority which states otherwise.[44]

The court in *Crawford* tried to distinguish further individual and group policies by arguing that the employment status is a matter affecting the willingness of the insurer to assume a defined risk at a defined premium charge and that the membership of the insured in a specific class may protect the insurer against "adverse selection."[45] Here it appears that the court is arguing that an attribute of the employee which affects the insurer's willingness to insure is in reality a matter which relates to whether the risk is assumed. This agrument fails to follow "formidable authority to the contrary" which states that all those factors upon which the insurer would make a determination of whether to accept or reject an applicant are related to his "insurability."[46] The term "insurability"

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36. The problem lies in the interpretation of the widely accepted distinction espoused in *Conway*.

37. Freed v. Bankers Life Ins. Co., 216 N.W.2d 357, 359 (Iowa 1974).

38. Simpson v. Phoenix Mut. Life Ins. Co., 24 N.Y.2d 262, 266, 247 N.E.2d 655, 657, 299 N.Y.S.2d 835, 839 (1969). The court in *Simpson* appeared concerned with the legislative purpose of the incontestable provision when it stressed: "Our courts in the past have stringently enforced the incontestable provision required by statute to be included in every group and individual life insurance policy because of the important purposes which it is intended to serve." *Id.*

39. This attitude was reflected in the decisions which stressed the proposition that the terms of the policy reflect the coverage and an enforcement of them after the contestable period has run is not a contest to the policy's validity. *See* Fisher v. United States Life Ins. Co., 249 F.2d 879 (4th Cir. 1957) (where the court looked to the fundamental purposes of the parties to the insurance contract rather than to the fundamental purposes of the incontestable clause).

40. Crawford v. Equitable Life Assurance Soc'y of the United States, 56 Ill. 2d 41, 50, 305 N.E.2d 144, 150 (1973).

41. *Id.* at 48-53, 305 N.E.2d at 149-51.

42. *Id.* at 48, 305 N.E.2d at 149.

43. *Id.*

44. Chrysler Corp. v. Hardwick, 299 Mich. 696, 700, 1 N.W.2d 43, 45 (1941).

45. Crawford v. Equitable Life Assurance Soc'y of the United States, 56 Ill. 2d 41, 50-51, 305 N.E.2d 144, 150 (1973).

46. Freed v. Bankers Life Ins. Co., 216 N.W.2d 357, 360 (Iowa 1974), *citing* New England Mut. Life Ins. Co. v. Hinkle, 248 F.2d 879, 885 (8th Cir. 1957); Greenberg v. Continental Cas. Co., 24 Cal. App. 2d 506, 514-15, 75 P.2d 644, 649 (Dist. Ct. App.

is used in the incontestable clause of the policy which was scrutinized in *Crawford* to explain which defenses go to the validity of the policy.[47] The court in *Crawford* reasons that the term refers only to one's proof of his *individual* insurability and not to that relating to his eligibility because of his membership in a class.[48] This appears not to give effect to the entire incontestable clause[49] as well as not conforming with authority on the accepted meaning of "insurability."[50]

The dissent in *Crawford* states that the majority would admittedly disallow a contest, under the incontestable clause, as to an illness not readily discoverable at the inception of the contract.[51] The disallowance of a contest in that situation, compared with the allowance of a contest to someone's employment status which is easily discoverable, appears incongruous, and it is argued that such a result is not supported by the authorities cited.[52]

The majority in *Crawford* imply that holding the insured's employment status as relating to the policy's validity would defeat one of the principal advantages of group insurance.[53] The basis of this argument is that it is beneficial to the public to enable employed groups to obtain the most advantageous protection warranted by their status at the least cost by restricting coverage to particular individuals.[54] To support this position further the court stated that costs are reduced in group insurance because of its self-administrative features and that requiring the insurer to investigate the employment status of potential insureds would defeat this.[55]

Here is the point at which *Crawford* appears to come into conflict with *Simpson* and where they can be distinguished. In *Simpson* the court stated that the incontestable "provision safeguards an insured from excessive litigation many years after a policy has already been in force and assures him security in financial planning for his family, while providing an insurer a reasonable opportunity to investigate."[56] This advances the view that the purpose of the clause is to protect the beneficiary. Since after the insured dies the best witness

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1938); Kahn v. Continental Cas. Co., 391 Ill. 445, 458-59, 63 N.E.2d 468, 474 (1945); Kirby v. Prudential Ins. Co. of America, 239 Mo. App. 476, 484-86, 191 S.W.2d 379, 382-83 (1945); Colonial Life Ins. Co. of America v. Mazur, 25 N.J. Super. 254, 262, 96 A.2d 95, 99 (Super. Ct. 1953); Gressler v. New York Life Ins. Co., 108 Utah 173, 178, 156 P.2d 212, 214 (1945).

47. Crawford v. Equitable Life Assurance Soc'y of the United States, 56 Ill. 2d 41, 44, 305 N.E.2d 144, 147 (1973).

48. *Id.* at 45, 305 N.E.2d at 147.

49. Freed v. Bankers Life Ins. Co., 216 N.W.2d 357, 359-60 (Iowa 1974).

50. *See, e.g.*, note 46 *supra.*

51. Crawford v. Equitable Life Assurance Soc'y of the United States, 56 Ill. 2d 41, 54-55, 305 N.E.2d 144, 152 (1973) (dissenting opinion).

52. *Id.*

53. Crawford v. Equitable Life Assurance Soc'y of the United States, 56 Ill. 2d 41, 52-53, 305 N.E.2d 144, 150-51 (1973).

54. Rasmussen v. Equitable Life Assurance Soc'y of the United States, 293 Mich. 482, 487, 292 N.W. 377, 380 (1940).

55. Crawford v. Equitable Life Assurance Soc'y of the United States, 56 Ill. 2d 41, 53, 305 N.E.2d 144, 151 (1973).

56. Simpson v. Phoenix Mut. Life Ins. Co., 24 N.Y.2d 262, 266, 247 N.E.2d 655, 657, 299 N.Y.S.2d 835, 839 (1969).

is dead, the beneficiary, without the benefit of the incontestable clause, would be placed at the mercy of the insurer, who would be much better equipped to defend on technical grounds.[57] Thus, it appears that the court in *Simpson* concerned itself with the legislative intent of protecting the expectancies of insureds and policyholders as distinguished from the view espoused in *Crawford* where it appears that the court favored the social benefit argument of reduced rates in group life insurance.

Hence, one could conclude that the question evolves to whether the social benefits of reduced rates and total freedom of contract should weigh more heavily than the policy of favoring the insured's expectancies. First of all, it is debatable whether the "adverse selection" argument espoused in *Crawford* is confined to group policies.[58] No facts are shown as to the material effect the employment misrepresentation problem has had on policy rates. In *Crawford* the insurer was allowed to make periodic inspections and audits of the employer's records.[59] To this can be added the arguments of the *Simpson* court, that it is much easier to investigate the employment status in group policies than to investigate medical histories in individual policies and the fact that some insurers in the past have not investigated an employee's eligibility until death cannot be given any weight.[60]

The legislative intent behind the statute should weigh heavily in the solution to this question. The Iowa statute[61] expressly refers to a provision which is at least as favorable or more favorable to the insured. It further states that a contest which relates to *insurability* is a contest to the policy's validity and is therefore precluded by the incontestable clause.[62] A following of the authorities which have defined the term *insurability*[63] taken in conjunction with this statute would thus appear to preclude the defense of an employee's status misrepresentation in Iowa after the running of the contestable period.

Under the test espoused by the court in *Simpson* it appears that the insurer's right of contract would not be significantly infringed. The distinction which the court draws between conditions, those relating to the validity of the policy, and limitations, those relating to coverage, is discoverability.[64] Under this test the insurer is not forced to cover those persons he does not desire to insure since he has a reasonable time to investigate the employment status of those enrolled prior to the running of the period set forth in the incontestable

57. D. GREGG, LIFE AND HEALTH INSURANCE HANDBOOK 174 (2d ed. 1964).
58. Simpson v. Phoenix Mut. Life Ins. Co., 24 N.Y.2d 262, 269, 247 N.E.2d 655, 659, 299 N.Y.S.2d 835, 841 (1969) (where the court stated that the problem of adverse selection is not indigenous to group policies but has confronted insurers of individual policies long before group policies came into existence).
59. Crawford v. Equitable Life Assurance Soc'y of the United States, 56 Ill. 2d 41, 55, 305 N.E.2d 144, 152 (1973) (dissenting opinion).
60. Simpson v. Phoenix Mut. Life Ins. Co., 24 N.Y.2d 262, 269, 247 N.E.2d 655, 659, 299 N.Y.S.2d 835, 841 (1969).
61. IOWA CODE § 509.2 (1973) (set forth in note 4 *supra*).
62. *Id.*
63. *See, e.g.*, note 46 *supra.*
64. Simpson v. Phoenix Mut. Life Ins. Co., 24 N.Y.2d 262, 267, 247 N.E.2d 655, 658, 299 N.Y.S.2d 835, 840 (1969).

clause. Any costs resulting from these investigatory procedures could then be reflected in the group premiums.

In *Simpson* the court distinguished *Conway* by emphasizing *when* the event being questioned became discoverable. In *Conway* the court was concerned with a *future event* which could cause the insured's death.[65] In *Simpson* the event was one *existing*[66] and which would affect one's worthiness as a risk but would unlikely be the direct cause of a person's death. By saying that a *future event* is precluded by an incontestable clause the provision excluding such an event would be meaningless. To say an existing easily discoverable event is precluded by an incontestable clause after a reasonable time has been had to investigate to discover its truthfulness is to give the incontestable clause the effect of a statute of limitations which would protect the expectancies of those relying on the insurance policy's validity.

By adopting the reasoning of *Simpson* the court in *Freed* recognized the legislative purpose behind the incontestable clause. It kept alive its true nature as a statute of limitations as to certain defenses. The adoption affords protection which is equal to all the insured public by not distinguishing between individual and group policyholders. This recognizes that both have the same goal of personal security for their beneficiaries.[67]

The application of the test is simple and will provide for more predictable decisions in contrast with those in the past. The greatest fault with the adoption is that it does not allow the insurer complete freedom of contract. The Iowa legislature, however, saw fit to protect the beneficiary and the insured by requiring an incontestable clause more favorable to them than to the insurer.[68] Thus the balance has been weighted by public policy in favor of the insured and the court in *Freed* rightfully pursued that intent and purpose by its decision.

SHELDON T. FLECK

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65. Metropolitan Life Ins. Co. v. Conway, 252 N.Y. 449, 169 N.E. 642 (1930). In *Conway* the court found that a proposed rider, which excluded from coverage the risk of death resulting from air travel except as a fare paying passenger, was not inconsistent with the required incontestable clause.

66. Simpson v. Phoenix Mut. Life Ins. Co., 24 N.Y.2d 262, 247 N.E.2d 655, 299 N.Y.S.2d 835 (1969). In *Simpson* the event referred to was the employment status of the insured.

67. *Id.* at 268, 247 N.E.2d at 658, 299 N.Y.S.2d at 840.

68. IOWA CODE § 509.2 (1973) (set forth in note 4 *supra*).

UNINSURED MOTORIST COVERAGE—LEGISLATIVE INTENT IN ENACTING UNINSURED MOTORIST COVERAGE STATUTE IS TO ASSURE PROTECTION TO AN INSURED AGAINST MOTORISTS WHOSE LIABILITY TO INSURED IS NOT COVERED AT THE TIME OF THE ACCIDENT.—*Rodman v. State Farm Mutual Automobile Insurance Co.* (Iowa 1973).

Plaintiff was injured in an accident as a passenger in his own automobile. He had insured the automobile for bodily injury liability and uninsured motorist coverage with defendant's company. Plaintiff's policy contained an exclusion section[1] which stated that the insurer had no liability for bodily injury to the insured caused by a permissive driver of the automobile. The policy also contained a definition of an uninsured motor vehicle under the uninsured motorist coverage, which excluded the insured's automobile. In a lawsuit which the insurer refused to defend, plaintiff was granted a judgment against the permissive driver for injuries sustained in the accident. Plaintiff then commenced a suit against defendant on the insurance policy, alleging it covered the permissive driver's liability to him. The trial court found that the insured was excluded from liability coverage because of the exclusion section, but awarded him a judgment on the basis of the policy's uninsured motorist coverage and the Iowa uninsured motorist coverage statute.[2] The insurer appealed[3] to the Iowa supreme court on the issue that the uninsured motorist coverage statute nullified the policy exclusion of the uninsured motorist coverage. *Held*, affirmed. The insurer could not by its policy definition of an uninsured motor vehicle deprive plaintiff of uninsured motorist protection as required by the Iowa uninsured motorist coverage statute.[4] *Rodman v. State Farm Mutual Automobile Insurance Co.*, 208 N.W.2d 903 (Iowa 1973).

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1. "In its bodily injury liability insuring agreement, insurer covenanted to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of (A) bodily injury sustained by other persons . . . ."
"In its exclusion section, the policy provided: This insurance does not apply under . . . (A), to bodily injury to the insured or any member of the family of the insured residing in the same household as the insured." Rodman v. State Farm Mut. Auto. Ins. Co., 208 N.W.2d 903, 905 (Iowa 1973).

2. IOWA CODE § 516A.1 (1973).

3. The insured also appealed on the theory of reasonable expectation to vitiate the insurer's exclusion section, but the supreme court affirmed the trial court's decision that policies containing the exclusion have been consistently enforced. Rodman v. State Farm Mut. Auto. Ins. Co., 208 N.W.2d 903, 907 (Iowa 1973).

4. No automobile liability or motor vehicle liability insurance policy insuring against liability for bodily injury or death 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 in such policy or supplemental thereto, for the protection of persons insured under such policy who are legally entitled to recover damages from the owner or operator of an uninsured motor vehicle or a hit-and-run vehicle because of bodily injury . . . caused by accident and arising out of the ownership, maintenance, or use of such uninsured motor vehicle . . . .
IOWA CODE § 516A.1 (1973).