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THE FAMILY-HOUSEHOLD EXCLUSION CLAUSE IN AUTO LIABILITY INSURANCE

Automobile liability insurance policies frequently contain clauses excluding coverage where liability arises out of suits between members of the same family and household. These exclusionary provisions protect the insurer in situations where natural partiality exists between a plaintiff and a defendant who are related and live together.[1] This type of clause is usually upheld.[2]

In the recent Alabama case of *State Farm Mut. Auto. Ins. Co. v. Hanna*,[3] the insured, a college student visiting his family for the weekend, injured his father in an automobile accident which occurred in the yard of the parent's home. The question involved was whether there was coverage in light of a clause excluding recovery for "Bodily injury to the insured or any member of the family of the insured residing in the same household as the insured."[4] The insured was twenty years old and attending Howard College in Birmingham, Alabama. His parents, who were paying part of his college expenses, lived in East Tallassee, Alabama. The insured went home for vacations and on occasional weekends. While he did not pay rent or board, he contributed some groceries when home during the summer. He kept some of his belongings, including the insurance policy, at home. He used the East Tallassee address to obtain his driver's license, automobile license tags, and to register for the draft.[5]

The Supreme Court of Alabama affirmed a trial court decision that the family-household exclusionary provision did not relieve State Farm of its obligation to defend the insured and to pay any judgment

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[1]Basically it is the same policy reason as behind judicial and legislative discouragement of claims between members of the same family. 7 Appleman, Insurance Law and Practice § 4411 (1962).

[2]The clause has been held valid as against the contentions that it is contrary to public policy and that it violates financial responsibility laws. Zipperer v. State Farm Mut. Auto. Ins. Co., 254 F.2d 853 (5th Cir. 1958). Statutes may, however, prohibit the exclusion. Klatt v. Zera, 11 Wis. 2d 415, 105 N.W.2d 776 (1960); Perlick v. County Mut. Cas. Co., 274 Wis. 558, 80 N.W.2d 921 (1957).

[3]166 So. 2d 872 (Ala. 1964).

[4]Id. at 874.

[5]When the State Farm agent explained the conditions of the policy, including the family-household exclusion provision, to the insured and his father, he considered the insured to be a member of the household in East Tallassee, notwithstanding the fact that he was in college elsewhere and would have the automobile with him. Id. at 875.

that might be entered.[6] The court rejected the insurer's contention that the exclusionary provision was plain, unambiguous, and susceptible of only one reasonable construction,[7] holding instead that the insured could be residing at college while still having a legal domicile with his family.[8]

Generally, courts look to the purpose of the exclusionary clause,[9] which is said to be the exclusion of liability where there would be natural partiality between the insured and the injured party because of the close ties existing between members of the same family or domestic circle living in the same household.[10] The words "family" and "household" have been used interchangeably,[11] although "family" may be limited to those members of a group having some blood relationship,[12] and "household" may be a broader term including servants or attendants.[13] When the purpose of the exclusion is kept in

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[6]The lower court also found that there had been no breach of the cooperation clause in the policy that would prejudice the insurer. The Supreme Court of Alabama affirmed the trial court's holding on this issue.

[7]The court also rejected the argument that Holloway v. State Farm Mut. Auto. Ins. Co., 275 Ala. 41, 151 So. 2d 774 (1963), and Home Ins. Co. v. Pettit, 225 Ala. 487, 143 So. 839 (1932), were decisive of the issue in this case. The court stated that the Holloway case was limited to the construction of the word "family" and that the Pettit case was limited to the construction of the word "household" in the exclusionary clause, whereas the issue in the principal case was the construction of the phrase "residing in the same household."

[8]The court defined residence as "a dwelling place for the time being, as distinguished from a mere temporary locality of existence," and indicating "some intent of permanency of occupation as distinguished from boarding or lodging." The court added, however, that residence does not require "the intent of permanency to the degree required in domicile." In support of its conclusion that the insured was residing at Howard College for purposes of the exclusionary provision of the insurance policy, the court cited the requirement that a student must be "in residence" at a college or university for the academic year preceding the award of his degree and the general usages of the term "in residence" with regard to faculty and students. The court also suggested that his residence might change when the student went home during the summer.

[9]State Farm Mut. Auto. Ins. Co., v. James, 80 F.2d 802 (4th Cir. 1936); Zipperer v. State Farm Mut. Auto. Ins. Co., 254 F.2d 853 (5th Cir. 1958); Johnson v. State Farm Mut. Auto Ins. Co., 252 F.2d 158 (8th Cir. 1958); Holloway v. State Farm Mut. Auto. Ins. Co., 275 Ala. 41, 151 So. 2d 774 (1963); Home Ins. Co. v. Pettit, 225 Ala. 487, 143 So. 839 (1932); Morris v. State Farm. Mut. Auto. Ins. Co., 88 Ga. App. 844, 78 S.E.2d 354 (1953); Umbarger v. State Farm Mut. Auto. Ins. Co., 218 Iowa 203, 254 N.W. 87 (1934); Third Nat'l Bank v. State Farm Mut. Auto. Ins. Co., 334 S.W.2d 261 (Ky. 1960); Tomlyanovich v. Tomlyanovich, 239 Minn. 250, 58 N.W.2d 855 (1953); Engebretson v. Austvold, 199 Minn. 399, 271 N.W. 809 (1937); Cartier v. Cartier, 84 N.H. 526, 153 Atl. 6 (1931); Hunter v. Southern Farm Bureau Cas. Ins. Co., 241 S.C. 446, 129 S.E.2d 59 (1962).

[10]Cartier v. Cartier, 84 N.H. 526, 153 Atl. 6 (1931).

[11]Johnson v. State Farm Mut. Auto Ins. Co., 252 F.2d 158 (8th Cir. 1958).

[12]See Tomlyanovich v. Tomlyanovich, 239 Minn. 250, 58 N.W.2d 855 (1953).

[13]Engebretson v. Austvold, 199 Minn. 399, 271 N.W. 809 (1937).

mind, however, a discussion of the definition of these words can develop into a useless exercise in semantics.[14] Attempting to define the words by citing definitions used in other areas of the law is not persuasive when one is looking to the purpose of the exclusion in the insurance policy.[15] Even within the area of insurance law, definitions used out of context may be inapplicable; for example, one may be a member of a household within a clause extending coverage, but not for purposes of excluding coverage.[16]

Generally, two questions have been raised in interpreting the family-household exclusionary clauses: (1) Who are "members of the family of the insured" within the meaning of the clause? (2) Who are "residing in the same household as the insured" within the meaning of the clause?

An argument was rejected in *Tomlyanovich v. Tomlyanovich*,[17] that the clause[18] should be construed to cover only the spouse and issue of the insured. In this case, which actually involved adult brothers,[19] the court pointed out that such a narrow construction of the

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[14]Third Nat'l Bank v. State Farm Mut. Auto. Ins. Co., 334 S.W.2d 261, 263 (Ky. 1960).

[15]See Tomlyanovich v. Tomlyanovich, 239 Minn. 250, 58 N.W.2d 855 (1953); also Holloway v. State Farm Mut. Auto. Ins. Co., 275 Ala. 41, 151 So. 2d 774 (1963).

[16]See Annot., 50 A.L.R.2d 120 n.1 (1956).

[17]239 Minn. 250, 58 N.W.2d 855 (1953). The court stated: "If the narrow definition urged by plaintiff were applied, it would mean that if a father were the insured his son would be within the exclusionary clause but if a son were the insured an injured mother or father would not be within the exclusion. The same hazard exists that the son, being the insured, would be partial to his father as that the father, being the insured, would be partial to his son." 58 N.W.2d at 861.

The opinion in this case and the annotation at 50 A.L.R.2d 120 (1953) contain detailed discussions of the family-household exclusionary provisions. For additional supplemental material, see 12 Couch, Insurance § 45:509-531 (2d ed. 1964).

[18]The exclusion covered "any member of the family of the insured residing in the same household as the insured."

[19]The plaintiff, the defendant, and two other unmarried brothers lived with their parents. The father owned the house; the mother prepared the meals which they all ate together. The members of the family had the same mailing address, and except for having separate bedrooms they commonly shared the use of the house. While there was no set arrangement for room, board and laundry, both the plaintiff and the defendant paid the parents.

In Holloway v. State Farm Mut. Auto. Ins. Co., 275 Ala. 41, 151 So. 2d 774 (1963) a case involving similar facts and the same exclusion, the Supreme Court of Alabama expressly followed Tomlyanovich. The issue was whether adult sisters were members of the same "family."

But see American Indem. Co. v. Martin, 54 S.W.2d 542 (Tex. Civ. App. 1932), where an adult, younger brother lived with the insured and had all the privileges of the insured's home but had a job, paid for his room and board, and was not in any way under the control of the insured. The court refused to hold as a matter of law that the younger brother was within a clause excluding coverage for

clause would virtually eliminate the exclusion altogether in states which prohibit suits for personal injuries between spouses and between unemancipated minors and their parents. While it is possible to limit the definition of the word "family" to those members of a group having some blood relationship, it appears that such a limitation will not necessarily be imposed if the purpose of the exclusion is considered.[20] In *Hunter v. Southern Farm Bureau Cas. Ins. Co.*[21] "family" was said to include "such persons as habitually reside under one roof and form one domestic circle;"[22] therefore, marriage was not a prerequisite to finding that a man and woman were of the same "family" for this insurance purpose.[23]

More frequently, courts have had to determine who was residing in the same "household" as the insured. Two of the leading cases interpret household exclusionary clauses, *State Farm Mut. Auto. Ins. Co. v. James*[24] and *Cartier v. Cartier,*[25] arose prior to the time when the "family" requirement was made a part of the clause.[26] These two

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"injury to or death of any member of the household or family of the assured hereunder."

As to the effect of payment of board by the adult child to the parent, see Zipperer v. State Farm Mut. Auto. Ins. Co., 254 F.2d 853 (5th Cir. 1958), and Morris v. State Farm Mut. Auto. Ins. Co., 88 Ga. App. 844, 78 S.E.2d 354 (1953), which held that such payment does not remove the child from the exclusion.

[20]See Tomlyanovich v. Tomlyanovich, 239 Minn. 250, 58 N.W.2d 855 (1953).

But see Preferred Acc. Ins. Co. v. Onali, 125 F.2d 580 (8th Cir. 1942), which held that the word "relative" used in an exclusionary clause, although seemingly a broader term than "family," is actually restricted to "one allied by blood," and that a sister-in-law is not a "relative" within the meaning of such a clause in an automobile indemnity policy. Contra, Fidelity and Cas. Co. v. Jackson, 297 F.2d 230 (4th Cir. 1961), held that a mother-in-law was a "relative" when the purpose of the exception was considered.

[21]241 S.C. 446, 129 S.E.2d 59 (1962). Coverage was excluded for "bodily injury to or death of the insured or any member of the family of the insured residing in the same household."

[22]129 S.E.2d at 61.

[23]In this case, a woman lived adulterously with the insured, as his wife, for about six years and had several children by him. The insured had a living wife from whom he had been separated, but not divorced, for a period of from twelve to thirteen years, and who also had children by him.

[24]80 F.2d 802 (4th Cir. 1936).

[25]84 N.H. 526, 153 Atl. 6 (1931).

[26]In the James case, the claimant was first a boarder in the insured's home; but after losing her job, she continued to eat and sleep there about half of her time. She did not pay the insured, but helped with the housework. At the time of the accident, she was staying at the insured's home. The court said: "The term 'household' is customarily used to mean a number of persons who dwell together as a family." 80 F.2d at 803. Notwithstanding this definition, the court held that the phrase was not limited to persons related by blood or marriage. In looking to

cases have often been cited by courts in emphasizing the necessity of looking at the purpose of the exclusion in determining its applicability to a particular set of facts.[27] *Cartier* held that the insured does not have to be head of the household for the household exclusion to be applicable.[28] A later case held that the exclusion was applicable when there was no evidence showing who was the common head or manager of the household.[29]

While it would seem to be a rather anomalous position, related people who live under a common roof have been held not to be covered by the family-household exclusion. In *State Farm Mut. Auto. Ins. Co. v. Pennington*,[30] a nephew and uncle were held not to be members

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the purpose of the exclusion, the appellate court held that on the facts of this case a motion for directed verdict should have been granted by the trial court.

In the Cartier case, the plaintiff and defendant were brothers living with their father, mother, and sister in a house owned and managed by the mother. The father and brothers paid board. The court stated that "household" and "family" were substantially synonymous terms.

[27]In the often quoted words of the court in Cartier, "The natural tendency of one insured to strengthen or enlarge the evidence of liability to members of his household for accidents insured against increases the hazard of liability under the policy in such cases over that for accidents to others. Without actual dishonesty, the disposition to favor those close to one reflects itself in opinions and judgments, and one insured is more likely to concede by admissions or nonresistance blame for hurting a member of his household than for doing harm to others." Cartier v. Cartier, 89 N.H. 526, 527; 153 Atl. 6, 7 (1931).

[28]The position the insured occupies in the household is not important. "It is an attitude of common mutuality arising out of the general status and not one dependent upon the particular relationship of one member to another within the status. Cartier v. Cartier, supra note 27, 153 Atl. at 7. In interpreting the clause, the court said: "[T]he reasonable conclusion would be that it was meant to cover family accidents generally and not an arbitrary part of them limited to such as were caused by household heads." 153 Atl. at 8. The court concluded that if such a restrictive meaning were intended, more restrictive and specific language could have been used and that the phrasing was well adapted to cover the broad purpose of the clause notwithstanding the demands of preciseness in written contracts.

[29]Johnson v. State Farm Mut. Auto. Ins. Co., 252 F.2d 158 (8th Cir. 1958). (The facts are discussed infra note 39). The argument was made that where there was no common head or manager of a household, the court was precluded from finding that a person was within the exclusion which provided that coverage did not apply "to the insured or any member of the family of the insured residing in the same household as the insured." The appellate court pointed out that the lower court only found that it did not appear who was the common head or manager of the household. It further stated, "The term 'family' or 'household' cannot be so limited and strait-jacketed as always to mean, regardless of the facts and circumstances, a collective body of persons who live in one house under one common head or "manager." Id. at 161.

[30]215 F. Supp. 784 (E.D. Ark. 1963). Coverage under the policy was not extended to "bodily injury to the insured or any member of the family of the insured residing in the same household as the insured."

of the same "family" within the meaning of an exclusionary clause even though they lived under the same roof and were perhaps members of the same "household."[31] The court could not find from the evidence any particular familial closeness sufficient to invoke the operation of the exclusion.[32] Another approach, reaching the same result, is to conclude that the insured and the claimant, although members of the same "family," belong to two different "households" living under the same roof. In *Hoff v. Hoff*,[33] the plaintiff was a daughter-in-law living under the same roof as the insured. The court concluded that because of the domestic arrangements and method of living a jury could conclude that they lived in two separate households.[34]

A different result was reached by the Court of Appeals of Kentucky in *Third Nat'l Bank v. State Farm Mut. Auto. Ins. Co.*[35] The insured, who was a self-supporting, divorced mother, had returned to live with her parents in a seven-room house. The insured's brother and sister-in-law also lived in the house. The sister-in-law was found to be within the exclusion notwithstanding the fact that she and her husband paid rent, had separate bedrooms, and bought their own groceries.[36]

The principal case raises the question of whether members of the same family living at different places may be "residing in the same

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[31]The nephew, his wife, and child had gone to live with his father because of economic stress. Following the uncle's divorce, he had come to live with his brother-in-law, the insured nephew's father. The father supported both his son and his brother-in-law.

But see, Home Ins. Co. v. Pettit, 225 Ala. 487, 143 So. 839 (1932), where the Supreme Court of Alabama, looking to the purpose of the exclusion, concluded that an uncle and nephew were members of the same "household."

[32]The court stated that regardless of the specific words chosen to define family, "any accurate definition in present context must embrace the concept of a group of related individuals, dwelling together, and welded by familial ties into a single sociological unit." 215 F. Supp. at 789.

[33]132 Pa. Super. 431, 1 A.2d 506 (1938). The policy excepted coverage to agents and members of the insured's family. The policy also had this definition: "member of the assured's family shall be defined as any person residing in the same household with the assured and related to him by blood or marriage and shall also include regardless of their place of residence those related to the assured as follows: husband, wife, father, mother, son, daughter, brother or sister."

[34]The plaintiff, her husband and child lived in a house owned by her father-in-law, the insured. The plaintiff and her husband furnished and controlled the rooms they occupied but shared a bathroom with the father-in-law. They purchased groceries and prepared meals separately using the same kitchen but separate utensils. The plaintiff did most of the housework in the entire house as payment of rent. The family life of the plaintiff and her husband functioned separate and apart from the defendant and his wife. Guests of the plaintiff's family were entertained as they would have been if she and her husband had lived under a separate roof.

[35]334 S.W.2d 261 (Ky. 1960).

[36]Id. at 262.

household." The question has arisen in cases where a member of the family has returned to live with the family. In *Johnson v. State Farm Mut. Auto. Ins. Co.*,[37] a plaintiff daughter was considered to have been "but temporarily absent from the [family] group..."[38] when she went to live with her husband for six or seven months prior to his military transfer overseas and subsequently returned to live with her father, who was the insured, and her uncle. She was thought never to have had a home other than her parental home. In looking at the intention of the parties, the court defined "family" as "such persons as habitually reside under one roof and form one domestic circle."[39] The intention of the claimant, however, is clearly not controlling. In *Engebretson v. Austvold*,[40] the return of a married daughter to the parental home following the death of her husband made her a member of the same household as her mother, as a matter of law, notwithstanding the daughter's testimony to the contrary regarding her intention.[41] The Supreme Court of Minnesota rejected the argument that the policy limitation which controlled the decision should be narrowly construed, concluding that the language and purpose of the exclusion were equally plain. In *Senn v. State Farm Mut. Auto. Ins. Co.*,[42] the Court of Appeals of Kentucky held that adult brothers were "residing in the same household" when at the time of the accident the insured was home on furlough from military service.[43] The court said: "We

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[37]252 F.2d 158 (8th Cir. 1958). The clause excluded coverage "to the insured or any member of the family of the insured residing in the same household as the insured."

[38]Id. at 162.

[39]Id. at 161. The insured father lived with his brother who owned the home. His daughter, the plaintiff, had lived with them since early childhood except for the six or seven months she had lived with her husband. After the husband's transfer overseas she returned to live with them.

[40]199 Minn. 399, 271 N.W. 809 (1937). The exclusionary clause included "persons in the same household as the assured [defendant]...."

[41]The insured had testified that she did not intend to make the home of her parents the place of her own "residence" or to "become a member of the household." She insisted that she intended to return to Montana where she had lived with her husband. In settling her husband's estate, however, she had given Minnesota as her residence. In applying for a Minnesota driver's license, she had stated under oath that she intended to remain in Minnesota permanently. While attending the University of Minnesota, she had stated that she was a resident of Minnesota. As to the relationship in the family group, the court could find no distinction between the returning daughter and two other daughters who had remained at home.

[42]287 S.W.2d 439 (Ky. 1956). The exclusion covered "any member of the family of the insured residing in the same household of the insured."

[43]Prior to military service, the insured had lived with his parents and after discharge, he continued to live there. The plaintiff brother also lived with his par-

think the facts show that Elmer [the insured] was only temporarily absent from the family group. His absence was never accompanied by an intent to change permanently his residence or his home, and he returned immediately to the household upon the cessation of his military duties."[44]

Like the principal case, other cases require the parties to be living under a common roof for the family-household exclusion to be operative. In *Kelso v. Kelso*,[45] adult unmarried brothers, who had lived in the parental home all of their lives, were held not to be "residing in the same household" when it appeared that several weeks prior to his injury the plaintiff brother had moved to a trailer house on a farm where he worked,[46] even though when he entered the hospital he gave his address as that of his parents, and both he and his brother had signed statements for the insurance adjuster to the effect that they were members of the same household.[47] The same result was reached In *Travelers Indem. Co. v. American Indem. Co.*[48] when the son was killed while he was actually moving back to live with his parents.[49]

It is submitted that a more logical and just result is reached by looking to the purpose of the exclusion. It would seem that a college student and his father on the facts in the principal case would fall within the family-household exclusion if the purpose of the exclusionary clause is considered.

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ents. The Court of Appeals of Kentucky sustained the granting of a motion for summary judgment.

[44]Id. at 440.

[45]306 S.W.2d 534 (Mo. 1957).

[46]Actually, at the time of the accident, the plaintiff was staying temporarily at a deer hunting camp. While he was there, he visited his parents, but did not "stay" with them.

[47]In discussing the meaning of the words "home," "household," and "reside," the court felt that since the brothers had lived at the farm substantially all of their lives, they considered it as "home" sentimentally, and even the brother who had left felt that he was still a part of the family group. Recitals of the kind made to the insurance adjuster were thought not to particularly challenge the brother's attention, and hence were general admissions and not as persuasive as the corroborating testimony of two of the plaintiff's witnesses who testified that the plaintiff was living in a trailer.

[48]315 S.W.2d 677 (Tex. Civ. App. 1958). The insurance policy did not cover "any automobile owned by the named insured or a member of his household...."

[49]The son was thirty-four years old and had lived with his parents intermittently following his divorce. Because of his job, he had moved to a hotel approximately fifty miles from his parent's home about three months before his death, but returned on occasional weekends. At the time of his death, the son was moving his belongings home in his father's truck.