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Missouri's Stance on Household Exclusion Clauses in Automobile Insurance Contracts: Consistent with Public Policy?

*American Family Mutual Insurance Co. v. Ward*¹

I. INTRODUCTION

Should an insurer be able to deny coverage to a family member involved in an automobile accident simply because the individual lives in the same household as a negligent driver? In *American Family Mutual Insurance Co. v. Ward*, the Missouri Supreme Court overruled a lower court decision that would have allowed an injured household member to recover if the driver is insured by an uncertified, pre-1987 insurance policy containing a household exclusion clause.² The supreme court held that it is not a violation of Missouri public policy to deny coverage in these circumstances. This Note examines various policy considerations affected by the use of household exclusion clauses in automobile liability insurance policies and demonstrate how Missouri's public policy is affected by the *Ward* decision.

II. FACTS AND HOLDING

American Family Mutual Insurance Co. (American Family) brought a declaratory judgment action seeking relief of financial responsibility to defend or to indemnify defendant, Larry Ward, on claims concerning Larry Ward's automobile liability insurance policy.³ The six-month policy was issued by American Family on December 1, 1984, and contained a household exclusion clause.⁴ The dispute arose out of a multi-vehicle collision occurring on March 16, 1985, in which Larry Ward was driving.⁵ The insured's wife, Karen Ward, was a passenger and sustained bodily injuries.⁶

1. 789 S.W.2d 791 (Mo. 1990) (en banc).

2. *Id.*

3. *Id.* at 792.

4. *Id.* Larry Ward's insurance policy stated as follows: "EXCLUSIONS. This coverage does not apply to . . . [b]odily injury to any person injured while operating your insured car or for bodily injury to any person related to and residing in the same household with the operator." *Id.*

5. *Id.*

6. *Id.*

The Wards filed suit against two other drivers in the accident.⁷ The two drivers counterclaimed against Larry Ward, seeking contribution for any of Karen Ward's damages that were attributable to Larry Ward's negligence.⁸ The Wards also filed suit against American Family pursuant to the uninsured motorist provision of the Ward's insurance policy to collect for Karen's damages caused by an unidentified hit and run driver involved in the accident.⁹ A jury found that Larry Ward was twenty percent at fault and determined that Karen Ward had incurred \$1,500,000 in damages.¹⁰

American Family alleged that the household exclusion clause in Larry Ward's policy relieved it of any obligation to answer a claim of contribution for Karen Ward's damages caused by Larry Ward or any obligation to pay her damages under the policy's uninsured motorist provision.¹¹ The Wards asserted that the clause was invalid because it conflicted with Missouri public policy. They claimed that Missouri's adoption of contribution and apportionment among tortfeasors¹² and the abrogation of interspousal immunity for negligent torts¹³ both warranted invalidating the clause. The Wards further argued that the clause was contrary to public policy reflected in the Missouri Motor Vehicle Safety Responsibility Law (MSRL).¹⁴ American Family argued that pursuant to the Ward's contract of insurance,¹⁵ the MSRL public policy did not become effective until the Ward's insurance policy was certified by American Family as proof of future financial responsibility under the MSRL.¹⁶

The circuit court entered judgment for American Family and held that the clear and unambiguous language in the exclusionary clause relieved the

7. *Id.*

8. *Id.* See *Ward v. American Family Ins. Co.*, 783 S.W.2d 921 (Mo. Ct. App. 1989).

9. *Id.*

10. *Id.*

11. *Id.*

12. See *Missouri Pac. R.R. Co. v. Whitehead & Kales Co.*, 566 S.W.2d 466 (Mo. 1978) (en banc).

13. See *S.A.V. v. K.G.V.*, 708 S.W.2d 651 (Mo. 1986) (en banc).

14. See MO. REV. STAT. §§ 303.010-.270 (1989).

15. *Ward*, 789 S.W.2d at 792. The Wards' insurance policy provided as follows: When we [American Family] certify this policy as proof under any financial responsibility law, it will comply with the law to the extent of the required coverage. You [Larry Ward] agree to repay us for any payment we would not have had to make except for this agreement *Terms of this policy* which are in conflict with the statutes of the state in which this policy is issued are changed to conform to those statutes.

Id. (emphasis added).

16. *Id.* at 793. See *infra* notes 65-70 and accompanying text.

insurer of any liability for Karen Ward's injuries.¹⁷ The court based its holding on the non-retroactive effect of the abrogation of interspousal immunity and the adoption of mandatory insurance laws, each adopted in Missouri after the accident occurred.¹⁸

The Missouri Court of Appeals for the Eastern District reversed the circuit court decision and transferred the case to the Missouri Supreme Court.¹⁹ In reversing, the court of appeals acknowledged that parties were free to contract but determined that the public policies "as expressed in the Safety Responsibility Law, by the adoption of contribution, and by the abrogation of interspousal immunity" outweigh this freedom.²⁰

The Supreme Court of Missouri reversed, holding that a household exclusion clause in an uncertified motor vehicle liability insurance policy does not contravene the public policies underlying the contribution and apportionment doctrines, the abrogation of interspousal immunity, and the MSRL as it existed in 1985.²¹

III. LEGAL BACKGROUND

A. *National Approach to Household Exclusion Clauses*

Household exclusion clauses evolved as a result of the abrogation of intrafamily immunity.²² Such clauses typically state that insurance coverage is not available for "bodily injury to any person related to and residing in the same household with the operator."²³ The purpose of the clause is to limit the contractual liability of insurance companies and to protect insurers from fraudulent and collusive claims.²⁴ Jurisdictions have rendered inconsistent

17. *Id.* at 791.

18. *Id.*

19. *American Family Mut. Ins. Co. v. Ward*, No. 55512 (Mo. Ct. App. Aug. 22, 1989).

20. *Id.* at 13.

21. *Ward*, 789 S.W.2d at 796.

22. See Note, *The Household Exclusion Clause—Returning to the Days of Family Immunity*, 7 *HAMLIN L. REV.* 507, 507 (1983).

23. See *supra* note 4.

24. See Note, *supra* note 22, at 510-13.

decisions concerning household exclusion clause validity,²⁵ but a majority have found them invalid.²⁶

Most jurisdictions that have found these clauses invalid have done so primarily for public policy reasons.²⁷ For example, in *Geico v. Dickey*,²⁸ the Georgia Supreme Court determined that promoting a household exclusion clause would be in direct "conflict with the policy underlying [the state's] compulsory insurance law."²⁹ Noting that the policy of the state was to protect the public through comprehensive automobile liability coverage, the court specifically held that "if the exclusion were broader than the tort immunity of the state, the exclusion would be against public policy."³⁰

In *Bishop v. Allstate Insurance Co.*,³¹ the Kentucky Supreme Court considered the validity of a household exclusion clause in light of the state's mandatory insurance statute, the Kentucky Motor Vehicle Reparation Act (MVRA). The court held the exclusion invalid because it violated the purpose of mandatory insurance by acting to eliminate insurance coverage for a motor vehicle operator.³² Because the legislature modeled the MVRA after the Uniform Motor Vehicles Accident Reparations Act and specifically omitted sections allowing certain exclusions, the court reasoned that the legislature did not intend "that the minimum tort liability coverage be diluted or eliminated by exclusions."³³

25. See Annotation, *Validity, Under Insurance Statutes, of Coverage Exclusion for Injury to or Death of Insured's Family or Household Members*, 52 A.L.R.4th 18 (1987) (a comprehensive discussion of the validity of various household exclusion clauses analyzed in state and federal cases). See also 6C S. LIEBO, APPLEMAN'S INSURANCE LAW AND PRACTICE § 4411 (Supp. 1989).

26. Clapp, *The Household Exclusion in Automobile Insurance Policies*, INS. COUNS. J., April 1986, at 248. See also *Meyer v. State Farm Mut. Auto. Ins. Co.*, 689 P.2d 585, 590 (Colo. 1984) (finding a household exclusion clause invalid is consistent with the majority of jurisdictions). The majority rule that household exclusion clauses are invalid is a recent trend. Other prior decisions are inconsistent with this statement because the prior majority rule was that the clauses were valid. See *State Farm Mut. Auto. Ins. Co. v. Ward*, 340 S.W.2d 635, 638 (Mo. 1960) ("We approve the majority rule."); *Gabler v. Continental Casualty Co.*, 295 S.W.2d 194 (Mo. Ct. App. 1956); *Perkins v. Perkins*, 284 S.W.2d 603 (Mo. Ct. App. 1955).

27. Note, *Family Exclusion Clauses Void in Automobile Insurance Policies*, 35 DRAKE L. REV. 817, 825 (1986-87).

28. 340 S.E.2d 595 (Ga. 1986).

29. *Id.* at 596.

30. *Id.* at 596-97.

31. 623 S.W.2d 865 (Ky. 1981).

32. *Id.* at 867.

33. *Id.* at 866.

Similarly, in *Mutual of Enumclaw Insurance Co. v. Wiscomb*,³⁴ the Washington Supreme Court used the rationale behind the state's Financial Responsibility Act to determine that a household exclusion clause was void in contravention of the state's public policy.³⁵ Although the Washington statute did not require proof of motor vehicle liability insurance until after an accident occurred, the policy behind the Act was to assure "monetary protection and compensation to those persons who suffer injuries through the negligent use of public highways by others."³⁶ Thus, the court held that household exclusion clauses are void because they deprive innocent victims of the benefit of protection and compensation simply because they live with the negligent driver.³⁷

Another policy justification for denying the validity of household exclusion clauses is the policy underlying the abrogation of intrafamily immunity.³⁸ In *Transamerica Insurance Co. v. Royle*,³⁹ a daughter brought an action against her parents' insurance company to recover for injuries sustained in an accident in which her parents were driving.⁴⁰ The daughter sought recovery against her parents, and later challenged the validity of the exclusion clause in her parents' insurance policy.⁴¹ The court stated, "[I]f we recognize parental immunity, then the exclusion clause is valid . . . if parent-child immunity does not exist, then the exclusion clause must be invalid"⁴² Thus, once the court determined that intrafamily immunity could no longer exist in Montana, the clause logically was held invalid.⁴³

The minority find household exclusion clauses valid and base their justification primarily on freedom to contract, avoidance of collusion, and

34. 97 Wash. 2d 203, 643 P.2d 441 (1982).

35. *Id.* at 209, 643 P.2d at 444.

36. *Id.* at 206, 643 P.2d at 442.

37. *Id.* at 208, 643 P.2d at 444.

38. See Note, *supra* note 27, at 824-25. See also *Farmer's Ins. Group v. Reed*, 109 Idaho 849, 712 P.2d 550 (1986). In *Reed*, parents brought an action against their son, the negligent driver, to recover for expenses incurred in an automobile accident. *Id.* at 850, 712 P.2d at 551. The Idaho Supreme Court held the household exclusion clause invalid, stating that "every state which has considered intrafamily immunity in the context of negligently caused automobile accidents and household exclusion clauses has . . . invalidated the exclusion clause in the insurance contract." *Id.* at 850, 712 P.2d at 551.

39. 202 Mont. 173, 656 P.2d 820 (1983).

40. *Id.* at 174, 656 P.2d at 821.

41. *Id.* at 174, 656 P.2d at 822.

42. *Id.* at 175, 656 P.2d at 822.

43. *Id.* at 180, 656 P.2d at 824.

absence of specific language in state statutes voiding the clauses.⁴⁴ For example, in *Walker v. American Family Mutual Insurance Co.*,⁴⁵ an insured passenger was injured fatally in an automobile accident. His personal representative brought a wrongful death action against the driver who had been given consent to drive the vehicle by the insured.⁴⁶ The court refused recovery on the wrongful death action because the insured's policy contained a household exclusion clause that also included language that specifically excluded coverage for an injured insured.⁴⁷ In upholding the validity of the exclusion clause, the court stated that insurance companies are free to limit the scope of coverage to protect themselves from collusive actions and that "freedom of individuals to contract is not taken lightly by this court."⁴⁸

B. Applicable Missouri Law

Missouri traditionally has followed the minority view that household exclusion clauses are valid and not in contravention of public policy.⁴⁹ Recently, however, the state has made significant judicial and legislative changes that could affect this view.

In *Missouri Pacific Railroad Co. v. Whitehead & Kales Co.*,⁵⁰ a railroad company was sued by a consignee when the consignee's employee fell from a three-decker automobile rack railcar and was injured.⁵¹ The railroad company wanted to join the manufacturer and installer of the rack as third-

44. See Clapp, *supra* note 26, at 249. See also *Farmers Ins. Exch. v. Cocking*, 29 Cal. 3d 383, 286 P.2d 1, 173 Cal. Rptr. 846 (1981); *United Farm Bureau Mut. Ins. Co. v. Hanley*, 172 Ind. App. 329, 360 N.E.2d 247 (1977).

45. 340 N.W.2d 599 (Iowa 1983).

46. *Id.* at 600.

47. *Id.*

48. *Id.* at 602 (quoting *Skyline Harvestore Systems, Inc. v. Centennial Ins. Co.*, 331 N.W.2d 106, 109 (Iowa 1983)).

49. See *Harrison v. MFA Mut. Ins. Co.*, 607 S.W.2d 137, 139 (Mo. 1980) (en banc) (insurance policy that excluded family members from uninsured motorist liability insurance policy is not void); *State Farm Mut. Auto. Ins. Co. v. Ward*, 340 S.W.2d 635 (Mo. 1960) (Motor Vehicle Safety Responsibility Law stating that a "certified" policy will conform to liability imposed by law did not change household exclusion clause in automobile liability insurance policy); *Hussman v. Government Employees Ins. Co.*, 768 S.W.2d 585, 587 (Mo. Ct. App. 1989) (household exclusion clause remains valid although Missouri has abrogated intrafamily immunity); *Foster v. State Farm Mut. Auto. Ins. Co.*, 750 S.W.2d 494 (Mo. Ct. App. 1988) (wife could not recover from insurer for injuries because husband and wife were living together in a common household).

50. 566 S.W.2d 466 (Mo. 1978) (en banc).

51. *Id.* at 467.

party defendants for indemnification.⁵² The Missouri Supreme Court overruled the prior rule that there was no right to contribution between concurrent joint tortfeasors, unless provided by statute.⁵³ Thus, the court held that two tortfeasors should be "treated according to their respective fault or responsibility"⁵⁴ in order to comply with the doctrine of fairness.⁵⁵

The Missouri Supreme Court, in the companion cases *Townsend v. Townsend*⁵⁶ and *S.A.V. v. K.G.V.*,⁵⁷ determined that spousal immunity was no longer a bar to intentional and negligent tort actions. In *Townsend*, a wife brought an action against her husband seeking damages for injuries she suffered when he intentionally shot her in the back.⁵⁸ The court noted that interspousal immunity had been traditionally based on the common law view that a husband and wife became one upon marriage, and hence, no legal action would be feasible between the two.⁵⁹ Once Missouri adopted the Rights of Married Women Act,⁶⁰ however, a woman's legal existence became equal to and separate from that of her husband's, and the common law doctrine of unity no longer had a basis.⁶¹ Thus, the court determined that the wife could maintain an action against her spouse for an intentional tort.⁶² Similarly, the *S.A.V.* court determined that a wife could maintain an action

52. *Id.*

53. *Id.* at 469, 472.

54. *Id.* at 472.

55. *Id.* at 474. The court stated that indemnity was connected to fairness. Historically, Missouri has used an "active-passive" test in which the passive tortfeasor was not found liable but the active tortfeasor was. *Id.* at 470. The test often gave illogical results that were not based on fairness principles. The present decision does away with the historical test and contemplates any kind of negligence resulting in fault. *Id.* at 470-72.

56. 708 S.W.2d 646 (Mo. 1986) (en banc).

57. 708 S.W.2d 651 (Mo. 1986) (en banc).

58. *Townsend*, 708 S.W.2d at 646.

59. *Id.* at 647. "By marriage, the husband and wife are one person in law: that is, the very being or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated into that of the husband." *Id.* (quoting 1 W. BLACKSTONE COMMENTARIES 442). This view made such suits impractical because the husband was viewed as suing himself. *Id.*

60. This statute, adopted in 1889, has not changed and is currently codified as MO. REV. STAT. §§ 451.250-.300 (1986). The Married Women's Act described a woman as being "femme sole" for business and contract purposes and allowed women to sue and contract with others without her husband being involved. *Townsend*, 708 S.W.2d at 647-48; see MO. REV. STAT. § 451.290 (1986).

61. *Townsend*, 708 S.W.2d at 649-50.

62. *Id.* at 650.

against her spouse after he negligently exposed her to a venereal disease.⁶³ Relying on the trend throughout the nation to abrogate spousal immunity as to all tort claims, the court determined that spousal immunity was no longer a bar to negligence actions.⁶⁴

The Missouri Legislature enacted the MSRL⁶⁵ to "protect the public from injury or damage by the operation of motor vehicles upon the public highways."⁶⁶ The provisions of the MSRL are to be given a liberal interpretation to best facilitate public policy.⁶⁷ Pursuant to this statute as it existed in 1985, when an individual was involved in an accident, the owner or operator of a motor vehicle had to furnish proof of financial responsibility to be relieved of the possibility of losing his driver's license or registration.⁶⁸ To satisfy proof of financial responsibility, an owner or operator must have had a liability policy properly "certified" in writing by the insurer to the Director of Revenue that he had automobile liability coverage of not less than \$25,000 for one person injured, or \$50,000 for two persons injured.⁶⁹ Thus, until an

63. *S.A.V.*, 708 S.W.2d at 652. The appellant alleged that her husband "wilfully, recklessly and negligently transmitted the disease to appellant without informing her of his infection." *Id.* The trial court determined that interspousal immunity prevented the wife's claim. *Id.*

64. *Id.* at 653.

65. MO. REV. STAT. §§ 303.010-.370 (1986). The specific section dealing with Motor Vehicle Safety Responsibility states that an owner's policy of liability insurance [s]hall insure the person named therein and any other person, as insured, using any such motor vehicle or motor vehicles with the express or implied permission of such named insured, against loss from the liability imposed by law for damages arising out of the ownership, maintenance or use of such motor vehicle or motor vehicles within the United States of America or the Dominion of Canada, subject to limits, exclusive of interest and costs, with respect to each such motor vehicle, as follows: twenty-five thousand dollars because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, fifty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and ten thousand dollars because of injury to or destruction of property of others in any one accident.

Id. § 303.190(2).

66. *City of St. Louis v. Carpenter*, 341 S.W.2d 786, 788 (Mo. 1961).

67. *Id.* at 788.

68. *Protective Casualty Ins. Co. v. Cook*, 734 S.W.2d 898, 906-07 (Mo. Ct. App. 1987). Once a license or registration has been suspended, proof of financial responsibility must be demonstrated. The proof is not mandatory, but no license or registration will be returned until the proof is furnished to the Director of Revenue. *Id.*

69. *Id.* at 907.

accident occurred, no "certification" of proof of financial responsibility was required.⁷⁰

Effective July 1, 1987, Missouri became a compulsory insurance state.⁷¹ The result of this change was that the law "require[d] an owner or operator to carry liability insurance in order for the vehicle to be operated on public highways."⁷² The provisions of the MSRL (renamed Missouri "Financial Responsibility Law) and the protective coverage for victims of negligent motorists immediately come into play, and there is no longer an opportunity for a motorist to have one "free" accident.⁷³ Thus, this change indicates the importance that the legislature placed on having continuous protective coverage for victims of motor vehicle accidents.

IV. INSTANT DECISION

In *American Family Mutual Insurance Co. v. Ward*, the Wards argued that Missouri's adoption of contribution and apportionment indicates a public policy that conflicts with upholding the validity of household exclusion clauses.⁷⁴ The Wards asserted that Missouri's adoption of contribution and apportionment among tortfeasors and the abrogation of spousal immunity have created a new class of persons, negligent spouses, for whom no liability coverage presently exists.⁷⁵ Relying on *Whitehead & Kales*, the Wards concluded that household exclusion clauses weaken the tort liability distribution created by contribution.⁷⁶ This argument is illustrated by the facts in the *Ward* case. Karen Ward, the injured spouse, received a judgment against the negligent driver involved in the collision. The negligent driver received a judgment for contribution against Larry Ward proportionate to Ward's contributory negligence. Because Larry Ward's insurance policy contained a household exclusion clause, Karen Ward was unable to recover the entire amount of her damages, the negligent driver was unable to obtain contribution, and Larry Ward was unprotected from a personal judgment.⁷⁷

In response, American Family relied on *MFA Mutual Insurance Co. v. Howard Construction Co.*⁷⁸ to argue that the policy behind contribution was

70. *Id.* at 906-07. MO. REV. STAT. § 303.170 (1986).

71. MO. REV. STAT. §§ 303.010-.025 (1989).

72. *Cook*, 734 S.W.2d at 906.

73. *See* 12-A G. COUCH, CYCLOPEDIA OF INSURANCE LAW, § 45.721 (2d ed. 1981).

74. *Ward*, 789 S.W.2d at 792.

75. *Id.*

76. *Id.*

77. *Id.*

78. 608 S.W.2d 535 (Mo. Ct. App. 1980).

inapplicable because the third-party action filed by the other drivers against Larry Ward was not valid.⁷⁹ In *Howard*, the insured was operating a motor vehicle involved in an accident in which her two children were passengers.⁸⁰ A daughter brought suit against Howard Construction Co. (Howard), alleging negligence for failure to post warning signs near the scene of the accident.⁸¹ Howard sought contribution for any negligence due to the decedent and filed a third-party claim against the insured's estate.⁸² MFA sought a declaratory judgment that the household exclusion precluded any liability it may have for bodily injuries resulting from the insured's negligence.⁸³

Howard argued that the household exclusion was inapplicable because its contribution claim was a claim against the mother's estate and not a claim between family members.⁸⁴ Alternatively, Howard asserted that if the exclusion applied, the clause was void as against the contribution public policy expressly adopted in *Whitehead & Kales*.⁸⁵ The *Howard* court acknowledged that when the original plaintiff is barred by immunity, a third party, having a derivative claim, similarly is barred.⁸⁶ The immunity would serve as an exception to contribution doctrine.⁸⁷ The court determined, however, that Howard had a valid claim for contribution because the claim was derivative from the daughter's cause of action, and parental immunity ceased to exist upon the mother's death.⁸⁸

The court stated that it would be unsound to determine that the household exclusion did not apply since the "third-party action in origin is the same as could be maintained by the original plaintiff, [and] it is doubtful that any real distinction can be made because the third-party petition is filed by one seeking apportionment and contribution."⁸⁹ The *Howard* court determined that "[i]nsurance policy exposure is neither enhanced nor reduced by [the apportionment and contribution] aspect of *Whitehead and Kales*."⁹⁰ Because the household exclusion clause was plain and unambiguous, the court held that

79. American Family Mut. Ins. Co. v. Ward, No. 55512, slip op. at 7 (Mo. Ct. App. Aug. 22, 1989).

80. *Id.*

81. *Howard*, 608 S.W.2d at 535.

82. *Id.* at 536-37.

83. *Id.* at 537.

84. *Id.*

85. *Id.*

86. *Id.*

87. *Id.*

88. *Id.* at 538.

89. *Id.*

90. *Id.* See *supra* notes 49-55 and accompanying text for a discussion of *Whitehead & Kales*.

the intent of the parties controlled and that the household exclusion clause was valid.⁹¹ The court refrained from addressing the public policy issue concerning household exclusion clauses.

The Wards used *Townsend v. Townsend*⁹² and *S.A.V. v. K.G.V.*⁹³ to argue that the conflict between use of household exclusions and public policy was enhanced further in light of the abrogation of interspousal immunity.⁹⁴ The supreme court relied upon "[l]ong established common law principles [that] authorize courts to compel tort-feasors to compensate those they intentionally or negligently injure."⁹⁵ The Wards asserted that abrogation of interspousal immunity lends further support for the policy of equitable distribution of tort liability underlying contribution, and that the continued validity of household exclusion clauses undermine this policy.⁹⁶

American Family relied upon *Cameron Mutual Insurance Co. v. Proctor*⁹⁷ and *Hussman v. Government Employees Insurance Co.*⁹⁸ to argue that the clause was unaffected by the abrogation of interspousal immunity. In *Cameron*, a husband and wife were involved in a collision in which the husband was driving.⁹⁹ The husband and wife were both named on an insurance policy which contained an exclusion for the named insured as well as a household exclusion clause.¹⁰⁰ The wife brought a personal injury action against her deceased husband's estate for personal injuries she sustained in the collision.¹⁰¹ The insurance company sought a declaration that it was not liable to defend any action or pay for damages incurred due to the wife's injuries.¹⁰²

The *Cameron* court acknowledged the abrogation of interspousal immunity but upheld the exclusionary clause and stated that "[t]here exists no

91. *Howard*, 608 S.W.2d at 538.

92. See *supra* notes 56-64 and accompanying text for a discussion of *Townsend*.

93. See *supra* notes 63-64 and accompanying text for a discussion of this decision.

94. *American Family Mut. Ins. Co. v. Ward*, No. 55512 (Mo. Ct. App. Aug. 22, 1989).

95. *Id.* at 9 (quoting *Townsend v. Townsend*, 708 S.W.2d 646, 647 (Mo. 1986) (en banc)).

96. *Id.*

97. 758 S.W.2d 67 (Mo. Ct. App. 1988).

98. 768 S.W.2d 585 (Mo. Ct. App. 1989).

99. *Cameron Mut. Ins.*, 758 S.W.2d at 68.

100. *Id.* The clause stated that "[t]his policy does 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." *Id.* at 69.

101. *Id.*

102. *Id.*

public policy consideration which would require respondent not to exclude a named insured . . . from coverage for her own bodily injuries."¹⁰³ The *Cameron* court did not address the issue of whether the policy underlying abolition of interspousal immunity would require invalidation of household exclusion clauses because the wife was excluded as a named insured and not as a household member.¹⁰⁴

In *Hussman*, the insured was a driver involved in an automobile accident in which his wife, a passenger, was injured.¹⁰⁵ The insurance policy in question contained an exclusion that disallowed coverage for bodily injury to "any insured."¹⁰⁶ The policy defined "insured" as "you and your relatives."¹⁰⁷ The Missouri Court of Appeals, relying in part on *Cameron*, determined that the household exclusion clause in the insured's policy was not void after Missouri abrogated spousal immunity.¹⁰⁸

The Wards used the MSRL¹⁰⁹ to assert that household exclusion clauses contravene the statute's policy to provide "financial remuneration" for individuals injured by tortfeasors involved in motor vehicle accidents.¹¹⁰ The statute states that motor vehicle liability policies protect the insured "against loss from the liability imposed by law for damages arising out of the ownership, maintenance, or use of such motor vehicle."¹¹¹ The Wards took the position that the public policy underlying the MSRL should be mandatory for all drivers, regardless of whether an insurance policy has been "certified" by the insurer as proof of future financial responsibility.¹¹² The Wards based their position on three Missouri decisions involving interpretation of omnibus clauses in motor vehicle liability insurance policies.¹¹³

In the first case, *Winterton v. Van Zandt*,¹¹⁴ the insurance policy contained an omnibus clause providing coverage to any operator having the

103. *Id.* at 70.

104. *Id.*

105. *Hussman*, 768 S.W.2d at 586.

106. *Id.* at 587.

107. *Id.*

108. *Id.*

109. MO. REV. STAT. § 303.010 (1986). This currently is titled the Motor Vehicle Financial Responsibility Law due to a 1987 amendment.

110. *American Family Mut. Ins. Co. v. Ward*, 789 S.W.2d 791, 793 (Mo. 1990) (en banc). See also *City of St. Louis v. Carpenter*, 341 S.W.2d 786, 788 (Mo. 1961).

111. *American Family Mut. Ins. Co.*, 789 S.W.2d at 793 (citing MO. REV. STAT. § 303.190.2(2) (1986)).

112. *Id.* at 794.

113. *Id.*

114. 351 S.W.2d 696 (Mo. 1961).

insured's permission to operate the vehicle¹¹⁵ and language stating that the policy was intended to comply with the MSRL.¹¹⁶ The court used the public policy and statutory language of the MSRL applying to a "certified" policy to interpret the omnibus clause in the uncertified policy in question.¹¹⁷ Thus, arguing by analogy, the Wards contended that the financial remuneration purpose behind the MSRL in a certified policy should also apply to an uncertified policy.¹¹⁸

In *Weathers v. Royal Indemnity*,¹¹⁹ the court determined that where an omnibus clause is ambiguous, the public policy of the MSRL encourages liberal construction to comply with the protection purpose of motor vehicle insurance policies.¹²⁰ In *Weathers*, an action to recover for personal injuries suffered in an automobile accident was brought against an insurer of a rental car.¹²¹ The insurance policy contained an omnibus clause that extended coverage to any person using the rental car with "permission" of the lessor.¹²² When the lessee loaned the car to another, the court determined that the language in the omnibus clause should be interpreted broadly to cover the injured driver, even though the person actually granted "permission" had not been driving.¹²³ Thus, the Wards concluded that language in their insurance policy similarly should be interpreted broadly to cover Karen Ward's injuries to comply with the underlying public policy in the MSRL.¹²⁴

115. *Id.* at 698. In *Winterton*, the driver of a vehicle had been granted by the insured permission to go to the store a few blocks away, but was involved in an accident over sixty miles from the insured's home. *Id.*

116. *Id.*

117. *Id.* The *Winterton* court noted:

The provisions of [MO. REV. STAT. § 303.170 (1986)] are indicative of the public policy of this state to assure financial remuneration to the extent and under the conditions therein provided for damages sustained through the negligent operation of motor vehicles upon the public highways of this state not only by the owners of such automobiles but also all persons using them with the owners' permission, express or implied.

Id. at 700-01.

118. *American Family Mut. Ins. v. Ward*, 789 S.W.2d 791, 795 (Mo. 1990) (en banc).

119. 577 S.W.2d 623 (Mo. 1979) (en banc).

120. *Id.* at 625. The clause provided insurance coverage for any driver so long as the driver had been given permission to use the car by the insured rental car company. *Id.* at 624.

121. *Id.* at 624-25.

122. *Id.* at 624.

123. *Id.* at 630.

124. *See American Family Mut. Ins. v. Ward*, 789 S.W.2d 791, 794 (Mo. 1990) (en banc).

The third case, *Allstate Insurance v. Sullivan*,¹²⁵ involved interpretation of an omnibus clause in an automobile rental company agreement. The clause covered the "named insured" and any driver given permission by the insured to drive the vehicle.¹²⁶ The policy specifically excluded coverage for any driver operating the vehicle "while under the influence of intoxicants or narcotics."¹²⁷ Sullivan was involved in a collision while driving the vehicle in an intoxicated condition.¹²⁸ The court found that both the insured and the insurer intended that the policy comply with the MSRL.¹²⁹ The court stated that the insurer's argument that an insurance policy should receive a restrictive-interpretation until it is "certified" should be given no merit,¹³⁰ and that "[a]ny policy providing less protection [than that required in the Safety Responsibility Law] is contrary to the public policy of this state."¹³¹

American Family argued that the MSRL applied only to "certified" insurance policies.¹³² In *State Farm Mutual Automobile Insurance v. Ward*,¹³³ an insurer brought a declaratory judgment action to determine liability on a claim filed by a wife and daughter injured in an automobile accident in which the insured decedent was driving.¹³⁴ The insurance policy sold to the decedent contained a household exclusion clause.¹³⁵ The Missouri Supreme Court rejected the defendant's claim that the household exclusion clause contravened the public policy of Missouri's MSRL. The court concluded that the applicable statutory sections relied on pertained only to operator's policies that have been certified by the insurer as proof of financial responsibility.¹³⁶

The Missouri Supreme Court disagreed with the Wards' arguments and held for American Family. The court noted that *Sullivan* had been criticized for failing to cite *State Farm Mutual Automobile Insurance v. Ward*.¹³⁷ The

125. 643 S.W.2d 21 (Mo. Ct. App. 1982).

126. *Id.* at 22.

127. *Id.*

128. *Id.* at 22.

129. *Id.* at 23.

130. *Id.*

131. *Id.* at 23.

132. *American Family Mut. Ins. v. Ward*, 789 S.W.2d 791, 793 (Mo. 1990) (en banc). (MO. REV. STAT. §§ 303.170-.180 (1986) are the applicable statutes that provide for certification of motor vehicle liability policies).

133. 340 S.W.2d 635 (Mo. 1961).

134. *Id.* at 637.

135. *Id.*

136. *Id.* at 638.

137. *American Family Mutual Ins. Co. v. Ward*, 789 S.W.2d 791, 795 (Mo. 1990) (en banc) (relying on the following decisions to support this proposition: Protective

court also noted that *Sullivan* has not been followed consistently in later cases.¹³³ The court distinguished *Sullivan* from the case at bar because the Ward policy contained a household exclusion clause and not an omnibus clause as the *Sullivan* policy did. *Sullivan* was also distinguishable because that policy specifically undertook to meet the requirements of the MSRL, and the Wards' insurance policy committed only to modify terms that were "in conflict with the statutes."¹³⁹ The court concluded that the *Sullivan* holding was limited and could not be considered "authoritative beyond the context in which it was decided."¹⁴⁰

The court further noted that *Winterton*, *Weathers*, and *Sullivan* concerned rules of liberal contract construction when interpreting "ambiguous" language in insurance policies.¹⁴¹ The court held that when language is clear and unambiguous, as was the language in the Ward insurance policy, the rules for contract construction are inapplicable.¹⁴²

The court found that the public policy applying to the Wards' insurance policy was embodied in the MSRL as it existed in 1985 when the accident occurred, and not the public policy underlying the statute as it existed in 1990.¹⁴³ The court noted that the public policy under the 1985 statute was that "ambiguous provisions . . . will be liberally construed to conform to the liability coverage described in [the MSRL]," and that automobile insurance was strictly a voluntary undertaking.¹⁴⁴ The court found that because insurance was voluntary, parties were free to agree to any terms, "subject only to the requirements that the contract is lawful and reasonable."¹⁴⁵

Concluding there was no evidence that the family exclusion clause in the Wards' insurance policy was unreasonable under general contract principles, or "certified" as proof of financial responsibility, the court held that the insurance policy was not contrary to the public policy embodied in the 1985 MSRL.¹⁴⁶ Similarly, the court held that "[n]either adoption of contribution and apportionment among joint tort-feasors nor the abrogation of interspousal immunity modify public policy as expressed in the 1985 version of the Safety

Casualty Ins. v. Cook, 734 S.W.2d 898, 908 (Mo. Ct. App. 1987); Universal Underwriters Ins. v. Weber, 701 S.W.2d 588, 591 (Mo. Ct. App. 1985)).

138. *Id.*

139. *Id.*

140. *Id.*

141. *Id.*

142. *Id.*

143. *Id.*

144. *Id.* (citations omitted).

145. *Id.* (citing *Ward*, 340 S.W.2d at 640).

146. *Id.* at 796.

Responsibility Law, by mandating the coverage required in an uncertified automobile liability insurance policy."¹⁴⁷

In a concurring opinion, Judge Covington mentioned that although Ward's arguments were persuasive considering Missouri's 1987 change to a compulsory insurance state, the public policy that existed at the time the accident occurred was the only public policy that was relevant.¹⁴⁸ She noted that the Missouri Supreme Court's abrogation of interspousal immunity in *S.A.V.* applied to judgments that had not been entered as of the date the opinion was issued, and that *Cameron* and *Hussman* did not undermine the *S.A.V.* holding.¹⁴⁹

Judge Covington noted a discrepancy, however, in the interplay of the *Cameron* and *Hussman* opinions.¹⁵⁰ Because the wife in *Cameron* was excluded as a named insured on the policy pursuant to language excluding the "insured" and not due specifically to the household exclusion portion of the clause, the court did not analyze the validity of household exclusion clauses.¹⁵¹ In *Hussman*, however, it was not clear that the injured wife was not a named insured.¹⁵² The importance of this distinction is that if the wife in *Hussman* had been a named insured, *Cameron* lends adequate support for the *Hussman* holding.¹⁵³ If not, then *Cameron* is not controlling. Because *Cameron* did not address the validity of household exclusion clauses, if *Cameron* controls, then "the *Hussman* Court's language with respect to the validity of family exclusion clauses is merely surplusage."¹⁵⁴

Judge Covington gave merit to the cumulative effect of policies underlying the interaction of the MSRL, the adoption of contribution, and the abrogation of interspousal immunity. However, she stated that these policy considerations "may well signal that the public policy of this state now favors indemnification of Larry Ward . . . [but] whatever the public policy now espoused by the State of Missouri, this Court should not by judicial fiat retroactively impose that policy on this antecedent insurance contract."¹⁵⁵

147. *Id.*

148. *Id.*

149. *Id.*

150. *Id.* at 797.

151. *Id.*

152. *Id.*

153. *Id.*

154. *Id.*

155. *Id.*

V. COMMENT

American Family Mutual Insurance Co. v. Ward decided the status of household exclusion clauses in motor vehicle liability insurance policies that pre-dated compulsory insurance legislation enacted in Missouri in 1987.¹⁵⁶ The decision left uncertain, however, the status of motor vehicle insurance policies written post-1987. If the Supreme Court had affirmed the Court of Appeals' decision, there would have been consistency with existing public policy and both the insurer and insured would be aware of their respective rights under a contract of motor vehicle liability insurance. Under the present limited decision, however, both groups may have to wait until Missouri courts are confronted with a policy issued post-1987 which includes a household exclusion clause.

Missouri traditionally has determined that household exclusion clauses are valid.¹⁵⁷ The Missouri Supreme Court decision rendered in *Ward* remains consistent with this view. Yet, the state recently has taken steps to create policy considerations that may undermine this lengthy tradition. When the Missouri Supreme Court abrogated interspousal immunity,¹⁵⁸ the state evinced a strong public policy of compensation for victims of intentional and negligent torts caused by family members.¹⁵⁹ Underlying this policy consideration is an implied assumption that adequate compensation will be available to restore the injured victim.¹⁶⁰ When insurance companies limit contractual liability by inserting household exclusion clauses into insurance policies, the effect is arguably to deter the household member from bringing an action against the negligent driver and to exclude adequate compensation for the injured household victim.¹⁶¹ Thus, the existence of household exclusion clauses in motor vehicle liability insurance policies tends to restore the consequences of family immunities and frustrates the public policy underlying abrogation.¹⁶²

The *Ward* court addressed abrogation of interspousal immunity as it concerns validity of household exclusion clauses and found that *Hussman*¹⁶³ upheld the clauses despite the Missouri Supreme Court's stance in *Townsend*¹⁶⁴ and *S.A.V.*¹⁶⁵ The validity the *Ward* court gave the *Hussman*

156. See *supra* notes 137-47 and accompanying text.

157. See cases cited *supra* note 49.

158. See *supra* notes 56-64.

159. *Id.*

160. See *Townsend v. Townsend*, 708 S.W.2d 646, 647 (Mo. 1986).

161. See Note, *supra* note 27, at 822.

162. See Note, *supra* note 22, at 519.

163. See *supra* notes 105-108 for a discussion of this decision.

164. See *supra* notes 58-62 and accompanying text for a discussion of this

holding, however, should be questioned. Although Judge Covington concurred in *Ward*, she noted an important discrepancy in the interplay of the *Cameron* and *Hussman* opinions.¹⁶⁶ Judge Covington stated that it is unclear from the *Hussman* opinion whether the facts in *Hussman* are indistinguishable from those in the *Cameron* decision. This discrepancy could make the *Hussman* language on family exclusion clauses "mere surplusage."¹⁶⁷ Thus, the ambiguous nature of the *Hussman* holding indicates that in light of judicial abrogation of interspousal immunity, household exclusion clause validity deserves further judicial or legislative attention.

The *Ward* holding was consistent with the pre-1987 Missouri public policy of voluntary insurance coverage. After 1987, however, Missouri amended the MSRL and changed to a compulsory insurance state.¹⁶⁸ When the state adopted mandatory insurance, the public policy manifested was that there should be compensation for "all" innocent victims of motor vehicle accidents.¹⁶⁹ Upholding the validity of household exclusion clauses denies adequate compensation for injured household members and undermines post-1987 public policy. Hence, although *Ward* was consistent with Missouri precedent concerning validity of household exclusion clauses, continued validity of household exclusion clauses may be inconsistent in light of the interplay between abrogation of interspousal immunity and the legislative change to mandatory insurance.

The *Ward* court did not discuss the 1985 Missouri statutes that mandated uninsured motorist coverage.¹⁷⁰ The public policy underlying these statutes

decision.

165. See *supra* notes 63-64 and accompanying text for a discussion of this decision.

166. See *supra* text accompanying notes 150-154 for a discussion of Judge Covington's analysis.

167. *Id.*

168. See *supra* text accompanying note 71.

169. See *supra* note 73.

170. MO. REV. STAT. § 379.203 (1978). This statute required "liability policies to afford coverage to insureds who are legally entitled to recover damages from owners or operators of uninsured motor vehicles." *Harrison v. M.F.A. Mut. Ins.*, 607 S.W.2d 137, 140 (Mo. 1980) (en banc). The 1978 Missouri uninsured motorist statute provides:

No automobile liability insurance covering liability arising out of the ownership, maintenance, or use of any motor vehicle shall be delivered or issued for delivery in this state with respect to any motor vehicle registered or principally garaged in this state unless coverage is provided therein or supplemental thereto, in not less than the limits for bodily injury or death set forth in section 303.030, RSMo, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or

is to provide financial protection for insureds against uninsured motorists.¹⁷¹ It has been determined that excess/escape clauses¹⁷² inserted into motor vehicle liability insurance policies violate this public policy by reducing available coverage below the statutory minimum.¹⁷³ Arguably, the same analysis should apply to household exclusion clauses that reduce or completely exclude coverage for household members.

The *Ward* court based its decision on traditional contract principles, stipulating that parties are free to contract and agree to any provisions that are considered lawful and reasonable.¹⁷⁴ The court did not address, however, the idea that insurance contracts are typically contracts of adhesion.¹⁷⁵ An insurance contract usually is entered into between an insurer and a customer on a "take it or leave it" basis.¹⁷⁶ There is relatively little room for equal bargaining power where the average customer purchases insurance once per year from an insurance company that is in the business of entering contracts on a daily basis. This point is made particularly compelling by Missouri's requirement of mandatory automobile liability insurance coverage.

An alternative approach would be to look at the clause in light of the doctrine of "reasonable expectations."¹⁷⁷ This doctrine advocates that insurance policy language should be interpreted as a lay person would

operators of uninsured motor vehicles because of bodily injury, sickness or disease, including death, resulting therefrom

MO. REV. STAT. § 379.203 (1978).

171. See *Otto v. Farmers Ins.*, 558 S.W.2d 713, 717 (Mo. Ct. App. 1977); *Brake v. MFA Mut. Ins.*, 525 S.W.2d 109, 112 (Mo. Ct. App. 1975), *cert. denied*, 423 U.S. 894 (1975).

172. These clauses limit coverage on the policy to "the excess of its limits of liability over the limits of other insurance available." Note, *Uninsured Motorist Coverage-Validity of Anti-Stacking Provisions and Workmen's Compensation Set-off Clause*, 39 MO. L. REV. 96, 96 (1974).

173. See *Steinhaeufel v. Reliance Ins.*, 495 S.W.2d 463, 468 (Mo. Ct. App. 1973).

174. *American Family Mut. Ins. v. Ward*, 789 S.W.2d 791, 795 (Mo. 1990) (en banc).

175. See Keeton, *Honoring Reasonable Expectations in the Interest of Life and Health Insurance Contracts*, 1971 A.B.A. INS. SEC. 213, 213 (1971).

176. Note, *supra* note 27, at 826. See also *Hughes v. State Farm Mut. Auto. Ins.*, 236 N.W.2d 870, 885 (N.D. 1975) (adhesion contract analysis was used to void a family exclusion clause).

177. Keeton, *Insurance Law Rights at Variance with Policy Provisions*, 83 HARV. L. REV. 961, 967 (1970) (the thrust of the doctrine of reasonable expectations is that the reasonable expectations of applicants will be honored even when the policy says otherwise). See also *Lightner v. Farmers Ins.*, 789 S.W.2d 487, 490 (Mo. 1990) (en banc) (an example of the doctrine of reasonable expectations recognized by Missouri courts).

understand and expect it to be interpreted.¹⁷⁸ Thus, the test would be whether Larry Ward expected his insurance policy to cover injuries of household members and whether American Family called the exclusion clause to Larry Ward's attention at the time the policy was signed,¹⁷⁹ not whether the clause was clear and unambiguous as in the *Ward* court analysis.

Ward has differing ramifications for the insurance industry and the individual. The decision benefits insurance companies by allowing them to limit their contract liability on policies entered into before 1987. By not deciding the validity of household exclusion clauses in light of Missouri's mandatory insurance law, however, the decision is limited, and benefits for the insurance industry are questionable on post-1987 policies.¹⁸⁰ The court also leaves questionable the status of renewal policies.

The ramifications for Missouri consumers are equally limited. If the consumer entered into a policy before 1987, the decision arguably has negative results for household members involved in automobile accidents. Validating a household exclusion clause leaves injured family members with little viable recourse for reimbursement for injuries. Although abrogation of interspousal immunity would allow an injured spouse to bring suit against another spouse as a negligent driver, availability of compensation without insurance would result only in a redistribution of family assets.

Consumers who entered into policies after 1987 and those who have policies renewed after 1987 also have an uncertain status regarding household exclusion clause validity. By determining that household exclusion clauses are valid in policies issued before mandatory insurance was legislated, the supreme court implies that there may be a different result on policies entered into after 1987.¹⁸¹ This implication is not sufficient, however, to protect innocent family members who are injured in post-mandated insurance years.

Similarly, a consumer involved in an accident who is found partially negligent and seeks contribution from a third party who is also to blame, would not be allowed to do so if the injured party is a household member and passenger in the negligent third party's vehicle. Thus, a consumer's right to contribution claims may be undermined.

The continued validity of household exclusion clauses in post-1987 insurance policies is in great need of judicial or legislative attention. A viable solution would be for the legislature to pass a statute that invalidates or restricts household exclusion clauses in motor vehicle liability insurance policies entered into after 1987. An example of state legislation restricting use

178. Keeton, *supra* note 177, at 967.

179. *Id.* at 968.

180. See Lieberman, *Household Exclusions' Valid in Pre-1987 Auto Insurance Policies*, 4 MO. LAW. WEEKLY 537, 540 (May 1990).

181. *Id.*

of household exclusion clauses is found in Maine Revised Statutes Annotated.¹⁸² Under this statute, no insurer may sell or renew a policy on or after January 1, 1986, that excludes insurance coverage for injuries to the insured's family members unless specific statutory requirements are met.¹⁸³ Included in this statute is a requirement of disclosure of the household exclusion to the insured.¹⁸⁴ With legislative attention, Missouri's current public policies underlying abrogation of interspousal immunity, contribution and apportionment doctrine, and compulsory insurance could be preserved.

VI. CONCLUSION

The issue of household exclusion clause validity in Missouri is still undetermined for post-mandated insurance years. By limiting the scope of *Ward*, the Missouri Supreme Court remained consistent with pre-mandated insurance public policy but implied that the clause would not be valid in policies entered into after 1987. By not taking a clear stance on this issue, the *Ward* court allows household exclusion clauses to co-exist with a public policy that is clearly inconsistent with the purpose underlying the clause. This important issue is in great need of judicial or legislative attention. Without a stance on the issue, a large class of innocent victims will continue to be unable to recover adequately for injuries caused by motor vehicle accidents,

182. ME. REV. STAT. ANN. tit. 24-A. § 2902-A (1989).

183. *Id.* The statutory provision provides, in part:

2. EXCLUSION. No insurer may sell or renew an insurance policy providing motor vehicle liability insurance on or after January 1, 1986, that excludes coverage for injuries sustained by the insured's family members unless the insurer notifies the bureau in writing of its utilization of the exclusion, the insurer notifies each of its licensed agents within the State of its utilization of the exclusion and the exclusion is provided by a separate endorsement to the insured's policy. An exclusion that does not meet the requirements of this section shall be invalid and of no effect.

Id.

184. *Id.* The statutory provision further provides:

3. DISCLOSURE OF EXCLUSION PROVISION. Every insurance policy providing motor vehicle liability insurance shall clearly state on the face of the policy whether the policy excludes coverage for liability for injuries sustained by the insured's family members. The requirements of this subsection may be satisfied by language on the cover sheet of the policy or which is securely affixed to the front of the policy in a manner not to obscure other policy provisions. The bureau shall, by rule, specify the specific clear and concise language to be required to satisfy this requirement.

Id.

and the policy underlying mandatory insurance for all citizens will not be given adequate effect.

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