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Knocking Out Motor Vehicle Insurance Household Exclusions: Does the Financial Responsibility Law Cover All Bases

David A. Dick

Knocking Out Motor Vehicle Insurance Household Exclusions: Does the Financial Responsibility Law Cover All Bases?

Halpin v. American Family Mutual Insurance Co.[1]

I. INTRODUCTION

This Note discusses the issues presented by the conflicts between Missouri's Motor Vehicle Financial Responsibility Law,[2] a legislative act intended to provide compensation for persons injured in vehicular accidents,[3] and contractual exclusion clauses contained in motor vehicle liability insurance policies. A "household" or "family" exclusion clause, the type of liability insurance contract exclusion at issue in *Halpin*, typically states that no coverage exists for any obligation an insured may have to a member of the insured's family who is residing in the same household as the insured.[4] The household exclusion is designed to eliminate coverage when one family member's negligence results in liability to another family member.[5] Motor vehicle insurance policies typically include other exclusionary clauses also designed to deny coverage in specific situations, such as a household exclusion, an "automobile business" or a business use exclusion,[6] a "garage shop" provision,[7] or a named insured exclusion.[8]

II. FACTS AND HOLDING

Halpin v. American Family Mutual Insurance Co. stems from a declaratory action brought by Donald and Rebecca Halpin as the next friends of their children.[9] The Halpins, appellants in this action, requested the Supreme Court of Missouri to declare void as contrary to public policy the "household exclusion clause" contained in the Halpins' auto insurance policy with American Family Mutual Insurance Company.[10] The accident at issue

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1. 823 S.W.2d 479 (Mo. 1992) (en banc).

2. MO. REV. STAT. §§ 303.010-.370 (1986).

3. Atlanta Casualty Co. v. Salyer, No. 17251, 1991 WL 216277, at *3 (Mo. Ct. App. Oct. 25, 1991).

4. Robert H. Jerry II, *New Developments in Kansas Insurance Law*, 37 KAN. L. REV. 841, 887 (1989).

5. *Id.*

6. *See* Universal Underwriters Ins. Co. v. American Motorists Ins. Co., 541 F. Supp. 755 (N.D. Miss. 1982); Pennsylvania Nat'l Mut. Casualty Ins. Co. v. Parker, 320 S.E.2d 458 (S.C. Ct. App. 1984).

7. *See* DeWitt v. Young, 625 P.2d 478 (Kan. 1981).

8. As the name suggests, a named insured exclusion denies coverage for the policy's named insured. *See* Allstate Ins. Co. v. United States Fidelity & Guar. Co., 619 P.2d 329 (Utah 1980).

9. *Halpin*, 823 S.W.2d at 480.

10. *Id.*

occurred on May 12, 1990.[11] The insured vehicle, driven by Rebecca Halpin, collided with another car, injuring the two Halpin children, Jessica and John.[12] Respondent American Family denied coverage of a claim by the children for injuries caused by their mother's negligence.[13] Respondent based its denial upon a standard household exclusion clause in the insurance contract.[14] The clause at issue stated that the policy coverage did not apply to:

> 10. Bodily injury to:
> a. You, a relative or any other person injured while operating your insured car;
> b. Any person related to you and residing in your household; or
> c. Any person related to the operator and residing in the household of the operator.[15]

The appellants argued for the nullification of the household exclusion clause as contrary to the public policy of Missouri enumerated in the Motor Vehicle Financial Responsibility Law (FRL).[16] The appellants contended that the public policy behind the sections of the law[17] describing minimum

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11. *Id.*
12. *Id.*
13. *Id.*
14. *Id.*
15. *Id.*
16. MO. REV. STAT. §§ 303.010-.370 (1986).
17. The Halpins, appellants, based their argument upon two sections of the FRL. First, the appellants argued that § 303.025 created a requirement of "financial responsibility." This section reads:

> 1. No owner of a motor vehicle registered in this state shall operate the vehicle, or authorize any other person to operate the vehicle, unless the owner maintains the financial responsibility as required in this section. Furthermore, no person shall operate a motor vehicle owned by another with the knowledge that the owner has not maintained financial responsibility unless such person has financial responsibility which covers his operation of the other's vehicle.
> 2. A motor vehicle owner shall maintain his financial responsibility in a manner provided for in section 303.160, or with a motor vehicle liability policy which conforms to the requirements of the laws of this state.

MO. REV. STAT. § 303.025.1, .2 (1986).

Second, the appellants argued that the financial responsibility required by § 303.025 had to comply with the dollar terms listed in § 303.190. The pertinent parts of this section state:

> Such owner's policy of liability insurance:
> (2) Shall 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

amounts of insurance mandates that a contract of vehicle liability insurance must provide the minimum amount of coverage, despite the exclusion clause.[18] The net effect, the appellants asserted, is that section 303.025 and its requirement of financial responsibility mandate coverage up to the dollar amounts specified in section 303.190.[19] The appellants also argued that the household exclusion clause should be fully invalidated, thus extending coverage to the *limits* listed in the insurance policy, beyond the dollar amounts dictated by statute.[20]

Respondent American Family offered several arguments against the claims of the appellants. The respondent argued that the Missouri statutes cannot be characterized as a compulsory insurance law because section 303.160 provides alternative methods of proving financial responsibility.[21] The respondent also maintained that the actual text of section 303.190 applies only to policies certified in accordance with other sections of the FRL, specifically, sections 303.170 or 303.180.[22] Additionally, the respondent argued for the validity of the insurance contract containing the exclusion clause on the grounds that the Missouri Division of Insurance had approved the contract.[23]

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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 one accident.

MO. REV. STAT. § 303.190.2 (1986) (emphasis added).

To summarize the "dollar amounts" required by § 303.190, the FRL provides a pool of potentially recoverable insurance funds of up to $25,000 for one person. The FRL requires $50,000 of insurance coverage available to all parties injured in one accident. For example, suppose four persons riding in a car are injured in an accident. If the insured only has enough insurance to meet the minimal amounts of the FRL, the most any individual could recover from the insurance company would be $25,000, and all four injured parties could recover no more than a total of $50,000. However, it is important to remember that the negligent party would be liable for the amount of the judgment exceeding the amounts paid by the insurance company.

18. *Halpin*, 823 S.W.2d at 480-82. *See supra* note 17.

19. *Halpin*, 823 S.W.2d at 481. *See supra* note 17.

20. *Halpin*, 823 S.W.2d at 482. The dollar amounts are listed in § 303.190.2. *See supra* note 17.

21. *Halpin*, 823 S.W.2d at 482. The four methods of proving financial responsibility listed in § 303.160 are: (1) a certificate of insurance, or a "certified insurance policy;" (2) a bond; (3) a certificate of deposit of money or securities; and (4) a certificate of self-insurance. MO. REV. STAT. § 303.160.1 (1986). This section was enacted in 1953 and was not amended by the 1986 enactment of the Financial Responsibility Law. *Id.*

22. *Halpin*, 823 S.W.2d at 481. Basically, a certified insurance policy is simply an insurance policy filed with the Missouri Division of Insurance, while a noncertified policy is any insurance policy not filed with the Division of Insurance. Sections 303.170-.180 specify the process necessary to certify an insurance policy. Section 303.170 allows proof of financial responsibility by filing a written certificate of insurance with the Missouri Director of Insurance. MO. REV. STAT. § 303.170 (1986). Section 303.180 applies to proof of insurance by a nonresident, so this section is irrelevant to the issues at hand.

23. *Halpin*, 823 S.W.2d at 482.

The trial court entered judgment for respondent American Family.[24] The Missouri Court of Appeals, Eastern District, affirmed the trial court decision, but transferred the case to the Missouri Supreme Court.[25] After noting the apparent legislative purpose of requiring motor vehicle liability policies to provide statutorily limited coverage coextensive with liability,[26] the supreme court partially invalidated the household exclusion clause, holding that the public policy of the FRL requires that a liability insurance contract provide coverage equal to the minimal amounts indicated in section 303.190.[27]

III. LEGAL BACKGROUND

A. *Missouri Law Prior to* Halpin

To begin an examination of Missouri law surrounding the validity of household exclusions, it is appropriate to review the statutes that serve as the basis of public policy. Missouri enacted the Motor Vehicle Safety Responsibility Law (SRL) in 1953.[28] This statute did not require all drivers to maintain insurance or other means of financial responsibility; the SRL merely required the owner of a motor vehicle involved in an accident resulting in more than $500 in damages to prove "financial responsibility."[29] After a person had been involved in an accident, the owner or operator of the vehicle had to furnish proof of financial responsibility to avoid the possibility of revocation of the person's driver's license or vehicle registration.[30] This type of law has been described as a "one free accident rule."[31] Several methods of proving financial responsibility were available under the statute.[32]

Under the SRL, Missouri courts consistently upheld the general validity of household exclusion clauses.[33] Missouri courts have cited freedom of contract in liability insurance as a general principle supporting the validity of exclusions.[34] The Missouri Supreme Court, in *Harrison v. MFA Mutual*

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24. *Id.* at 480.

25. *Id.*

26. *Id.* at 482.

27. *Id.* at 482-83. *See supra* note 17.

28. MO. REV. STAT. §§ 303.010-.370 (1986).

29. *Halpin*, 823 S.W.2d at 481-82. If a driver needed to show financial responsibility under the Safety Responsibility Law, she could do so by any of the methods specified in § 303.160. *See supra* note 21. The dollar amounts of the current § 303.190 were applicable to the SRL. *See supra* note 17.

30. Protective Casualty Ins. Co. v. Cook, 734 S.W.2d 898, 906-07 (Mo. Ct. App. 1987).

31. *See* 12-A GEORGE J. COUCH, CYCLOPEDIA OF INSURANCE LAW § 45:721 (2d ed. 1981).

32. MO. REV. STAT. § 303.160 (1986). See *supra* note 21 for the means of proving financial responsibility listed in § 303.160.

33. American Family Mut. Ins. Co. v. Ward, 789 S.W.2d 791 (Mo. 1990); State Farm Mut. Auto Ins. Co. v. Ward, 340 S.W.2d 635 (Mo. 1960).

34. See *Ward*, 789 S.W.2d at 795; Hines v. Government Employees Ins. Co., 656 S.W.2d 262, 265 (Mo. 1983).

Insurance Co.,[35] held that an unambiguous and unequivocal family exclusion clause is effective.[36] The *Harrison* court decried creating "an ambiguity under the [insurance] policy language where none exists so as to construe the imaginary ambiguity in such a way to reach a result which some might consider desirable but which is not otherwise permissible under the policy or the law."[37] In *American Family Mutual Insurance Co. v. Ward*,[38] the Supreme Court of Missouri again refused to invalidate a household exclusion clause, despite the abolition of interspousal immunity.[39] The *Ward* court classified the procurement and extent of vehicular liability insurance as a voluntary measure; therefore, the parties could agree to any lawful and reasonable terms, including exclusions.[40]

B. Evolution Into Current Missouri Law—Issues Facing the Halpin *Court*

Missouri's Safety Responsibility Law experienced a severe facelift when the 1986 Motor Vehicle Financial Responsibility Law was enacted, effective July 1, 1987.[41] The Financial Responsibility Law (FRL) repealed only particular sections of the previous Safety Responsibility Law, leaving the great majority of the prior law effective.[42] The new law applies to any accident occurring after July 1, 1987.[43] The provisions of the FRL are only a few years old; consequently, little judicial interpretation of the law has been offered.

Because *Halpin* introduced a case of first impression to the Missouri Supreme Court, several issues were presented to the court. These issues, highlighted in the forthcoming sections of this Note, include: (1) the inconsistencies within the current statutory framework determining appropriate methods of sustaining financial responsibility; (2) the general nature of the new law, as either a compulsory or noncompulsory insurance law; (3) the validity of household exclusions in light of the public policy espoused by the FRL; and (4) assuming invalidity of household exclusions as being void as against public policy, determining whether the exclusions are void only up to the dollar amounts of coverage specified in section 303.190[44] or completely void, thus allowing the entire coverage provided in the individual policy.

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35. 607 S.W.2d 137 (Mo. 1980).

36. *Id.* at 142.

37. *Id.*

38. 789 S.W.2d 791 (Mo. 1990).

39. *Ward*, 789 S.W.2d at 796. Missouri abolished spousal immunity for negligent torts in S.A.V. v. K.G.V., 708 S.W.2d 651 (Mo. 1986).

40. *Ward*, 789 S.W.2d at 795.

41. The title of Chapter 303 was renamed the Motor Vehicle Financial Responsibility Law from the previous Motor Vehicle Safety Responsibility Law. MO. REV. STAT. § 303.010 (1986).

42. *Halpin*, 823 S.W.2d at 480.

43. Shelter Mut. Ins. Co. v. Haney, 824 S.W.2d 949, 953 (Mo. Ct. App. 1992); *see also Ward*, 789 S.W.2d at 796-797 (Covington, J., concurring).

44. *See supra* note 17.

1. The Statutory Inconsistencies of the Financial Responsibility Law

The Financial Responsibility Law made several important additions to the old statute. The new law added section 303.025, providing that "[n]o owner of a motor vehicle registered in this state shall operate the vehicle . . ., unless the owner maintains the financial responsibility as required in this section."[45] This section also decrees that a "motor vehicle owner shall maintain his financial responsibility in a manner provided for in section 303.160, or with a motor vehicle liability policy which conforms to the requirements of the laws of this state."[46] The requirement of maintaining financial responsibility conforming to the laws of Missouri implicates section 303.190, which delineates the actual dollar amounts required to satisfy financial responsibility.[47] The FRL, section 303.025 in particular, mandates that financial responsibility be maintained before a vehicle can be operated, regardless of past driving history.[48]

The statutory mandate of financial responsibility presents the problem of ascertaining the methods of financial responsibility authorized by the legislature. Subsection 2 of section 303.025 states that the financial responsibility required can be satisfied by a motor vehicle policy in conformity with the laws of Missouri or in any manner listed in section 303.160.[49] Section 303.160 had been a part of the old Safety Responsibility Law, and was not repealed by the 1986 amendments. This section authorized proof of financial responsibility by four various means: (1) a certified motor vehicle policy; (2) posting a bond; (3) a certificate of self-insurance; or (4) by posting a certificate of deposit.[50] Thus, the current Missouri statute recognizes certified and noncertified insurance policies.[51] Herein definitional inconsistencies arise.

While section 303.025.2 allows noncertified policies to satisfy the financial responsibility requirements, section 303.190.1 defines a motor vehicle liability policy as a policy "certified as provided in section 303.170."[52] Because the legislature did not amend the section 303.190 definition of "motor vehicle liability policy" to comport with the 1986 addition of section 303.025, the dollar figures of section 303.190 apply only to a certified policy, if one applies a literal interpretation to the two statutes.[53] The discrepancies between the various sections of the current law have evoked arguments that

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45. MO. REV. STAT. § 303.025 (1986). See *supra* note 17 for the full text of this section.

46. MO. REV. STAT. § 303.025 (1986). *See supra* note 17.

47. MO. REV. STAT. § 303.190 (1986). *See supra* note 17.

48. State Farm Mut. Auto. Ins. Co. v. Monday, No. WD44299, 1991 WL 179383, at *1 (Mo. Ct. App. Sept. 17, 1991).

49. MO. REV. STAT. § 303.025 (1986).

50. MO. REV. STAT. § 303.160 (1986).

51. *Monday*, 1991 WL 179383, at *2. *See* MO. REV. STAT. §§ 303.025, 303.160 (1986).

52. MO. REV. STAT. § 303.190.2 (1986).

53. *See Halpin*, 823 S.W.2d at 481; *Monday*, 1991 WL 179383, at *2.

the FRL does not apply to the standard, noncertified vehicle liability insurance policy.[54]

In *State Farm Mutual Automobile Insurance Co. v. Monday*,[55] the insurer raised such an argument, contending that the financial provisions of the law do not apply to a noncertified policy.[56] The Missouri Court of Appeals, Western District, looked to canons of statutory construction to address the inconsistencies between the old and new sections of the law.[57] The court stated that "where an unaltered section and the amendment cannot be reconciled, the provisions of the amendatory act, which is the last expression of the will of the legislature, must prevail."[58] Supported by rules of statutory construction, the *Monday* court held that a noncertified insurance policy is an authorized method of showing financial responsibility.[59] The *Monday* court reasoned that "it is necessary to delete" any language stating that only a certified policy must meet the terms of the FRL.[60]

2. Is the FRL a Compulsory Insurance Law?

After resolving the discrepancies between the old and new sections of the FRL, another important issue remains: Is the FRL a compulsory insurance law? While difficulties may arise in labeling a statute as a "compulsory insurance law" or a "financial responsibility law," commentators have pointed out basic differences between the two general types of laws.[61] Compulsory insurance laws are intended to be a condition for any operation of a motor vehicle for the unlimited class of all motorists.[62] Financial responsibility laws generally apply to a limited class of motorists, most often a class of people who have been involved in accidents or had a driver's license revoked.[63] According to a renowned commentator on insurance law, George Couch, "[t]he basic problem with this type of statute [financial responsibility statutes] is that the motorist is entitled to one free accident."[64] Couch

54. *See Halpin*, 823 S.W.2d at 481; *Monday*, 1991 WL 179383, at *2.

55. No. WD44299, 1991 WL 179383 (Mo. Ct. App. Sept. 17, 1991).

56. *Monday*, 1991 WL 179383, at *2-3.

57. *Id.* at *3.

58. *Id.* (quoting 1A JABEZ G. SUTHERLAND, STATUTORY CONSTRUCTION, § 22.35 (4th ed. 1985)).

59. *Id.* at *4.

60. *Id.*

61. Classifications of statutes as compulsory or noncompulsory are typically generalizations. The innumerable subtle differences among state insurance statutes clouds the accuracy of classifying a particular statute as a compulsory insurance law or as any other type of law. *See* American Family Mut. Ins. Co. v. Ward, 789 S.W.2d 791, 796 n.2 (Mo. 1990) (Covington, J., concurring).

62. *See* COUCH, *supra* note 31, § 45:721; 7 AM. JUR. 2D *Automobile Insurance* § 20 (1980).

63. *See* COUCH, *supra* note 31, § 45:721; 7 AM. JUR. 2D *Automobile Insurance* § 20 (1980).

64. COUCH, *supra note 31*, § 45:721.

concluded that such a financial responsibility law "provides little consolation to the victim of the first accident."[65]

The confusion created by affixing the labels of "compulsory" and "financial responsibility" is apparent. The confusion is magnified upon consideration of the history of Missouri's legislative attempts in this area. Missouri's pre-1987 Safety Responsibility Law corresponds to the commentators' generic classification of financial responsibility laws.[66] The name "Motor Vehicle Financial Responsibility Law" would seem to suggest that the current FRL is a stereotypical financial responsibility law, but prior to *Halpin*, Missouri courts had not agreed upon the type of insurance requirement the FRL created.[67]

Two Missouri courts have addressed this issue in dicta.[68] In *Protective Casualty Co. v. Cook*,[69] the Missouri Court of Appeals, Eastern District, distinguished compulsory insurance and financial responsibility acts, then stated, "[A] number of states have enacted laws which require an owner or operator to carry liability insurance in order for the vehicle to be operated on the public highways. This is what Missouri will have effective July 1, 1987."[70] However, the same court of appeals said in *American Standard Insurance Co. v. Dolphin*[71] that "the Missouri legislature did not enact a mandatory automobile insurance law, but rather a mandatory financial responsibility law."[72] Clearly, a uniform understanding of the FRL has not been reached.

3. Validity of Household Exclusions in Light of the FRL

Regardless of the characterization of the current Missouri law, the central issue facing the *Halpin* court was determining whether a household exclusion clause was void as against the public policy manifested in the FRL. The Supreme Court of Missouri entertained this public policy argument in *American Family Mutual Insurance Co. v. Ward*.[73] The accident at issue in *Ward* occurred on March 16, 1985, well before the passage of the FRL or its effective date.[74] The court ruled that because the wreck antedated the FRL, considerations of public policy were to be extrapolated from the Safety

65. *Id.*

66. *See supra* notes 28-32, 61-65 and accompanying text.

67. *See, e.g.*, American Standard Ins. Co. of Wisconsin v. Dolphin, 801 S.W.2d 413, 415 (Mo. Ct. App. 1990); Protective Casualty Ins. Co. v. Cook, 734 S.W.2d 898 (Mo. Ct. App. 1987).

68. *Dolphin*, 801 S.W.2d at 415; *Cook*, 734 S.W.2d at 906.

69. 734 S.W.2d 898 (Mo. Ct. App. 1987).

70. *Id.* at 906.

71. 801 S.W.2d 413 (Mo. Ct. App. 1990).

72. *Id.* at 415.

73. 789 S.W.2d 791 (Mo. 1990).

74. *Id.* at 792. The FRL was passed in 1986 and took effect July 1, 1987. MO. REV. STAT. § 303.010 (1986).

Responsibility Law.[75] Although the court rejected the insured's public policy argument,[76] Judge Covington's concurring opinion left the door open for future arguments that household exclusions are void as against public policy.[77] Covington postulated that the "cumulative effect" of the adoption of rights of contribution, enactment of the FRL, and the abolition of spousal immunity[78] may well have favored the insured's argument under current public policy, but that current public policy did not govern the specific case of *Ward*.[79]

Prior to *Halpin*, the Missouri Court of Appeals addressed public policy arguments contesting the validity of insurance exclusions in three cases stemming from accidents occurring after the effective date of the FRL.[80] In *American Standard Insurance Co. v. Dolphin*,[81] the court dealt with a "passenger exclusion"[82] clause in a motorcycle liability insurance policy.[83] The *Dolphin* court admitted that the FRL is not a mandatory insurance law.[84] However, the court found that regardless of the passenger exclusion clause or the fact that the policy was not certified,[85] the parties intended that the policy conform to the FRL.[86] The court then held the passenger exclusion to be contrary to the public policy of Missouri as expressed in section 303.190.2(2).[87]

Just as in *Halpin*, the issue of the validity of household exclusion clauses was before the Missouri Court of Appeals in *State Farm Mutual Automobile Insurance Co. v. Monday*.[88] The *Monday* court rejected the insurer's

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75. *Ward*, 789 S.W.2d at 795.

76. *Id.* at 796.

77. *Id.* at 797 (Covington, J., concurring).

78. Missouri adopted rights of contribution among tortfeasors in Missouri Pacific Railroad Co. v. Whitehead & Kales Co., 566 S.W.2d 466 (Mo. 1978). The FRL was enacted in 1986. Spousal immunity for negligent torts was abolished by S.A.V. v. K.G.V., 708 S.W.2d 651 (Mo. 1986).

79. *Ward*, 789 S.W.2d at 797.

80. Atlanta Casualty Co. v. Salyer, No. 17251, 1991 WL 216277 (Mo. Ct. App. Oct. 25, 1991); State Farm Mut. Auto. Ins. Co. v. Monday, No. WD44299, 1991 WL 179383 (Mo. Ct. App. Sept. 17, 1991); American Standard Ins. Co. v. Dolphin, 801 S.W.2d 413 (Mo. Ct. App. 1990).

81. 801 S.W.2d 413 (Mo. Ct. App. 1990).

82. As the name suggests, a passenger exclusion denies insurance coverage to any person riding in or on a vehicle with the named insured.

83. *Dolphin*, 801 S.W.2d at 414.

84. *Id.* at 415. For a discussion of compulsory and noncompulsory insurance laws, see *supra* notes 61-72 and accompanying text.

85. *Dolphin*, 801 S.W.2d at 416. *See supra* notes 22, 50-54 and accompanying text.

86. *Dolphin*, 801 S.W.2d at 416.

87. *Id.* at 414-15. In citing § 303.190.2, the court referred to this operative language: "[s]uch owner's policy of liability insurance: . . . (2) [s]hall insure . . . against loss from the liability imposed by law for damages arising out of the ownership, maintenance, or use of such motor vehicle." MO. REV. STAT. § 303.190.2 (1986).

88. No. WD44299, 1991 WL 179383 (Mo. Ct. App. Sept. 17, 1991).

argument based upon the definitional inconsistencies within the FRL.[89] Citing with approval the *Dolphin* court's invalidation of a passenger exclusion clause, the *Monday* court held that because a household exclusion denies coverage for liability which the FRL recognizes a duty to provide, the exclusion is void as against public policy.[90]

In *Atlanta Casualty Co. v. Salyer*,[91] the Missouri Court of Appeals, Southern District, dealt with the validity of a "business use" exclusion.[92] The *Salyer* court cited the recent holdings of *Dolphin* and *Monday*, noting each case rendered an exclusion clause void as against public policy.[93] The *Salyer* court also recognized that business use limitations and other types of exclusions have been ruled invalid under motor vehicle financial responsibility laws similar to those in Missouri.[94] The *Salyer* court opined that "[t]he purpose of The Motor Vehicle Financial Responsibility Law is to require insurance coverage or other financial responsibility for damages caused by vehicles. To allow only coverage in certain situations depending on the acts of the driver or the particular insurance policy would thwart the purpose of the act."[95] Accordingly, the *Salyer* court invalidated the business use exclusion on grounds of public policy.[96]

4. Assuming Invalidity, Are Household Exclusions Fully Void or Partially Void?

Even if Missouri courts find that the FRL renders household exclusions void as against public policy, another issue remains. Serious ramifications stem from the decision to fully or partially invalidate a contract exclusion. If the exclusion is declared fully invalid, coverage would exist up to the full limits of that particular policy. However, if the exclusion is partially invalidated, coverage would exist only up to the dollar amounts prescribed in

89. *Id.* at *3-4. For a full discussion of the definitional problems in the FRL, *see supra* notes 45-60 and accompanying text.

90. *Monday*, 1991 WL 179383 at *4.

91. No. 17251, 1991 WL 216277 (Mo. Ct. App. Oct. 25, 1991).

92. The catch phrase "business use exclusion" is also self-explanatory. The policy at issue in *Salyer* stated that it did not provide liability coverage for "any person's liability arising out of the ownership or operation of a vehicle while it is being used to carry persons or property for a fee." *Id.* at *1.

93. *Id.* at *2.

94. *Id.* (citing DeWitt v. Young, 625 P.2d 478 (Kan. 1981) (household and garage shop exclusions); Tahash v. Flint Dodge Co., 321 N.W.2d 698 (Mich. Ct. App. 1982) (automobile dealer's escape clause); Estate of Neal v. Farmers Ins. Exch., 566 P.2d 481 (Nev. 1977) (household exclusion); Hartford Accident Indem. Co. v. Travelers Ins. Co., 400 A.2d 862 (N.J. 1979) (automobile business); Nationwide Mut. Ins. Co. v. Aetna Life & Cas. Co, 194 S.E.2d 834 (N.C. 1973) (automobile business); Allstate Ins. Co. v. U.S. Fidelity & Guar. Co., 619 P.2d 329 (Utah 1980) (named driver exclusion); Mutual of Enumclaw Ins. Co. v. Wiscomb, 611 P.2d 1304 (Wash. Ct. App. 1980) (family or household exclusion)).

95. *Id.* at *3.

96. *Id.*

section 303.190.[97] For example, suppose a liability policy provides $500,000 in coverage. If an exclusion is fully invalidated, the injured plaintiff could recover up to $500,000 from the insurance company. If the exclusion is partially invalidated, the insurance company would only be liable for a maximum of $25,000 to an individual plaintiff or up to $50,000 regardless of the number of injured parties.[98]

While the *Dolphin* and *Monday* opinions did not mention the potential distinction between a total and partial invalidation of an exclusion clause, the *Salyer* court expressly avoided the issue.[99] Consequently, no Missouri court had addressed this question prior to *Halpin*.

C. *Household Exclusions and Uninsured Motorist Provisions*

The FRL mandate of financial responsibility and Missouri's requirement of uninsured motorist insurance[100] combined to present the *Halpin* court with another interesting dilemma. Designed under the pragmatic realization that not all drivers will purchase liability insurance, the uninsured motorist statute is a protective measure providing limited insurance coverage in situations where the negligent driver was uninsured. The purpose of the uninsured motorist law is to give an insured person coverage equal to the amount of coverage required by the minimum amounts listed in the financial responsibility law, regardless of whether the negligent driver causing a collision is insured or uninsured.[101]

In *Hoerath v. McMahan*,[102] the driver and a passenger injured in an auto accident were excluded from coverage under a household exclusion.[103] The two plaintiffs argued that because they were denied coverage by the household exclusion, the automobile was uninsured as to each person's injuries.[104] Both plaintiffs argued that because the vehicle was uninsured as to their injuries, each of them should be able to recover under the uninsured motor vehicle provision of the policy.[105] The *Hoerath* court stated that the purpose of section 379.203 is to protect insured persons from owners or operators of uninsured vehicles.[106] Refuting the plaintiffs' argument, the court ruled that the vehicle at issue was insured.[107] Because of the household exclusion and the fact that the insured vehicle was not an "uninsured

97. *See supra* note 17.
98. *See supra* note 17.
99. *Salyer*, 1991 WL 216277, at *2.
100. MO. REV. STAT. § 379.203 (1986).
101. Famuliner v. Farmers Ins. Co., 619 S.W.2d 894, 896-97 (Mo. Ct. App. 1981).
102. 669 S.W.2d 281 (Mo. Ct. App. 1984).
103. *Id.* at 282.
104. *Id.* at 282-83.
105. *Id.*
106. *Id.* at 283 (citing Harrison v. MFA Mut. Ins. Co., 607 S.W.2d 137, 140, 148 (Mo. 1980)).
107. *Id.*

vehicle" under the statute, the plaintiffs in *Hoerath* could not recover under the policy or the statute.[108]

Hoerath reaches a seemingly contradictory result: A driver that is not insured as a result of a household exclusion clause is not an uninsured motorist under section 379.203. Thus, no insurance coverage is afforded. Applying the *Hoerath* result to the situation in *Halpin*, it is apparent that the Halpin children, excluded under a household exclusion, also would not be able to recover under the uninsured motorist provision.

D. Comparable Law of Other Jurisdictions

Despite the fact that the *Halpin* opinion cited only one non-Missouri case,[109] decisions from other jurisdictions can provide insight into the *Halpin* decision. Before embarking upon a survey of the law of other states, it is important to recognize that each state has unique statutory insurance law and rules of tort immunity.[110] Like Missouri, several other states have recently amended statutes or modified case law related to the validity of insurance contract exclusions.[111] Because of the differences in statutes and court interpretations, any conclusions drawn from comparisons of holdings of other states should be qualified. The two issues presented in *Halpin* which are most suitable for comparison to provisions of other states are the determination of whether exclusions are void as against public policy and, assuming the exclusions are invalidated, the determination of whether the exclusion is partially or completely invalidated.

One feature that distinguishes various state statutes is characterization as a compulsory or noncompulsory insurance statute. This general characterization is highly relevant to determining the validity of exclusion clauses. A household exclusion, or any type of exclusion, effectively renders a driver or vehicle owner uninsured as to those persons affected by the exclusion.[112] Thus, if a statute is interpreted to require insurance or financial responsibility, a driver or owner is uninsured by operation of the exclusion and is most likely in violation of the statute.[113] Clauses in insurance contracts which attempt to exclude, dilute, or condition statutorily mandated coverage are invalid or void.[114] Even if a statute does not mandate insurance, the contract exclusion may still be invalidated on account of general public policy.[115]

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108. *Id.*

109. Transamerica Ins. Co. v. Henry, 563 N.E.2d 1265 (Ind. 1990).

110. *See* American Family Mut. Ins. Co. v. Ward, 789 S.W.2d 791, 796 n.2 (Mo. 1990).

111. *Id.*

112. Bishop v. Allstate Ins. Co., 623 S.W.2d 865, 866 (Ky. 1981).

113. Meyer v. State Farm Mut. Auto. Ins. Co., 689 P.2d 585, 589 (Colo. 1984); DeWitt v. Young, 625 P.2d 478, 482 (Kan. 1981).

114. *Meyer*, 689 S.W.2d at 589; *Bishop*, 623 S.W.2d at 866.

115. *See* State Farm Mut. Auto. Ins. Co. v. Dimmer, 773 P.2d 1012 (Ariz. Ct. App. 1988); *see generally* Robert E. Keeton, *Insurance Law Rights at Variance with Policy Provisions*, 83 HARV. L. REV. 961 (1970).

Despite distinctions in statutory framework, most jurisdictions have ruled that exclusion clauses in vehicle insurance policies are void.[116] A few courts have extended the rationale behind invalidation beyond the idea that the exclusion detracts from the public policy articulated in that state's statute.[117] The Washington Supreme Court, in *Mutual of Enumclaw Insurance Co. v. Wiscomb*,[118] claimed that the household exclusion has the effect of preventing a specific class of innocent victims, family members in particular, from insurance protection.[119] The Washington court opined that the exclusion of such a large class is "particularly disturbing when viewed in light of the fact that this class of victims is the one most frequently exposed to the potential negligence of the named insured."[120] The abolition of intrafamily immunity is also a persuasive argument for the invalidation of household or family exclusion clauses.[121] A legislative or judicial decision to abolish intrafamily immunities reflects a policy view that family members should be allowed to recover damages from each other; household exclusions certainly impede such a legislative or judicial policy decision.

A decreasing number of jurisdictions support the validity of vehicle insurance contract exclusions.[122] Arguments against the invalidation of exclusions have looked to two general lines for justification. The first argument contends that household or family exclusion clauses are intended to protect insurers from collusion which might arise in intrafamily lawsuits.[123] Courts have considered claims that the natural tendency of an insured is to strengthen or enlarge the case against oneself when the case involves family members.[124]

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116. Arceneaux v. State Farm Mut. Auto. Ins. Co., 550 P.2d 87 (Ariz. 1976); DeWitt v. Young, 625 P.2d 478 (Kan. 1981); Bishop v. Allstate Ins. Co., 623 S.W.2d 865 (Ky. 1981); State Farm Mut. Auto. Ins. Co. v. Sivey, 272 N.W.2d 555 (Mich. 1978); Transamerica Ins. Co. v. Royle, 656 P.2d 820 (Mont. 1983); Estate of Neal v. Farmers Ins. Exch., 566 P.2d 81 (Nev. 1977); Kish v. Motor Club of Am. Ins. Co., 261 A.2d 662 (N.J. Super. Ct. App. Div.), *cert. denied*, 264 A.2d 68 (N.J. 1970); Allstate Ins. Co. v. Anzalone, 462 N.Y.S.2d 738 (N.Y. Sup. Ct. 1983); Hughes v. State Farm Mut. Auto. Ins. Co, 236 N.W.2d 870 (N.D. 1975); Jordan v. Aetna Casualty & Sur. Co., 214 S.E.2d 818 (S.C. 1975); Mutual of Enumclaw Ins. Co. v. Wiscomb, 643 P.2d 441 (Wash. 1982); Allstate Ins. Co. v. Wyoming Ins. Dept., 672 P.2d 810 (Wyo. 1983).

117. See *supra* note 115.

118. 643 P.2d 441 (Wash. 1982).

119. *Id.* at 444.

120. *Id.*

121. *See* Gerald G. Ashdown, *Intrafamily Immunity, Pure Compensation, and the Family Exclusion Clause*, 60 IOWA L. REV. 239, 248-49 (1974).

122. Hutchenson v. Alabama Farm Bureau Mut. Casualty Ins. Co., 435 So. 2d 734 (Ala. 1983); Cook v. Wausau Underwriters Ins. Co., 772 S.W.2d 614 (Ark. 1989); Farmers Ins. Exch. v. Cocking, 628 P.2d 1 (Cal. 1981); Lee v. State Farm Mut. Ins. Co., 507 P.2d 6 (Or. 1973).

123. Meyer v. State Farm Mut. Auto. Ins. Co., 689 P.2d 585, 591 (Colo. 1984); State Farm Mut. Auto. Ins. Co. v. Traycik, 272 N.W.2d 629, 630 (Mich. Ct. App. 1979); *Lee*, 507 P.2d at 8.

124. *Wiscomb*, 622 P.2d at 1235.

Several responses to the "possibility of collusion argument" have been advanced. Of course, states that have abolished doctrines of spousal and parental immunity have previously discounted the validity of this "possibility of collusion" argument.[125] The Washington Supreme Court, in *Wiscomb*, cited the ability of the judicial system to "ferret out the meritorious from the fraudulent" as a protection from collusive intrafamily lawsuits.[126] Prompt, effective insurance company investigation and timely report requirements, which act to quickly establish the essential facts of a potential lawsuit, have also been cited as safeguards against collusive lawsuits.[127]

The second general line of argument against the invalidation of exclusions focuses on the freedom to bargain over contractual terms. Missouri law typifies the law of most states[128] in providing that parties to a contract may agree to terms as they wish, as long as the contract is lawful and reasonable.[129]

The Idaho Supreme Court, in *Porter v. Farmers Insurance Co. of Idaho*,[130] based its holding on this rationale.[131] The court noted that the insurance policy at issue provided coverage to "any person," but was followed by thirteen exclusions.[132] The court ruled that the insured's argument for voidness basically sought to eliminate any provision reducing the scope of the term "any person."[133] The Idaho court held that "the parties to a contract must be free to insure exactness in contracting by modifying and defining words in the contract, as long as the language is clear and unambiguous."[134]

One case of particular interest to the *Halpin* court was *Transamerica Insurance Co. v. Henry*.[135] In *Henry*, the Indiana Supreme Court called the statute at issue a "compulsory financial responsibility" law.[136] The statute provided several methods of procuring financial responsibility, and required such procurement as a condition of operating a vehicle.[137] In holding that

125. *Meyer*, 689 P.2d at 591.

126. *Wiscomb*, 622 P.2d at 1236 (citing Freeche v. Freeche, 500 P.2d 771, 775 (Wash. 1972)).

127. *Meyer*, 689 P.2d at 591 (citing Sorenson v. Sorenson, 339 N.E.2d 907, 915 (Mass. 1975)).

128. 43 AM. JUR. 2D *Insurance* § 160 (1982).

129. American Family Mut. Ins. Co. v. Ward, 789 S.W.2d 791, 795 (Mo. 1990).

130. 627 P.2d 311 (1981). However, Idaho has enacted a compulsory insurance statute since the *Porter* decision. Household exclusions were ruled invalid under this new statute in Farmers Insurance Group v. Reed, 712 P.2d 550, 553 (Idaho 1985).

131. *Porter*, 627 P.2d at 315.

132. *Id.*

133. *Id.*

134. *Id.*

135. 563 N.E.2d 1265 (Ind. 1990). This was the only non-Missouri case cited in the *Halpin* opinion. The statute at issue in *Henry*, IND. CODE § 9-1-4-3.5 (1990), has been repealed and replaced by IND. CODE § 9-25-2 (1992). The change in this statute should not affect the validity of the *Henry* holding.

136. *Id.* at 1268.

137. *Id.* at 1267-68.

household exclusions are not void as against the public policy of the statute, the court stated that the Indiana law did not "evince a social policy to guarantee compensation for all victims of automobile accidents."[138]

As discussed earlier, state courts that rule exclusions void as against public policy must choose whether to partially or completely invalidate exclusions.[139] The rationale typically offered for partial invalidation is that the exclusion is invalid only to the extent it violates the statutory requirements.[140] Another reason given for partial invalidations is that in the absence of statutory requirements, the exclusion clauses would be effective.[141] State statutes often specify that liability insurance exceeding that amount necessitated by statute is not subject to the provisions of that law.[142]

However, a few courts have fully invalidated exclusion clauses, resulting in insurance coverage up to the limits of the particular policy.[143] Two basic arguments have been employed to support complete invalidation. In *Meyer v. State Farm Mutual Automobile Insurance Co.*,[144] the Colorado Supreme Court rationalized that where a contract provision is void as against public policy, the remaining portions are enforceable to the extent that the illegal provision can be separated from the legal terms of the contract.[145] The court also based its holding on the public policy evidenced by the insurance statute, reasoning that extending coverage to the policy limits "is more consistent with the legislative intent and policy which is to maximize rather than minimize insurance coverage."[146] Thus, the *Meyer* court allowed insurance coverage up to the limits stated in the particular policy.[147]

A second argument used to completely invalidate exclusion clauses is derived from an "objectively reasonable expectations" analysis of insurance contracts.[148] This analysis contends that policy language should be construed as reasonable laypersons would understand, not according to the policyholder's actual knowledge or the interpretation of sophisticated underwriters.[149] This theory even upholds the layperson's expectations where that person would have understood the exclusion that defeats the

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138. *Id.* at 1268.

139. See *supra* notes 97-99 and accompanying text.

140. DeWitt v. Young, 625 P.2d 478, 483 (Kan. 1981); State Farm Mut. Auto. Ins. Co. v. Shelly, 231 N.W.2d 641, 642 (Mich. 1975); Estate of Neal v. Farmers Ins. Exch., 566 P.2d 81, 83 (Nev. 1977).

141. Arceneaux v. State Farm Mut. Auto. Ins. Co., 550 P.2d 87, 89 (Ariz. 1976); *DeWitt*, 625 P.2d at 483; *Estate of Neal*, 566 P.2d at 83.

142. *E.g.*, MO. REV. STAT. § 303.190.7 (1986).

143. *Meyer*, 689 P.2d at 592; Kish v. Motor Club of Am. Ins. Co., 261 A.2d 662, 666 (N.J. Super. Ct. App. Div. 1970); Hughes v. State Farm Mut. Auto. Ins. Co., 236 N.W.2d 870, 886 (N.D. 1975).

144. 689 P.2d 585 (Colo. 1984).

145. *Meyer*, 689 P.2d at 593.

146. *Id.*

147. *Id.* at 592-93.

148. *See* Keeton, *supra* note 115, at 967.

149. *Id.*

expectations at issue had she "made a painstaking study of the contract."[150] The Arizona Court of Appeals, in *State Farm Mutual Automobile Insurance Co. v. Dimmer*,[151] held a household exclusion fully void where the exclusion clause violated the reasonable expectations principle.[152] Citing section 211 of the *Restatement (Second) of Contracts*,[153] the court stated that a consumer is "not bound to unknown terms which are beyond the range of reasonable expectation."[154] The court took notice of the fact that the declarations page of the Dimmers' policy clearly stated their coverage limits, while a household exclusion clause listed on page six of a fifteen-page policy excluded part of that coverage.[155] The court fully invalidated the exclusion clause, concluding that a reasonably intelligent consumer without legal experience would not know that coverage denied by a household exclusion is equal only to the limits required by law.[156]

IV. THE *HALPIN* DECISION

Before delving into the arguments advanced by each party, the *Halpin* court briefly summarized the history of Missouri's legislative attempts in the area of motor vehicle insurance.[157] Justice Blackmar's majority opinion noted that the FRL, as opposed to the old law, requires financial responsibility without regard to driving history.[158]

The first contention entertained by the *Halpin* court was the respondent's argument that the FRL is not a compulsory insurance law because section 303.160 provides alternative means for supplying evidence of financial responsibility.[159] The *Halpin* court did not hide its opinion of the draftsmanship of the law, stating that "[t]he legislature has invited confusion by blending the old and the new."[160] The *Halpin* majority embraced a realistic approach, asserting that the great majority of motor vehicle owners will maintain financial responsibility through liability insurance policies.[161] The court declared that the "statute is, for all practical purposes, a compulsory insurance law."[162]

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150. *Id.*

151. 773 P.2d 1012 (Ariz. Ct. App. 1988).

152. *Id.* at 1021.

153. *Id.* at 1016-18.

154. *Id.* at 1017 (quoting Darner Motor Sales, Inc. v. Universal Underwriters Ins. Co., 682 P.2d 388, 396-97, (Ariz. Ct. App. 1984)). The *Dimmer* and *Darner* opinions extensively relied upon § 211 and comment (f) to § 211 of the *Restatement (Second) of Contracts*.

155. *Dimmer*, 773 P.2d 1012, 1019.

156. *Id.* at 1020.

157. *Halpin*, 823 S.W.2d at 480-82.

158. *Id.* at 480.

159. *Id.* at 481. *See supra* note 21 and accompanying text.

160. *Halpin*, 823 S.W.2d at 481.

161. *Id.*

162. *Id.*

In response to the insurer's argument that the statute applies only to certified policies, the *Halpin* opinion again refers to the inconsistencies between the old and new sections of the statute.[163] Recognizing that proof of insurance is required regardless of driving history, the court proclaimed that the FRL would be ineffective if applied only to certified policies.[164] Thus, the FRL will be applied to all insurance policies.[165]

The *Halpin* court next addressed State Farm's argument for validity of the household exclusion clause due to the approval of the insurance contract by the Missouri Division of Insurance.[166] The court summarily refused this argument, ruling that the Director of Insurance cannot usurp the courts' role in interpreting the public policy of insurance policies.[167] Emphasizing that matters of public policy are for the judicial branch, the opinion held that the failure of the Director of Insurance to reject a contract provision does not make the provision legitimate.[168]

Justice Blackmar's opinion next applied the public policy elucidated in the FRL to the problem presented by the household exclusion in this case.[169] Having clarified the role of the judiciary as interpreters of public policy, the majority announced that "[t]he plain purpose of the 1986 amendment is to make sure that people who are injured on the highways may collect damage awards, within limits, against negligent motor vehicle operators."[170] Thus, the purpose of the law would be not be completely fulfilled if the household exclusion were fully enforced.[171] The court rejected the approach espoused in *Transamerica Insurance Co. v. Henry*,[172] where the Indiana Supreme Court upheld the validity of household exclusions under a statutory scheme very similar to Missouri law.[173] Thus, the *Halpin* majority held that the household exclusion violated the public policy of the FRL.[174]

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163. *Id.* at 481-82.

164. *Id.* at 482. See *supra* notes 50-60 and accompanying text.

165. *Id.*

166. *Id.* The insurer relied on § 303.025.3, a 1986 provision that states:

> Nothing in sections 303.010 to 303.050, 303.060, 303.140, 303.220, 303.290, 303.330 and 303.370 shall be construed as prohibiting the division of insurance from approving or authorizing those exclusions and limitations which are contained in automobile liability insurance policies . . .

MO. REV. STAT. § 303.025.3 (1986).

The insurer argued that this provision, coupled with § 375.920 which mandates approval of insurance contracts by the division of insurance, rendered the household exclusion valid. *Halpin*, 823 S.W.2d at 482.

167. *Id.*

168. *Id.*

169. *Id.*

170. *Id.*

171. *Id.*

172. 563 N.E.2d 1265 (Ind. 1990). Amicus curiae briefs argued heavily for the position taken in *Henry*. *Halpin*, 823 S.W.2d at 482.

173. *Henry*, 563 N.E.2d at 1268-69. *See supra* notes 135-38 and accompanying text.

174. *Halpin*, 823 S.W.2d at 482.

The court next addressed the Halpins' contention that the household exclusion should be rendered completely void.[175] In rejecting the Halpins' claim, the court relied primarily upon section 303.190.7,[176] stating that a liability insurance policy in conformity with the FRL can provide coverage exceeding the statutory minimum amounts without subjecting that excess amount to the requirements of the FRL.[177] The majority cited Missouri cases supporting the freedom of contract in liability insurance.[178] The opinion also stated that when insurance contract language is clear, exceptions based on public policy must find support through the necessary implications of statutes.[179] The necessary implications of the FRL require that the household exclusion be invalidated only up to the amounts provided in section 303.190.[180]

Chief Justice Robertson was the lone dissenter in the *Halpin* decision. A fact crucial to Judge Robertson's contentions was that the wreck at issue occurred before the abolition of parental immunity by the Missouri Supreme Court in *Hartman v. Hartman*.[181] Robertson's dissent focused on the premise that the public policy rendering the household exclusion invalid was also effectuated by the abolition of parental immunity, not solely by the enactment of the FRL.[182] Robertson asserted that at the time of the Halpins' accident and at the time the policy was issued, Missouri's doctrine of parental immunity forbade the Halpin children from seeking recovery from their parents.[183] The dissent added that the exclusion clause accurately reflected the law and the parents' potential liability to their children at the time the contract was made.[184] Thus, the public policy of the FRL could not render the exclusion void, because the law effective at the time of the accident placed

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175. *Id.* at 482-83. For a complete discussion of the ramifications of declaring the exclusion either partially or completely void, see *supra* notes 97-99, 139-56 and accompanying text.

176. The full text of this section says:

> Any policy which grants the coverage required for a motor vehicle liability policy may also grant any lawful coverage in excess of or in addition to the coverage specified for a motor vehicle liability policy and such excess or additional coverage shall not be subject to the provisions of this chapter. With respect to a policy which grants such excess or additional coverage the term 'motor vehicle policy' shall apply only to that part of the coverage which is required by this section.

MO. REV. STAT. § 303.190.7 (1986).

177. *Halpin*, 823 S.W.2d at 483.

178. *Halpin*, 823 S.W.2d at 483 (citing Rodriguez v. General Accident Ins. Co., 808 S.W.2d 379 (Mo. 1991); American Family Mut. Ins. Co. v. Ward, 789 S.W.2d 791 (Mo. 1990); Hines v. Gov't Employees Ins. Co., 656 S.W.2d 262 (Mo. 1983); Cano v. Travelers Ins. Co., 656 S.W.2d 266 (Mo. 1983)).

179. *Halpin*, 823 S.W.2d at 483.

180. *Id.* See *supra* note 17.

181. *Halpin*, 823 S.W.2d at 484. The *Halpin* accident occurred on May 2, 1990, *id.* at 480, while the *Hartman* decision was handed down December 17, 1991. Hartman v. Hartman, 821 S.W.2d 852 (Mo. 1991).

182. *Halpin*, 823 S.W.2d at 484-45.

183. *Id.*

184. *Id.* at 485.

no liability upon the parents to their children, and the public policy of Missouri required insurance only where liability existed.[185]

The dissent criticized the majority for a retroactive imposition of current public policy.[186] Robertson quoted Judge Covington's concurrence in *Ward*, stating, "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."[187] Robertson found that neither party in this case intended to insure the Halpin children, and this intention was stated in the plain language of the policy.[188]

While the majority opinion did not mention the abolition of parental immunity, Judge Thomas incorporated the *Hartman* decision into his concurring opinion.[189] Concurring in the result and the rationale of the majority decision, Thomas sought to express the impact of the public policy of the FRL upon the insurance policy in a slightly different manner.[190] Judge Thomas asserted that

> the public policy inherent in the statute creates an implicit agreement in American Family's policy that, to the extent of the limits required by the Financial Responsibility Act, the provisions concerning coverage will automatically change to conform to any changes in the law of Missouri related to the "liability imposed by law for damages arising out of . . . use of such motor vehicle."[191]

Thomas commented that by choosing to write a policy in Missouri, an insurer agrees to insure pursuant to any changes in the common law that occur during the duration of the policy. This agreement creates a result that is not retroactively imposed upon the insurer.[192] Stated simply, the scope of the household exclusion changed as the Missouri law concerning parental immunity changed.[193]

In discussing the additional burden placed upon insurers, Thomas recognized that the additional cost of increased coverage created by an expansion of liability must be borne by either the insurer or the insured.[194] According to Thomas, the public policy of the FRL dictates that this cost should fall upon the insurer.[195] Qualifying the notion that all additional cost falls upon the insurer, Thomas asserted that the cost of any damage award

185. *Id.*
186. *Id.*
187. *Id.* (quoting American Family Ins. Co. v. Ward, 789 S.W.2d 791, 797 (Mo. 1990) (Covington, J., concurring)).
188. *Id.*
189. *Id.* at 483-84 (Thomas, J., concurring).
190. *Id.* at 483.
191. *Id.* (quoting MO. REV. STAT. § 303.190.2 (1986)).
192. *Id.*
193. *Id.*
194. *Id.* at 484.
195. *Id.*

above the statutory minimum amounts eventually will be incurred by the insured.[196] Thomas also noted that insurers may also benefit from future constrictions in tort liability.[197]

V. ANALYSIS

A. Critique of the Halpin *Decision*

Whether one agrees or disagrees with the result reached by the *Halpin* majority, it is clear that the legislature's poor drafting of the FRL complicates interpretation and invites meticulous arguments against application of the law. The majority opinion vociferously states its thoughts about the quality of the drafting of the FRL.[198] The FRL is a target worthy of legislative revision. Legislative amendments could clarify disputes as to the proper methods of financial responsibility. The 1986 amendments evidence a legislative intent to mandate insurance coverage for all vehicle owners and operators; the Missouri Supreme Court has held that the practical effect of the amendments is to "compel" insurance coverage.[199] If the legislature wishes to require insurance coverage, it should repeal and revise those sections of the FRL providing for antiquated alternative means of proving financial responsibility.[200] In addition, if the legislature believes that the *Halpin* decision and the trend in Missouri case law the decision represents[201] are not accurate statements of public policy, the legislature should enact amendments illuminating a new manifestation of public policy.

The *Halpin* court was certainly justified in disregarding the definitional inconsistencies that would render the FRL inapplicable to noncertified policies.[202] If the majority had accepted the insurer's argument that the FRL applies only to certified policies,[203] the enactment of the 1986 amendments would have had no real effect. The court was also correct in rejecting the insurer's claim for the validity of the household exclusion because of the approval of the contract by the division of insurance.[204] The insurer's argument would have basically removed judicial power to declare public policy in the context of insurance contracts. The court refuted the two arguments discussed above in short order, and the determination of these two issues will likely go unquestioned.

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196. *Id.*

197. *Id.*

198. The majority opinion described the legislature's "method of expression" as "inartistic," noted the "anachronistic features of the statute," and expounded that the "legislature has invited confusion" through the poor drafting of the statute. *Id.* at 481-82.

199. *Id.* at 481.

200. *See supra* notes 45-60, 159-65 and accompanying text.

201. For a discussion of the trend the *Halpin* decision may represent, see *infra* notes 224-232 and accompanying text.

202. *See Halpin*, 823 S.W.2d at 481-82.

203. *See supra* notes 22, 45-60 and accompanying text.

204. *See Halpin*, 823 S.W.2d at 482.

However, the decision to partially invalidate household exclusions will create quite a clamor in the insurance industry. The trend the decision represents and the impact of *Halpin* are discussed in later sections of this note.[205] A critique of the *Halpin* decision indicates that upholding the household exclusion would have created an anomaly in Missouri law.

The *Halpin* court recognized the impracticality of the FRL provisions for alternative means of financial responsibility when it stated, "[I]t is apparent that the great majority of motor vehicle owners will undertake to maintain financial responsibility by means of motor vehicle liability policies."[206] The court's pragmatic approach leads to the conclusion that in reality, the FRL is a compulsory insurance law.[207] Because the FRL is practically a compulsory insurance law, an exclusion clause renders the policyholder completely uninsured concerning all exclusions. Thus, a literal application of insurance contracts containing exclusions for household members, passengers, or the named insured would provide coverage only to unrelated third parties injured while operating a different vehicle. Permissive use and business use exclusions[208] would constrict coverage further in these particular situations. This collage of exclusions would seriously frustrate the pronounced purpose of the FRL.[209] Ruling household exclusions void as against the public policy of the FRL was necessary to effectuate the purpose of the law.

The sound policy result reached in *Halpin* also comports with the *Hoerath* interpretation of Missouri's uninsured motorist statute.[210] *Hoerath* created a situation where persons denied insurance coverage by a household exclusion were not uninsured for purposes of uninsured motorist insurance.[211] The decision of the *Hoerath* court rendered a large class of injured persons completely uninsured by the operation of exclusion clauses. Thus, *Hoerath* allowed insurers to continue to use exclusion clauses to avoid liability. The FRL and uninsured motorist statutes share the common purpose of requiring minimal amounts of insurance coverage. The minimum insurance coverage requirements for the uninsured motorist statute[212] and the FRL[213] are identical. Therefore, if the uninsured motorist statute had been interpreted to encompass any person not insured by reason of a contract exclusion, the result created by *Halpin* on the grounds of public policy would have been achieved by reversing the *Hoerath* decision through a different interpretation of the uninsured motorist statute. Whether insurance coverage is provided by the FRL or the uninsured motorist statute is of little practical significance; the

205. *See infra* notes 224-52 and accompanying text.

206. *Halpin*, 823 S.W.2d at 481.

207. *Id.*

208. For a discussion of business use exclusions, see *supra* note 92. A permissive use exclusion denies coverage to a person injured while using the insured's vehicle with the insured's permission.

209. *See supra* notes 170-71 and accompanying text.

210. Hoerath v. McMahon, 669 S.W.2d 281 (Mo. Ct. App. 1984).

211. *Id.* at 283.

212. MO. REV. STAT. §§ 379.203, 303.030 (1986 & Supp. 1991).

213. MO. REV. STAT. § 303.190 (1986). *See supra* note 17.

important result is that insurers may not circumvent public policy of requiring minimum insurance though the use of contract exclusions.

The *Halpin* majority's decision to invalidate the household exclusion only up to the statutory minimum has a foundation in the FRL and Missouri case law.[214] The *Halpin* court interpreted section 303.190.7[215] and case law to mean that the insured has no basis for expecting coverage in excess of the statutory minimum amounts.[216] The partial validity of household exclusions still leaves exclusion clauses with a significant importance—the insurer's liability from one accident can be no more than $50,000, even if the actual damages suffered by all plaintiffs totals millions of dollars.

The court's decision to hold the exclusion partially invalid highlights an important point: The public policy which renders the exclusion void emanates specifically from the FRL, not from the general canons of public policy. Thus, an exclusion in any type of insurance contract outside the scope of the FRL will continue to be effective. Missouri courts, long recognizing the freedom to bargain over terms in insurance contracts, subject only to the requirements that the contract is lawful and reasonable,[217] have consistently upheld exclusion clauses against arguments under the canons of general public policy. The Missouri Supreme Court has recently determined that a family exclusion clause is a reasonable term under general contract principles.[218] Exclusion clauses remain an effective weapon limiting the liability of insurers.

Despite the court's holding that household exclusions are acceptable, the "objectively reasonable expectations"[219] theory can be offered as a strong argument that exclusions such as the provision at issue in *Halpin* are repugnant to general public policy and contract principles. It is surely a fair assumption that most consumers want to protect their family members from uncompensated injuries caused by the negligence of another family member.[220] Undoubtedly, many consumers purchase insurance in the mistaken belief that the scope of their coverage is enumerated on the "policy declarations" page.[221] However, a consumer's trust in the simple language of a policy declaration page is controverted by obscure exclusion clauses buried within an insurance contract. Courts and insurance companies are cognizant of the fact that a large majority of consumers do not read the entire insurance policy, and of the minority that do read the contract, few read the policy with the caution and perception necessary to fully understand the provisions.[222] Disregarding these policy considerations, the Missouri Supreme Court "has not

214. *See supra* notes 175-80 and accompanying text.

215. *See supra* note 176.

216. *Halpin*, 823 S.W.2d at 483.

217. American Family Mut. Ins. Co. v. Ward, 789 S.W.2d 791, 795 (Mo. 1990); State Farm Mut. Auto. Ins. Co. v. Ward, 340 S.W.2d 635, 640 (Mo. 1960).

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

219. *See supra* notes 148-56 and accompanying text.

220. Ashdown, *supra* note 121, at 258.

221. *E.g.*, State Farm Mut. Auto. Ins. Co. v. Dimmer, 773 P.2d 1012, 1019 (Ariz. Ct. App. 1988); *see supra* notes 148-56 and accompanying text.

222. Keeton, *supra* note 115, at 968.

determined the viability of the objective reasonable expectations doctrine in Missouri."[223]

B. Halpin *as a Hallmark of a Trend in Missouri Law*

Earlier sections of this Note have discussed the Missouri cases leading up to the *Halpin* decision. *American Family Mutual Insurance Co. v. Ward*[224] stood for the proposition that household exclusions were valid under the Safety Responsibility Law,[225] a prior Missouri law. However, Judge Covington's concurring opinion in *Ward*, noting that the *Ward* result might have been different under the FRL and current public policy,[226] may have been a precursor to the *Halpin* decision. Previous to the *Halpin* decision, three Missouri Court of Appeals cases had ruled insurance contract exclusions void as against the public policy enumerated in the FRL.[227] Each of these three cases invalidated a different type of exclusion: a passenger exclusion in *Dolphin*,[228] a business use exclusion in *Salyer*,[229] and a household exclusion in *Monday*.[230] These three cases demarcate a clear trend in Missouri law, a trend requiring the minimum statutory amounts of insurance free from any type of contract exclusion. It is doubtful that any contract exclusion would survive under the *Halpin* majority's interpretation of the public policy espoused by the FRL.

Insurers fighting against an extension of *Halpin* to other types of contract exclusions may argue that the partial invalidation of household exclusions was simply a response to the abolition of parental immunity.[231] Insurers may attempt to argue that exclusions are still fully valid against persons other than children of the insured. However, the *Halpin* court dispelled any such argument by implication. The court stated that the household exclusion applied to "others [non-relatives] who never had the benefit of any doctrine of immunity."[232] By asserting that the scope of the household exclusion is more broad than the scope of parental immunity, the court has already extended the *Halpin* decision beyond the scope of parental immunity.

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223. Rodriguez v. General Accident Ins. Co. of America, 808 S.W.2d 379, 382 (Mo. 1991). *See also* Estrin Constr. Co. v. Aetna Cas. & Sur. Co., 612 S.W.2d 413 (Mo. Ct. App. 1981).

224. 789 S.W.2d 791 (Mo. 1990).

225. MO. REV. STAT. §§ 303.010-.370 (1986).

226. *Ward*, 789 S.W.2d at 797 (Covington, J., concurring).

227. Atlanta Casualty Co. v. Salyer, No. 17251, 1991 WL 216277, at *3 (Mo. Ct. App. Oct. 25, 1991) (business use exclusion); State Farm Mut. Auto. Ins. Co. v. Monday, No. WD44299, 1991 WL 179383, at *4 (Mo. Ct. App. Sept. 17, 1991) (household exclusion); American Standard Ins. Co. of Wis. v. Dolphin, 801 S.W.2d 413, 416 (Mo. Ct. App. 1990) (passenger exclusion).

228. *Dolphin*, 801 S.W.2d at 416.

229. *Salyer*, 1991 WL 216277, at *3.

230. *Monday*, 1991 WL 179383, at *4.

231. Hartman v. Hartman, 821 S.W.2d 852, 858 (Mo. 1991).

232. *Halpin*, 823 S.W.2d at 482.

C. The Collaboration of Halpin *and the Abolition of Intrafamily Immunities: A Sweeping Change Has Been Effected*

The joint effect of the abolition of intrafamily immunities and the partial invalidation of household exclusions will be resounding. The abolition of intrafamily immunities has the procedural effect of allowing a cause of action for negligent driving to be filed by one family member against another. If family immunities had not been abolished, *Halpin* would have had little practical effect, because the limited recovery allowed by *Halpin* would be unavailable due to the procedural mechanism of intrafamily immunity.

In policies containing applicable exclusion clauses, partial invalidation creates a potential recovery from insurance proceeds of $25,000 for an individual to $50,000 for all parties injured in the accident by the negligence of the driver.[233] The abolition of intrafamily immunities allows suits to be filed against another family member, but if a household exclusion were completely valid, the injured plaintiff could only recover directly from the negligent family member. If household exclusions were completely valid, potential lawsuits between family members would be discouraged, because the unavailability of insurance funds would often allow only a reallocation of family assets. After *Halpin*, injured parties can have a limited recovery from the coffers of an insurance company. As a result, the number of lawsuits spawned by the cooperation of the *Halpin* and *Hartman* decisions may be quite high.

Various policy arguments support and oppose the practical result created by the invalidation of household exclusions;[234] similar policy arguments surround the issue of family immunities. The juxtaposition of the basic policy arguments concerning intrafamily immunities creates an interesting contradiction. One of the primary policy reasons for maintaining immunities is the protection of family harmony.[235] Commentators have recognized that the pervasiveness of liability insurance provides a good reason to abolish intrafamily immunity.[236] As liability insurance has become commonplace, or nearly mandatory, the necessity of protecting family harmony through intrafamily immunities has dissipated.[237] However, the pervasiveness of liability insurance has also created another reason to maintain family immunities: the fear that the existence of insurance will induce families to fraudulently create or exaggerate claims.[238]

Concern about the potential for family collusion is the argument cited most often for sustaining intrafamily immunities.[239] Where the abolition of immunity allows a cause of action between family members, the temptatation

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233. MO. REV. STAT. § 303.190 (1986). *See supra* note 17.

234. See *supra* notes 73-96, 116-56 and accompanying text for a discussion of policy arguments for and against the invalidation of household exclusions.

235. *Hartman*, 821 S.W.2d at 854.

236. Ashdown, *supra* note 121, at 248.

237. *Id.* at 245.

238. *Id.* at 248.

239. *Id.* at 251-52.

of collusion is enticing. The family members involved may have been the only witnesses to the accident, providing an opportunity to conceal defenses and convolute facts.[240] The insured family member, a nominal defendant, will benefit in nearly every circumstance upon a successful injury claim by an injured family member. Although judgment would be entered against the insured driver, the insurance company would bear the financial burden of the initial $25,000 (or $50,000, if more than one plaintiff is involved) of the judgment. In many cases resulting in a judgment exceeding the minimum statutory amounts, the amount not paid by the insurance company will either go unpaid or will result in a ceremonial reallocation of family assets among family members. Thus, the nominal defendant could well have a financial incentive to conceal facts or even admit liability. Another factor inuring to the benefit of a collusive intrafamily claim is that juries tend to find for the plaintiff where it is suspected that liability insurance is involved.[241] Those supporting the potential intrafamily cause of action have cited several methods of combatting collusion: the ability of the judicial system to ferret out fraudulent claims,[242] quick investigation of accidents by insurance companies,[243] and the ability of an insurance company to examine and cross-examine witnesses at trial.[244]

Critics of the abolition of household exclusions and intrafamily immunities have pounced upon the arguments discussed above. One member of the judiciary surmised that allowing such a recovery between family members "in effect transforms the ordinary automobile liability policy into one providing health and accident coverage—where fault plays no part in the recovery of benefits."[245] Although the judicial system may be able to eliminate, or at least limit many fraudulent claims, insurance companies will expend greater sums on damage awards overall. Because injured parties will now have causes of action covered by insurance funds, insurance companies will often find it beneficial to settle the proliferation of relatively small claims filed by injured family members. The additional cost of damage and settlement expenditures will, of course, be passed on to consumers through higher premiums.

Undoubtedly, the Missouri Supreme Court considered the ramifications of the abolition of parental immunity and the invalidation of household exclusions in reaching the *Halpin* and *Hartman* decisions. The conflicts among allowing recovery for injured plaintiffs, protecting the interests of insurance companies from collusion, and protecting freedom of contract are

240. *Id.*

241. *Id.* at 250. Generally, rules of evidence protect against the admission of evidence as to liability insurance, but, as the Oregon Supreme Court noted, "juries are, as a Kentucky mountaineer once said—'tolerable generous with other people's money,' especially when the aroma of insurance permeates the courtroom." Smith v. Smith, 287 P.2d 572, 583 (Or. 1955).

242. Mutual of Enumclaw Ins. Co. v. Wiscomb, 622 P.2d 1234, 1236 (Wash. 1980).

243. Meyer v. State Farm Mut. Auto. Ins. Co., 689 P.2d 585, 591 (Colo. 1984) (citing Sorenson v. Sorenson, 339 N.E.2d 907, 915 (Mass. 1975)).

244. Ashdown, *supra* note 121, at 251.

245. Immer v. Risko, 267 A.2d 481, 489 (N.J. 1980) (Francis, J., dissenting).

apparent. The resolution of these conflicts by the *Halpin* court is most easily understood upon an examination of the purpose of the statute and public policy at issue. The *Halpin* majority resolved this conflict by interpreting the FRL to promote a public policy of "mak[ing] sure that people who are injured on the highways may collect damage awards, within limits, against negligent motor vehicle operators."[246] This interpretation provides for insurance protection for *all victims* injured by negligent vehicle operators, regardless of relation to the insured. One can assume that the *Halpin* rationale will be applied equally to partially invalidate other types of insurance exclusions.

The FRL was clearly enacted with the purpose of requiring a minimum amount of insurance. Requiring insurance coverage is the most common and effective method of promoting the availability of compensation for those injured in auto accidents.[247] Availability of compensation is the underlying purpose of any financial responsibility or compulsory insurance statute. To allow insurance companies to contravene such a clear public policy by the use of exclusion clauses is an undesirable result.

Courts that have upheld the validity of household exclusions have not embraced a similar interpretation of public policy. In *Transamerica Insurance Co. v. Henry*,[248] the Indiana Supreme Court held that the state's financial responsibility statute did not "'evince a social policy to guarantee compensation for all victims of automobile accidents.'"[249] The Indiana court added that the legislature did not intend to compel parents to buy liability insurance to cover damage actions brought by their own children.[250] As evidenced by the contrasting results reached by Missouri and Indiana courts, an interpretation of the purpose of an insurance law is dispositive as to the validity of contract exclusions.

The FRL implements the social policy of compensating injured victims. The Missouri Supreme Court interprets the FRL to provide such compensation, regardless of status as family members. Despite providing an opportunity to concoct fraudulent claims, the collaboration of *Halpin* and the abolition of intrafamily immunities enables a significant number of innocent, injured parties to recover up to $25,000 or $50,000[251] in insurance proceeds where fault exists. In light of the abolition of intrafamily immunities, continued support for the validity of household exclusions would have created an incongruous result. Allowing an insurer to use exclusion clauses to circumvent the stated purpose of compensating injured victims is "analogous to giving something with one hand while taking it away with the other."[252]

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246. *Halpin*, 823 S.W.2d at 482.
247. Ashdown, *supra* note 121, at 252-53.
248. Transamerica Ins. Co. v. Henry, 563 N.E.2d 1265 (Ind. 1990).
249. *Id.* at 1268 (brackets omitted).
250. *Id.* at 1269.
251. MO. REV. STAT. § 303.190 (1986). *See supra* note 17.
252. Ashdown, *supra* note 121, at 255.