

NO. A07-1627

State of Minnesota
In Court of Appeals

Michael Bundul as Trustee for the Heirs and
Next of Kin of Carol Bundul, and individually,
Plaintiff-Respondent,

and

Benjamin Bundul,
Involuntary Plaintiff,

vs.

Travelers Indemnity Company d/b/a Travelers,
Defendant-Appellant,

and

Dick Devine and David Agency, Inc.,
Defendant.

RESPONDENT'S BRIEF AND APPENDIX

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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STATEMENT OF THE ISSUE

I. WHETHER A FAMILY EXCLUSION CONTAINED IN AN UMBRELLA POLICY MAY BE ENFORCED WHEN THE COVERAGE IS TRIGGERED BY AN AUTOMOBILE ACCIDENT.

The district court invalidated the family exclusion based upon the stated public policy of the Minnesota No-Fault Act which prohibits family exclusions in automobile insurance.

Apposite authority:

Minn. Stat. §65B.43 Subd. 5

Minn. Stat. §65B.48

Himes v. State Farm Fire and Casualty Co., 284 N.W.2d 829 (Minn. 1979)

STATEMENT OF THE FACTS

The Bunduls were a happy family of four: Carol, Mick, Ben, and Merideth. Mick worked as a school teacher in Wayzata. Carol worked in sales for General Office Products. Together Carol and Mick worked hard to raise their kids and teach them to have respect for others and to work hard. Carol was one of those rare persons that seemed like she could and did do anything and everything. She hoped that quality would find its way into the character of her kids.

Together the family navigated life and enjoyed the time they were given with each other.

Insurance Coverage

The family was lucky enough to have a wonderful insurance agent. Dick Devine was a trusted advisor and a good friend. Devine had known Carol and Mick since their college days. The Bundul family grew to trust and respect Devine's advice on insurance issues. Carol and Mick trusted Devine to help them protect their family.

Devine recommended that the family raise their limit of insurance to provide more protection for the family. Devine recommended and the family agreed to purchase insurance coverage in the amount of \$1,500,000.00. *See AA-99.* The Bundul's accomplished this by purchasing an underlying auto policy and an umbrella policy. Together the policies would provide a sufficient level of protection for the family if the unthinkable were to occur.

The Crash

Ben was at that age when he was beginning to think about college. The University of Wisconsin was on his list of potential schools. Carol thought Ben should visit the campus before he made a decision. They loaded up the car and headed east. Carol, Ben and Merideth headed for Madison so they could see the campus first hand.

It was a cold November day and the roads were slick. Ben drove as they traveled through western Wisconsin near Osseo. Ben saw orange safety cones along the road for several hundred feet. Beyond those cones was an Osseo Fire Department truck parked on the left shoulder. Ben did not lower his speed. *See Exhibits 10 & 11.* Ben hit ice. The car swerved right, then left. Ben lost control of the car. Carol, seated in the front passenger seat, screamed just before her side of the car slammed into the fire truck. In seconds it was over. Carol was gone.

Ben was charged with driving too fast for conditions. Ben later would plea guilty to the charges. *See Exhibit 13.*

Claim Presentation

The Bundul family took solace in knowing that Devine had helped them provide protection for the family. At least they knew the family could survive the economic loss. Devine assured the Bundul family that the insurer would follow through on their promise and pay out the full limit of the protection the family had purchased. Never did Devine inform the Bundul family that the umbrella policy in fact excluded protection for the family.

Travelers undertook the investigation of the claim. Travelers agreed that Ben was responsible for causing the crash and began to process claims. Travelers knew that the economic loss from Carol's death exceeded the full limit of protection available under the policies purchased from Travelers. The Osseo Fire Department also presented a claim for damage done to their equipment.

Travelers voluntarily paid the claim of the Osseo Fire Dept thereby diminishing the value of the underlying policy. *See* AA-50. Travelers made the choice to diminish the policy when they knew they would also deny coverage to the Bundul family under the umbrella policy. Yet, the umbrella policy would have covered the claim of the Osseo Fire Department. So, it seems, Travelers purposely chose to pay the claim early in order to lessen the amount eventually paid out. Later, Travelers denied the claim made by the Bundul family for the protection of the umbrella policy. *See* AA-117.

STANDARD OF REVIEW

The district court can properly determine the construction and interpretation of insurance policies on a motion for summary judgment and appellate courts will review the district court's decision de novo. *See Brown v. State Auto. & Cas. Underwriters*, 293 N.W.2d 822 (Minn.1980). Interpretation of an insurance policy and application of the policy to the facts in a case are questions of law that are reviewed de novo. *Franklin v. Western Nat'l Mut. Ins. Co.*, 574 N.W.2d 405, 406 (Minn.1998); *Am. Family Ins. Co. v. Walser*, 628 N.W.2d 605, 609 (Minn.2001).

An insurers' liability is governed by contract, but only as long as the coverage required by law is not omitted and policy provisions do not contravene applicable statutes. *Streich v. American Family Mut. Ins. Co.*, 358 N.W.2d 396 (Minn. 1984). Contract terms that conflict with statutory law will not be enforced. *Roerling v. Grinnell Mut. Reinsurance Co.*, 444 N.W.2d 829 (Minn. 1989).

The No-Fault Act is remedial in nature. *Dahle v. Aetna Cas. & Surety Ins. Co.*, 352 N.W.2d 397, 401 (Minn. 1984). Remedial Statutes must be liberally construed for the purpose of accomplishing their objects. *State v. Indus. Tool & Die Works*, 21 N.W.2d 31 (Minn. 1946).

ARGUMENT

Minnesota prohibits the use of family exclusions in automobile insurance. Minnesota long ago abolished family immunity. Immediately following that abolition of immunity, legislation prohibiting family exclusions was enacted. That legislation was later assimilated into the Minnesota No-Fault Act. Policy terms that conflict with statutes are not enforceable. Therefore, Travelers family exclusion is not enforceable.

Other jurisdictions have chosen to protect insurance companies rather than families. However, many of those jurisdictions simply did not have legislation banning family exclusions, and allowed insurers the freedom to contract as they wished. However, if family exclusions are allowed in umbrella policies, then mischief in the claims process will be encouraged. Also, The Minnesota Supreme

Court has held that prohibiting family exclusions is more consistent with Minnesota's concept of fairness and equity.

I. MINNESOTA PROHIBITS FAMILY EXCLUSIONS IN AUTOMOBILE INSURANCE.

Minnesota has a well established public policy of compensating victims of automobile accidents. *See Christenson v. Milbank Ins. Co.*, 658 N.W.2d 580 (Minn.2003). This public policy led to the abolition of family immunity. Following the abolition of family immunity, legislation prohibiting family exclusions in automobile insurance was enacted. That legislation survives today as part of the Minnesota No-Fault Act. Travelers' attempt to exclude coverage for family members contradicts the No-Fault Act, and therefore violates public policy and is void.

A. PUBLIC POLICY LED TO THE ABOLITION OF INTRA-FAMILY IMMUNITY.

There was a time that there was no need for family exclusions. This was because family members were not allowed to sue each other for tort liability. However, in the 1960's Minnesota courts abolished family immunity. *Beaudette v. Frana*, 173 N.W.2d 416 (Minn. 1969); *Balts v. Balts*, 142 N.W.2d 66 (Minn. 1966).

The reasoning of The Minnesota Supreme Court in abolishing family immunities is based on the public policy of compensating persons injured in car accidents. This is especially true when the injured party is a family member of the tortfeasor. Specifically, the court stated:

Where serious harm has resulted from actionable negligence ... that a member of the family would have a right to recover or would be liable if the adversary were a stranger, public policy, we believe, requires that the wrong be righted within the family group by suit or settlement...

We believe the prospect of reconciliation is enhanced as much by equitable reparation as by denying relief altogether, particularly where the defendant is insured...

Liability insurance is designed not merely to indemnify the defendant but to protect those that are injured, more particularly if they are members of defendant's immediate family.

It is the common experience of those who have raised families that actionable torts are simply not inflicted with any frequency within the family circle, **except in the operation of the family automobile.**

Balts , 142 N.W.2d at 430. emphasis added.

The *Beaudette* Court also supported the conclusion that public policy required insurance for family members injured in car accidents. They stated, "If this court were to abrogate all family immunities in automobile cases, the automobile liability policy would be the means of providing such financial protection..." *Beaudette* , 173 N.W.2d at 419. The court then did abrogate family immunities. *Id.*

In another case involving the abolition of family immunity, The Supreme Court stated that the prevalence of insurance was an important factor in allowing lawsuits between parents and children. *Anderson v. Stream*, 295 N.W.2d 595, 600 (Minn. 1980). To deny an injured child the source of these funds was an anomaly that the court would not tolerate. *Id.*

Thus, for over 40 years, Minnesota has expressed a strong public policy of compensating all victims of automobile accidents, especially family members. In addition, that public policy anticipated that insurance coverage would be available to compensate family members injured in automobile accidents.

**B. FOLLOWING THE ABOLITION OF FAMILY IMMUNITY,
FAMILY EXCLUSIONS WERE PROHIBITED.**

Following abolition of family immunity, insurers did not accept the change in the law and willingly provide protection for family members. Rather, they employed exclusions which eliminated coverage for injury to family members. Even though family members now faced liability, insurers were not willing to provide protection. The insurance industry's attempt to sidestep the public policy set by the Minnesota Supreme Court was short lived.

The legislature enacted Minn. Stat. § 72A.1491, subd. 1 (1969). The statute prohibited family exclusions. Specifically, the statute stated:

65B.23 AUTOMOBILE INSURANCE EXCLUSIONS FORBIDDEN.

Subd. 1(a) No policy of automobile liability insurance as defined in section 65B.14, written or renewed after July 1, 1969, shall contain an exclusion of liability for damages for bodily injury solely because the injured person is a resident or member of an insured's household or related to the insured by blood or marriage.

Later, the statute was recodified, without significant change, as Minn. Stat. § 65B.23, which survived until repealed as irrelevant by passage of the Minnesota No-Fault Act in 1974. Minn. Laws 1974, ch. 408, § 33.

The statutory prohibition of family exclusions became Minn. Stat. § 65B.43 subd. 5. *See* RA-1 . The text of this statute states:

Subd. 5. Insured. "Insured" means an insured under a plan of reparation security as provided by sections 65B.41 to 65B.71, including the named insured and the following persons not identified by name as an insured while (a) residing in the same household with the named insured and (b) not identified by name in any other contract for a plan of reparation security complying with sections 65B.41 to 65B.71 as an insured:

- (1) a spouse,
- (2) other relative of a named insured, or
- (3) a minor in the custody of a named insured or of a relative residing in the same household with a named insured.

Minn. Stat. §65B.43 Subd. 5, (1974).

This new statutory language required that family members be "insureds" under automobile insurance policies. Thus, this new statutory scheme made Minn. Stat. § 65B.23 irrelevant. This new legislative scheme, The Minnesota No-Fault Act, continued Minnesota's public policy of prohibiting family exclusions in automobile insurance. *See Hime v. State Farm Fire & Casualty Co.*, 284 N.W.2d 829, 832, FN 1(Minn. 1979).

In addition, the No-Fault Act made insurance compulsory. Not only were you required to have insurance, but the policies were required to cover loss sustained by **any person**. *See Minn. Stat. § 65B.48*. emphasis added.

In summary, The No-Fault Act continues Minnesota's long standing public policy of prohibiting family exclusions in automobile insurance. Since the abolition of family immunity Minnesota has required insurance companies to provide coverage for family members. Insurers are required to protect family

members by including them in the definition of insured, and by requiring the policies to cover losses sustained by family members. Travelers admits as much. *See Appellant's Brief*, at 12.

II. CONTRACT TERMS WHICH CONFLICT WITH THE NO-FAULT ACT ARE NOT ENFORCEABLE.

Contract terms that conflict with statutory law will not be enforced.

Roerling v. Grinnell Mut. Reinsurance Co., 444 N.W.2d 829 (Minn. 1989). An insurers' liability is governed by contract, but only as long as the coverage required by law is not omitted and policy provisions do not contravene applicable statutes. *Streich v. American Family Mut. Ins. Co.*, 358 N.W.2d 396 (Minn. 1984).

The courts have previously rejected attempts to contract around the obligations of the No-Fault Act. In *Hertz v. State Farm Mut. Ins. Co.*, 573 N.W.2d 686 (Minn. 1998), the court rejected a car rental company's argument that their rental contract met the obligations of the No-Fault Act. Hertz attempted to make their coverage contingent. They would provide coverage, but only if there was no other insurance available. Hertz argued that the purpose of the No-Fault Act was met as compensation for victims would always be available from one source or the other. The freedom to contract argument was rejected because the contract violated the mandates of the No-Fault Act.

The same can be said in this case. Travelers suggests that their contract rights are paramount. What they fail to acknowledge is that the contract

provisions contravene provisions of the No-Fault Act that prohibit family exclusions. When freedom to contract and the public policy set forth in the No-Fault Act collide, there is no question which prevails. Courts will not enforce provisions that contradict statutory law. *Roerling*, 444 N.W.2d at 833.

III. AN UMBRELLA POLICY THAT IS PROVIDING AUTOMOBILE COVERAGE IS GOVERNED BY THE NO-FAULT ACT.

The No-Fault Act is remedial in nature. *Dahle v. Aetna Cas. & Surety Ins. Co.*, 352 N.W.2d 397, 401 (Minn. 1984). Remedial Statutes must be liberally construed for the purpose of accomplishing their objects. *State v. Indus. Tool & Die Works*, 21 N.W.2d 31 (Minn. 1946). One of the purposes of Minnesota's no-fault insurance law is to, "relieve the severe economic distress of uncompensated victims of automobile accidents." *Minn. Stat.* §65B.42 Subd. 1 (2005). Therefore the terms of the no-fault act must be liberally construed to ensure that the severe economic distress of uncompensated accident victims is alleviated. *Miklas v. Parrott*, 684 N.W. 2d 458 (Minn. 2004).

Travelers suggests that their policy is not an automobile policy and is therefore not regulated by the No-Fault Act. Substance over form, and context over labels. The policy was issued by **The Automobile Insurance Company of Hartford**. See *Appellant's Brief* at 5, FN 2. A separate premium was charged for automobiles. See AA-100. The occurrence that triggered coverage was an automobile accident. See AA-52. Is there any doubt, that under the circumstances of this loss, the policy provided automobile insurance?

Private passenger vehicle insurance is broadly defined by chapter 65B to include all policies that cover private passenger vehicles owned by an insured. *See Minn. Stat. §65B.001 Subd. 2 (1996)*. That is the definition that applied to the original ban of family exclusions, and the definition still exists today. There is no doubt that the umbrella policy at issue here covers the private passenger vehicles owned by Michael Bundul. Therefore the policy is private passenger vehicle insurance, and is regulated by the No-Fault Act.

A. A LIBERAL CONSTRUCTION REQUIRES FULL COVERAGE FOR CATASTROPHIC LOSSES.

Travelers suggests that the purpose of the No-Fault Act is met by the payment of the underlying policy. That would be a very conservative reading of the No-Fault Act. Yet, we know that the act must be liberally construed. *State v. Indus. Tool & Die Works*, 21 N.W.2d at 604.

The Bunduls selected a level of protection for their family in the amount of 1.5 million dollars. If we are to liberally construe the protection against unconscionable family exclusions, then that protection should be available for the most serious of losses. When the loss arises from an automobile accident, the public policy of protecting victims of automobile accidents applies.

It makes no sense to do otherwise. Why would we claim a public policy that automobile insurance may not exclude protection for family members, yet allow such protection to evaporate if we elect more protection from serious losses? Public policy applies equally to those that seek more than the minimum level of

protection. Public policy should not be illusory.

B. TRAVELERS' PROPOSAL WOULD LEAD TO MISCHIEF IN THE CLAIMS PROCESS.

Travelers proposes that as long as a policy providing minimum limits is available any excess policy is subject to absolutely no regulation. If that were true, imagine the implications. Why would every insurer not limit protection for family members to the minimum required by law? That way the insurers could escape the most serious losses for the most likely to be injured in the name of freedom of contract.

Sound far fetched? That is exactly what is happening in several jurisdictions. Although insureds are selecting higher levels of protection, they find that protection is reduced to the minimum level because a family member is involved in the loss. It is because the courts found that public policy only applied to the minimum coverage that all other coverage became illusory. *See Costello v. Nationwide Mutual Ins. Co.*, 795 A.2d 151 (Md. Ct. Spec. App. 2002); *Shahan v. Shahan*, 988 S.W.2d 529 (Mo. 1999); and *Wright v. State Farm Mutual Auto Ins. Co.*, 22 P.3d 744 (Or. 2001). Minnesota's public policy should not be illusory.

Further, the claims process itself would provide opportunities to further demean the value of family. To illustrate, you must look no further than the facts of this very case. Travelers was presented with two claims against two policies. The losses suffered exceeded the limits of both policies. Travelers, aware of the family exclusion, knew they could avoid paying out the excess coverage to the

Bunduls, but the excess policy would provide coverage to the other non-family claimant.

Travelers had a choice. They could choose to pay the Bundul family the entire underlying policy limit, and pay the remaining non-family claim from the excess policy; or they could choose to pay the smaller non-family claim first, thereby diminishing the value of the underlying policy to their own insured.

Travelers was not satisfied with the choice of limiting the protection of their policies to a third of the coverage that was purchased. They wanted an extra \$12,563.88 in profit. *See* AA-50.

This is not the type of activity that should be encouraged. Yet, if Travelers prevails in this action, they will have many more opportunities to take advantage of families. That despicable behavior will be encouraged unless we enforce our public policy of protecting family.

IV. FOREIGN AUTHORITY PROTECTING INSURANCE COMPANIES IS DISTINGUISHABLE AND NOT PERSUASIVE.

Other jurisdictions have considered this issue. Many of them have sided with insurance carriers and the freedom to contract. Others have applied the better rule of protecting our families rather than insurance companies.

Although the Eighth Circuit has ruled on the issue applying Minnesota law, the decision is neither binding nor persuasive. Further, the reasons that many jurisdictions have chosen to protect insurance companies are not applicable in Minnesota. We should follow the lead of the states that have chosen to apply the

better rule of law and offer maximum protection to our families.

A. LUSKIN V. STATE FARM IS NEITHER BINDING NOR PERSUASIVE.

Although the Eighth Circuit has addressed the present issue in *Luskin v. State Farm Fire & Casualty*, 141 F.3d 1169, 1998 WL 67760 (8th Cir. 1998), the decision is neither binding nor persuasive. A federal court's interpretation of state law is not binding upon state courts. *Jendro v. Honeywell, Inc.*, 392 N.W.2d 688, 691 FN 1(Minn. Ct. App. 1986) review denied (Minn. Nov. 19, 1986). This is especially true when an issue of first impression is presented and the court refuses a request to certify the issue to the Minnesota Supreme Court. That is exactly what happened in *Luskin*.

The facts of the case appear similar, but the decision does not give a detailed recitation of the facts. Judge Rosenbaum, at the District Court level, ruled from the bench and did not give his reasoning for the decision. The Eighth Circuit affirmed summarily, again without any reasoning to support the decision.

There is no reason to accept the reasoning of a court that does not tell us what their reasoning was.

B. THE REASONING OF THE FOREIGN JURISDICTIONS THAT HAVE CHOSEN TO PROTECT INSURANCE COMPANIES RATHER THAN FAMILIES IS NOT PERSUASIVE.

Many of the cases from foreign jurisdictions that are cited by Travelers simply did not have the same public policy of protecting family members.

Without that public policy the freedom of contract prevailed and insurance

companies were able to exclude protection for our families. *See Shahan v. Shahan*, 988 S.W.2d 529 (Mo. 1999) (There was no discussion of public policy. Rather the decision was based upon estoppel); *Wright v. State Farm Mutual Auto Ins. Co.*, 22 P.3d 744 (Or. 2001) (Court found no expression of public policy that invalidated family exclusion); *Walker v. State Farm Mutual Ins. Co.*, 850 So.2d 882 (La. Ct. App. 2003) (Statute prohibiting family exclusions passed after date of accident. Although court did not invalidate exclusion in case at bar, they expressed no opinion as to effect of statute on later cases); *Howe v. Howe*, 625 S.E. 2d 716 (W.Va. 2005) (Could not point to any authority invalidating family exclusions as a violation of West Virginia public policy); *Schanowitz v. State Farm Mutual Ins. Co.*, 702 N.E. 2d 629 (Ill. App. Ct. 1998) (Statute's plain language invalidated exclusions only when applied to third parties who were not residents of the insured's household); *Shelter General Ins. Co. v. Lincoln*, 590 N.W.2d 726 (Iowa 1999) (Court rejected a public policy of protecting persons injured in motor vehicle accidents. Also, when intra-family immunity was rejected, court did not rely upon availability of insurance. Rather, the court's opinion invited insurers to exclude coverage for families).

In addition several jurisdictions base their support of family exclusions on the need to protect against fraud or cozy claims. *See Electric Ins. Co. v. Rubin*, 32 F.3d 814 (3rd Cir. 1994); *Auto Owners Ins. Co. v. Van Gessel*, 665 So.2d 263 (Fla. Dist. Ct. App. 1995); *Costello v. Nationwide Mutual Ins. Co.*, 795 A.2d 151 (Md. Ct. Spec. App. 2002). That justification simply does not apply to the

circumstances presented by this case.

Umbrella policies only apply to the most serious losses. Therefore the fear of fraudulent claims is not well grounded. A review of the cases reveals why fraud is not a concern for excess carriers. Tragedy is abound. The cases are serious, often involving deaths, brain injury, and paraplegia. These are not the type of injuries one would voluntarily induce to make money.

Further, Travelers' policy offers other protection against fraudulent claims. The policy was endorsed with special provisions regarding concealment or fraud. *See AA-102*. That endorsement allows Travelers to void the entire policy if before or after the loss the insured engages in fraudulent conduct. Of course, Travelers would have to actually prove there was some fraud, but should they really complain about that? There is nothing wrong with expecting litigants to prove their claims and defenses. There is no just reason to exclude an arbitrary class of persons from compensation in absence of any proof of wrongdoing.

The Minnesota courts agree. The *Balts* court observed:

While it is perhaps a human failing for drivers to favor passengers in these situations, such a tendency to color testimony is not likely to escape the attention of the jury in litigation by a parent against a child. We conclude, therefore, that the judicial system is adequate to accommodate itself to threats of collusion and that the injustice of continued immunity outweighs the danger of fraud.

Balts, 142 N.W.2d at 431.

V. THE JURISDICTIONS THAT HAVE VOIDED FAMILY EXCLUSIONS ARE MORE CONSISTENT WITH MINNESOTA'S CONCEPT OF FAIRNESS AND EQUITY.

Three jurisdictions have considered the issue of family exclusions in an umbrella policy providing automobile coverage and chosen to invalidate the exclusions. *See Safeco Ins. Co. v. Automobile Club Ins. Co.*, 31 P.3d 52 (Wash. Ct. App. 2001); *GEICO v. Welch*, 90 P.3d 471 (N.M. 2004); and *State Farm Mutual Ins. Co. v. Marley*, 151 S.W.3d 33 (Ky. 2004). The reasoning of these decisions is more consistent with Minnesota's concept of fairness and equity. *See Hime*, 284 N.W.2d at 833. Therefore, the reasoning is more persuasive.

For example, Kentucky refused to view the umbrella as an unregulated multi-peril policy. Instead, they focused upon the occurrence that triggered coverage. *Marley* 151 S.W.3d at 36. Since the loss arose from an automobile accident, the policy was viewed as an extension of the automobile coverage. So the exclusion, as applied to the occurrence that triggered coverage was invalid.

New Mexico did not simply undertake to interpret the policy. Rather, they recognized that the issue implicated a fundamental principle of justice. *Welch*, 90 P.3d at 473. New Mexico had a policy of protecting innocent accident victims. Once an insurance company sold insurance that exceeded the required limits, that coverage applied to all accident victims whether a family member or not. *Id.* at 474.

When confronted with the freedom to contract argument, New Mexico quickly rejected that affront by stating that proposition ignores reality. *Id.* at 475.

They discussed that insurance contracts were take it or leave it bargains. Consumers were not truly given a choice to reject the family exclusion. Indeed, Minnesota has also recognized that the sanctity of the contractual relationship is already diminished by the relative absence of free negotiation, perhaps approaching the nature of a contract of adhesion. *Hime*, 284 N.W.2d at 834.

Washington took a very practical view of the issue. They observed that most insurance exclusions focused upon activities with an increased risk, but family exclusions denied coverage to an innocent class of persons for no good reasons. *Safeco*, 31P.3d at 55. Further, they noted that the excluded class of victims was more exposed to negligent operation of the vehicle than the included victims. This was because family members typically rode together in the family auto on the way to work, church, school, social functions, or family outings. *Id.* For those reasons they found the family exclusion repugnant to the public policy of protecting innocent accident victims.

Next, they were confronted with the argument that the exclusion only protected coverage required by statute, the minimum coverage, and that umbrella coverage was not subject to regulation. They rejected this argument by stating:

The automobile is a useful machine in our society, but it can also be a deadly weapon. The purpose of Safeco's umbrella policy is in part to protect against the possible catastrophic injury this deadly weapon can cause. That is exactly what happened here. There is no justifiable basis upon which to deprive household members of the full coverage available to every other potential victim. This especially holds true where there is no readily available alternative source of insurance and thus no practical way to avoid exposure to the risk for which they are uninsured. ...

It would be perverse indeed that victims who are less seriously injured would be covered, but those who are badly injured or killed would be excluded from coverage. It is precisely in the latter cases where the public policy of compensating victims of negligent drivers is most applicable.

Id. at 476-77.

The inequity of the family exclusion is well illustrated by the facts presented in *Howe*. Pamela and Duane Howe were married a few days before they left for their honeymoon. They rode their motorcycle through the hills of West Virginia where Duane crashed into another vehicle. Pamela was rendered a quadriplegic in the crash. Rather than start a life of bliss together, they were confronted with tragedy.

At least they knew that they had the foresight to purchase an umbrella policy which would provide protection from catastrophic injury. Imagine their anguish when they were told their marriage caused that coverage to evaporate. It is perverse indeed to think if they had not committed their lives to each other, Pamela would have been protected.

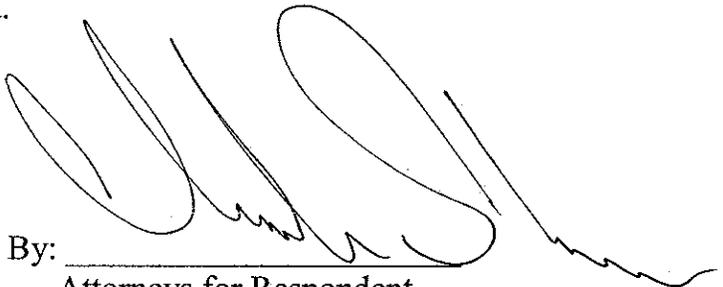
The same can be said for the Bunduls. Had the crash that led to the death of Carol happened a year later, after Ben had left home for school, then the family would have been protected. Minnesota's sense of fairness and equity dictates that the family exclusion should be invalidated.

CONCLUSION

When we are asked to choose between protecting our families, or protecting our insurance companies, the choice is clear. Minnesota has long embraced a public policy of compensating victims of automobile accidents. That public policy is now part of the Minnesota No-Fault Act, and prohibits family exclusions in automobile insurance. An umbrella policy that provides coverage for an automobile loss is subject to that public policy. Therefore the family exclusion in Travelers' policy must be invalidated.

Respectfully submitted.

Dated: 10-19-07

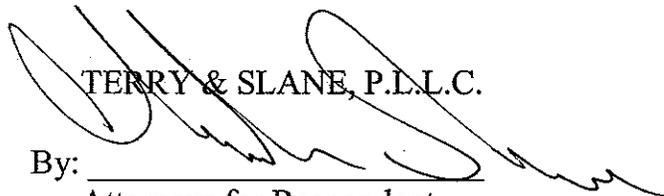
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CERTIFICATION OF BRIEF LENGTH

I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01 Subd. 1 and 3, for a brief produced with proportional font. The length of the brief is 492 lines and 4865 words. This brief was prepared using Microsoft Word 2003.

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