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# Insurance - Resident of the Same Household

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assure counsel ample time to discover whatever information he might need to effectively prosecute his case.<sup>31</sup>

*Richard A. Tonry*

#### INSURANCE — RESIDENT OF THE SAME HOUSEHOLD

Upon graduation from high school in Arkansas, Daniel Taylor, an unemancipated minor, left the home of his parents and went to live with his uncle in Louisiana, where he accepted a job with his uncle's employer. On the morning of the accident, Daniel and his uncle were on their way to their place of employment; Daniel was driving his uncle's pickup truck with his consent. Daniel lost control of the vehicle, which overturned, resulting in serious injuries to his uncle. The uncle sued his own liability insurer and the liability insurer of the father. The trial court ruled in favor of the plaintiff against both insurers. The Third Circuit Court of Appeal affirmed. The Supreme Court granted certiorari but limited its consideration to the question of whether Daniel Taylor was a resident of his father's household at the time of the accident. *Held*, Daniel Taylor was a resident of his father's household at the time of the accident, thereby rendering his father's insurer liable under its family automobile liability policy.<sup>1</sup> *Taylor v. State Farm Mut. Auto. Ins. Co.*, 248 La. 246, 178 So. 2d 238 (1965).

31. Moreover, it would seem wise to demand consistency between the periods within which a case will be considered abandoned on the trial level (presently five years), on appeal to an appellate court (presently five years), and on appeal to the Supreme Court (recently revised from five years to one year by the Supreme Court in RULES OF THE SUPREME COURT OF LOUISIANA rule VII, § 3 (1962); LOUISIANA COURT RULES 7, 13 (1965).

In order therefore to effect consistency throughout the judicial system, and because five years does seem unduly long, it is suggested the last paragraph of article 561 should be amended to allow the appellate court to provide by rule for the dismissal of appeals for the failure to take any steps in the prosecution or defense for a lesser period than five years. Such a revision is presently being considered by the Louisiana State Law Institute.

1. The pertinent parts of the insurance policy are as follows:

"*Named Insured*—means the individual so designated in the declarations [Garnie Taylor] and also includes his spouse, if a resident of the same household.

"*Insured*—the word 'insured' includes (1) the named insured, and also includes (2) his relatives, (3) any other person while using the automobile, provided the actual use of the automobile is with the permission of the named insured . . . .

"*Relative*—means a relative of the named insured who is a resident of the same household.

"INSURING AGREEMENT II — NON-OWNED AUTOMOBILES. Such insurance . . . applies to the use of a non-owned automobile by the named insured or a relative . . . ."

The usual family automobile liability policy is designed to provide coverage for the named insured, his spouse, and relatives who are residents of the same household, while they are driving the insured automobile, a non-owned automobile,<sup>2</sup> or a temporary substitute automobile.<sup>3</sup> Furthermore, under the omnibus clause it gives protection to any party driving the insured automobile with the permission of the named insured.<sup>4</sup>

Generally applicable to policies of insurance is the rule that a written agreement should, in case of ambiguity, be interpreted against the party who has drafted it.<sup>5</sup> This is important because in practically all cases it is the insurer, and not the insured, who draws up the insurance agreement<sup>6</sup> and, therefore, where the provisions of an insurance policy can reasonably be interpreted in one of two ways, both consistent with the object of the contract, the one favorable to the insured will be adopted.<sup>7</sup> Several reasons have been advanced why this rule should be applied to insurance. First, liberal construction in favor of the insured is conducive to trade and business.<sup>8</sup> Furthermore, whenever possible, the contract should be interpreted to increase coverage so

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2. The provisions of the family-type automobile liability policy relative to non-owned automobiles were as follows: "[S]uch insurance as is afforded by this policy . . . applies to the use of a non-owned automobile by the named insured or a relative, and any other person or organization legally responsible for the use by the named insured or relative of an automobile not owned or hired by such other person or organization.

"Insuring agreement does not apply: (1) to a non-owned automobile (a) registered in the name of the named insured or a relative, (b) hired by or furnished to the named insured or a relative for regular use, or (c) while used in the business or occupation of the named insured or relative . . . ."

It should be noted here that the 1958 Standard Automobile Family Policy excludes coverage for the use of non-owned automobiles unless the use is with permission of the owner. See, *e.g.*, *Rogillio v. Cazedessus*, 241 La. 186, 127 So. 2d 734 (1961).

3. See generally Note, 21 LA. L. REV. 835 (1961).

4. See generally Comment, 22 LA. L. REV. 626 (1962).

5. See, *e.g.*, *Kansas City Life Ins. Co. v. Freeman*, 120 F.2d 106 (5th Cir. 1941); *Kautz v. Zurich Gen. Acc. & Liab. Ins. Co.*, 212 Cal. 576, 300 Pac. 34 (1931); *Mathews Farmer's Mut. Live Stock Ins. Co. v. Moore*, 58 Ind. App. 240, 108 N.E. 155 (1915); 17 AM. JUR. 2d 689 *Contracts*, §§ 275, 276 (1964).

6. See, *e.g.*, *Beryllium Corp. v. American Mut. Liab. Ins. Co.*, 223 F.2d 71 (3d Cir. 1955); *Continental Cas. Co. v. Phoenix Constr. Co.*, 46 Cal. 2d 423, 296 P.2d 801 (1956).

7. See, *e.g.*, *Cherot v. United States Fid. & Guar. Co.*, 264 F.2d 767 (10th Cir. 1959); *Pennsylvania Indem. Fire Corp. v. Aldridge*, 117 F.2d 774 (D.C. Cir. 1941); *St. Paul F & M Ins. Co. v. American Compounding Co.*, 211 Ala. 593, 100 So. 904 (1924); *Illinois Auto. Ins. Exch. v. Southern Motor Sales Co.*, 207 Ala. 265, 92 So. 429 (1922); *Muse v. Metropolitan Life Ins. Co.*, 193 La. 605, 192 So. 72 (1939).

8. See, *e.g.*, *Wilkins v. Tobacco Ins. Co.*, 30 Ohio St. 317, 27 Am. Rep. 455 (1876); *West v. Citizen's Ins. Co.*, 27 Ohio St. 1, 22 Am. Rep. 294 (1875).

as to give the insured the benefit of the indemnity for which he had bargained.<sup>9</sup>

With this rule of construction in mind common-law courts have approached the problem of determining when the named insured's spouse or relative is a "resident of the same household" as the named insured. Cases in this area can generally be divided into two categories: first, those involving insurance policies containing clauses which *exclude* from coverage "residents of the same household" as the named insured;<sup>10</sup> second, those involving policies which *extend* protection to the named insured's spouse or relative who is a resident of the same household.<sup>11</sup>

In dealing with policies extending coverage to members of the named insured's household, the courts have adopted an extremely broad interpretation<sup>12</sup> of the clause; but when dealing with policies which exclude such persons, courts give the same terms a more restricted interpretation.<sup>13</sup> The apparent inconsistency is in reality no inconsistency; it is merely the application of the settled principle that ambiguity in an instrument is resolved against the draftsman.<sup>14</sup> This attitude is expressed in

9. See, *e.g.*, *Abrams v. American Fid. & Cas. Co.*, 32 Cal. 2d 233, 195 P.2d 797 (1948); *Blue Anchor-Overall Co. v. Pennsylvania Lumbermen's Mut. Ins. Co.*, 385 Pa. 394, 123 A.2d 413 (1956).

10. In *State Farm Mut. Auto. Ins. Co. v. Hanna*, 277 Ala. 32, 166 So. 2d 872 (1964), the son away at college purchased a policy on his own automobile which excluded coverage for injury to any member of the son's household. The court held the father was not a resident of the same household as his son, since the son was residing at college; therefore, the father could recover for injuries sustained as a result of the son's negligent operation of the car. In *Island v. Fireman's Fund Indem. Co.*, 30 Cal. 2d 541, 184 P.2d 153 (1947), the automobile liability policy issued to the father provided that if his son was a resident of the same household, it would not cover the father's use of his son's car. The father drove his son's car while his son was away in the army and injured the plaintiff. The court held the son was not a resident of his father's household; therefore, the policy extended coverage. See, *e.g.*, *Johnson v. State Farm Mut. Auto. Ins. Co.*, 252 F.2d 158 (8th Cir. 1958); *Rodenkirk v. State Farm Mut. Auto. Ins. Co.*, 325 Ill. App. 421, 60 N.E.2d 269 (1945); *Senn v. State Farm Mut. Auto. Ins. Co.*, 287 S.W.2d 439 (Ky. App. 1956).

11. In *Allstate Ins. Co. v. Jarling*, 16 A.D.2d 501, 229 N.Y.S.2d 707 (1962), a policy similar to the one in the instant case was issued to the father. His minor son who was in the service left his personal belongings at his father's and visited his parents whenever he could. The minor, while driving a non-owned vehicle, injured another and the court held the son was a resident of the same household as the father and therefore the policy provided coverage. *E.g.*, *Appleton v. Merchants Mut. Ins. Co.*, 228 N.Y.S.2d 442, 16 App. Div. 2d 361 (1962).

12. See note 11 *supra*.

13. See note 10 *supra*.

14. LA. CIVIL CODE art. 1957 (1870): "In a doubtful case the agreement is interpreted against him who has contracted the obligation." *Id.* art. 1958: "But if the doubt or obscurity arise for the want of necessary explanation which one of

*Cal-Farms Ins. Co. v. Boisseranc*,<sup>15</sup> where the court stated that the term "resident of the same household" has no absolute or precise meaning; and, if doubt exists as to the extent or fact of coverage, the language used in an insurance policy will be understood in its most inclusive sense.<sup>16</sup>

Highly significant in all cases, both of exclusion and extension, is the fact that the courts have resolved the issue of whether the spouse or relative was a resident of the insured's household on a purely *factual* basis<sup>17</sup> rather than on legal principles relative to duty of support, legal residence, or parental tort responsibility. In *Travelers Indemnity Co. v. Mattox*,<sup>18</sup> the policy extended coverage to relatives residing in the same household as the insured. There a seventeen-year-old unmarried son left his father's house to work with his brother in another town. He took only his work clothes, leaving his other possessions at his father's house. The son, while driving a non-owned automobile, negligently killed the daughter of the plaintiff. The Texas court held that whether the son was a resident of his father's household was a question of fact, and that there was sufficient evidence to support the jury's finding that the son, at the time of the accident, was a resident of the father's household.<sup>19</sup> On the other hand, in *State Farm Mut. Auto. Ins. Co. v. Hanna*<sup>20</sup> the policy excluded members of the same household from coverage. There a twenty-year-old son went to college in a different

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the parties ought to have given, or from any other negligence or fault of his, the construction most favorable to the other party shall be adopted, whether he be obligor or obligee." See, e.g., *Heiman v. Pan American Life Ins. Co.*, 183 La. 1045, 165 So. 195 (1936); *Parker v. Provident Life & Acc. Ins. Co.*, 178 La. 977, 152 So. 583 (1934); *Finley v. Massachusetts Mut. Life Ins. Co.*, 172 La. 477, 134 So. 399 (1931); *Massachusetts Protective Ass'n v. Ferguson*, 168 La. 271, 121 So. 863 (1929); *Ellis Electric Co. v. All State Ins. Co.*, 153 So.2d 905 (La. App. 1st Cir. 1963); *Jones v. Standard Life & Acc. Ins. Co.*, 115 So.2d 630 (La. App. 2d Cir. 1959). These cases indicate that the insured will be favored whenever reasonably possible.

15. 151 Cal. App. 2d 775, 312 P.2d 401 (1957).

16. There are of course certain exceptions to this general trend, as where a person is held to be a resident of the same household and coverage is denied on the theory that to hold otherwise would open the door to collusion. See *State Farm Mut. Auto. Ins. Co. v. James*, 80 F.2d 802 (4th Cir. 1936); *Rathburn v. Aetna Cas. & Sur. Co.*, 144 Conn. 165, 128 A.2d 327 (1956); *Tomlyanovich v. Tomlyanovich*, 239 Minn. 250, 58 N.W.2d 855 (1953).

17. By this is meant that the courts determined coverage depending on whether the person was in fact a resident of the insured's household rather than employing any purely "legal" doctrines.

18. 345 S.W.2d 290 (Tex. Civ. App. 1961).

19. The facts deemed sufficient by the court were that the son took only his work clothes with him to his brother's and left the rest with his father, and that he returned to visit his parents whenever possible.

20. 277 Ala. 32, 166 So.2d 872 (1964).

town, returning to his parents' home only for holidays and spring vacation. The son purchased an automobile policy which *excluded* coverage for injury to the insured or to any members of the family of the insured residing in the same household. The son negligently injured the father and the court allowed the father recovery against the son's insurer. The court stated that the word "residing" is ambiguous, elastic, and relative and that, under the facts of the case, the trial court did not err in concluding that the father and son were not residing in the same household at the time of the accident.<sup>21</sup>

Louisiana jurisprudence reveals no prior decision in which the court was called upon to interpret the clause "resident of the same household" in an automobile liability case where the minor was not physically living in the same household as the insured.<sup>22</sup> And so the issue in the instant case, namely, whether an unemancipated minor who had been physically living with his uncle for two months in another state was still a "resident of the same household" of his father, was *res nova* in Louisiana. If the minor was a resident of his father's household, he would be protected under the family automobile liability policy against liability arising from the accident. In concluding that the minor was a resident of the same household as his father, the court used confusing language. The court's initial approach to the problem appears more legal than factual. Citing article 38 of the Louisiana Civil Code,<sup>23</sup> it stated that "the terms residence and domicile are not synonymous"<sup>24</sup> and that "even though a

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21. Note that this was an exclusion case. If the legal theory had been applied, the son would have been a resident of his father's household since he was an unemancipated minor. Therefore, the father would not have recovered. But, fortunately, the court applied the factual test to determine whether the son was a resident of his father's household.

22. The court has interpreted the clause in cases in which the minor was in fact living with his father at the time he drove the non-owned automobile and had the accident. See, *e.g.*, *Rogillio v. Cazedessus*, 241 La. 186, 127 So. 2d 734 (1961); *Jones v. Indiana Lumbermen's Mut. Ins. Co.*, 161 So. 2d 445 (La. App. 4th Cir. 1964).

23. LA. CIVIL CODE art. 38 (1870): "The domicile of each citizen is in the parish wherein he has his principal establishment. The principal establishment is that in which he makes his habitual residence; if he resides alternately in several places, and nearly as much in one as in the other, and has not declared his intention in the manner hereafter prescribed, any one of the said places where he resides may be considered as his principal establishment, at the option of the person whose interests are thereby affected."

24. 178 So. 2d at 242. In *Oglesby v. Turner*, 127 La. 1093, 54 So. 400 (1911), the court declared a person may have as many residences as he chooses, but only one domicile. This distinction is also recognized in the Civil Code. In the case of a nuncupative will by public act, article 1578 requires three witnesses "*residing* in the place where the will is executed, or of five witnesses not *residing* in the

person which could include a child, might have several residences, despite the fact that he has but one domicile, the *legal*<sup>25</sup> residence of an unemancipated minor is that of his father unless changed by law,"<sup>26</sup> seeming thus to emphasize the legal aspects of residence. However, after pointing out that the policy employed the term "resident" rather than legal resident, the court construed the term to cover a member of a family, thereby apparently leading to the conclusion that the son, though living with his uncle, was still a member of his father's family and must be considered a member of his father's household as well. The court stressed that temporary absence would not affect his status as a member of his father's household.<sup>27</sup>

Justice Hamiter in his dissenting opinion indicated that the term "resident of the same household" should be interpreted on a purely factual basis and independently of any possible tort responsibility of the father, and suggested that the majority, influenced by the fact that the father would be responsible for his son's torts,<sup>28</sup> felt that it would be wiser policy to permit recovery against the father's insurer rather than let the father bear the loss himself. Justice Hawthorne dissented on the ground

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place." (Emphasis added.) Article 1110, dealing with public inventories, requires the witnesses to be "domiciliated" in the place where the inventories are made. In view of the fact that a person can have several residences, one approach available to the court would have been to recognize the son had two residences, one with his uncle, and one with his father; thus he qualified as a resident of his father's household.

25. In support of this point the court cited *Watkins v. Cupit*, 130 So.2d 720 (La. App. 1st Cir. 1961). However, it seems *Watkins* is distinguishable since no insurance policy was involved. In *Watkins*, the court declared that "as a matter of law, the residence of an unemancipated minor is that of his father." *Id.* at 723. To put this quote in context, however, the court was discussing the father's liability for the torts of his minor child. In further support of the legal residence point the court cited LA. CIVIL CODE art. 227 (1870): "Fathers and mothers by the very act of marrying, contract together the obligation of supporting, maintaining, and educating their children." The court also cited article 2318: "The father and after his death the mother, is responsible for the damage occasioned by their minor unemancipated children, residing with them or placed by them under the care of other persons. . . ."

26. 178 So.2d at 242. For examples of when a minor's residence is changed by law, see *Jackson v. Ratliff*, 84 So.2d 103 (La. App. Or. Cir. 1956); *Simmons v. Sorenson*, 71 So.2d 377 (La. App. 1st Cir. 1954); *LaRue v. Adams*, 59 So.2d 839 (La. App. Or. Cir. 1952).

27. The same position is maintained in other jurisdictions as well as Louisiana. See *Home Ins. Co. v. Pettit*, 225 Ala. 487, 143 So. 839 (1932); *American Universal Ins. Co. v. Thompson*, 62 Wash.2d 595, 384 P.2d 367 (1963); *Bannerman v. St. Paul Mercury Indemn. Co.*, 144 So.2d 167 (La. App. 1st Cir. 1962); *Leteff v. Maryland Cas. Co.*, 91 So.2d 123 (La. App. 1st Cir. 1956).

28. LA. CIVIL CODE art. 2318 (1870): "The father, or after his decease, the mother, are responsible for the damage occasioned by their minor or unemancipated children, residing with them, or placed by them under the care of other persons, reserving to them recourse against those persons. . . ."

that under the facts the son was not a resident of his father's household at the time of the accident. Justice McCaleb concurred on the basis of the ambiguity presented by failure of the policy to specify whether it meant *factual* or *legal* residence—an ambiguity he resolved in favor of the insured. His concurring opinion seems to imply, at least negatively, that the basis of the majority opinion was somewhere between the factual and legal approaches to the problem.

Perhaps the safest conclusion that may be drawn from the court's decision is that the unqualified term "resident of the same household" when used in a family automobile policy will not be interpreted to limit its application to a person actually residing in the same household, but will cover, as well, an unemancipated minor<sup>29</sup> who is legally a member of a family. In addition, the term "household" is to be construed as including a member of a family although he may be temporarily absent. But the case leaves undecided the question what period of absence would be sufficient to terminate membership in the household. Perhaps each case will have to be decided on its own facts.

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29. It is believed that the term residence of the same household would not be interpreted to allow a wife living separate and apart from her husband to be covered under the husband's policy for the reason that the husband is not responsible for the torts of his wife as he is for those of his minor child. The following set of facts illustrates this point. Suppose husband and wife purchase an automobile upon which they take out a policy similar to the one in the instant case. The wife becomes dissatisfied with her husband, leaves him, and moves back with her parents with whom she lives for five years without ever obtaining a legal separation or divorce. Then, while using her father's car with his consent, she negligently injures the plaintiff. If the legal approach to this problem were applied, the wife would be deemed a resident of the same household as her husband because of two pertinent code articles. Article 39 provides that a married woman has no other domicile than that of her husband. Further, article 120 provides that the wife is bound to live with her husband and to follow him wherever he chooses to reside. There are several pertinent cases sustaining the reasoning that in spite of these legal principles, the wife in the situation above would not be deemed to be a resident of the same household of her husband. In *Crilly v. Allstate Ins. Co.*, 18 App. Div. 2d 1012, 239 N.Y.S.2d 27 (1963), the wife was suing her husband's insurer to recover for personal injuries sustained while a passenger in a car owned and operated by her husband, from whom she had been separated voluntarily for more than two years. The court denied her recovery, holding that she was not a "resident of the same household" as her husband, since she had in fact not lived with him for more than two years. In *Selected Risks Ins. Co. v. Miller*, 227 Md. 174, 175 A.2d 584 (1961), the husband and wife had been living separate and apart for several months. The insurance policy had been issued to the wife, but the husband had control of the car. A friend of the husband's, while driving the car, injured Miller, who sued the wife's insurer. The court held there was no coverage because the husband, in fact, was not a resident of the same household of the wife.