

2002

Jimmy Calhoun and John Calhoun v. State Farm Mutual Automobile Insurance Company and Progressive Insurance Company : Brief of Appellee

Utah Supreme Court

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IN THE UTAH SUPREME COURT

JIMMY CALHOUN and JOHN
CALHOUN,

Plaintiffs/Appellants,

vs.

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY and
PROGRESSIVE INSURANCE
COMPANY,

Defendants/Appellees.

Case No. 000202450

Appeal No. 20020805-SC

BRIEF OF APPELLEE

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY

Appeal from the Third Judicial District Court of
Salt Lake County, State of Utah
Honorable Joseph C. Fratto, Jr.

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JURISDICTION OF THE COURT

The Supreme Court has appellate jurisdiction pursuant to Utah Code Annotated section 78-2-2(3)(j)(2003).

STATEMENT OF THE ISSUES

1. Did the trial court correctly enter Summary Judgment in favor of State Farm Mutual Automobile Insurance Company, finding that because John Calhoun had been properly excluded by way of a Driver Exclusion endorsement, as allowed by Utah law, no automobile liability coverage was extended to him under a State Farm Mutual Automobile Insurance Company policy? This issue is reviewed under the correctness standard. *See Allen v. Prudential Property & Cas. Ins. Co.*, 839 P.2d 798, 800 (Utah 1992) (“By definition, a summary judgment is based solely on conclusions of law. Therefore, we review a summary judgment for correctness, without deferring to the trial court’s legal determinations.”).

2. Did the trial court correctly enter Summary Judgment in favor of Progressive Insurance Company finding that John Calhoun’s policy of insurance with Progressive Insurance Company did not extend coverage to an accident when he was operating a motor vehicle owned by his parents, who were residents of his household? This issue also presents questions of statutory interpretation and is reviewed under the correctness standard. *See Allen v. Prudential Property & Cas. Ins. Co.*, 839 P.2d 798 (Utah 1992).

3. Did the trial court correctly enter Summary Judgment in favor of both State Farm and Progressive that, under the particular facts of this accident, neither the State Farm policy nor the Progressive policy extended insurance coverage to John Calhoun for his operation

of the motor vehicle? This issue also presents questions of statutory interpretation and is reviewed under the correctness standard. *See Allen v. Prudential Property & Cas. Ins. Co.*, 839 P.2d 798 (Utah 1992).

PORTIONS OF RELEVANT STATUTORY PROVISIONS

A. RELEVANT PART OF UTAH CODE ANNOTATED §31A-1-103 (1998):

- (2)(a) This title restricts otherwise legitimate business activity.
- (b) What this title does not prohibit is permitted unless contrary to other provisions of Utah law.

B. RELEVANT PART OF UTAH CODE ANNOTATED § 31A-22-302 (1998):

(1) Every policy of insurance or combination of policies purchased to satisfy the owner's or operator's security requirement of Section 41-12a-301 shall include:

(a) motor vehicle liability coverage under Sections 31A-22-303 and 31A-22-304;

(b) uninsured motorist coverage under Section 31A-22-305, unless affirmatively waived under Subsection 31A-22-305(4); and

(c) underinsured motorist coverage under Section 31A-22-305, unless affirmatively waived under Subsection 31A-22-305(8)(c).

(2) Every policy of insurance or combination of policies, purchased to satisfy the owner's or operator's security requirement of Section 41-12a-301, except for motorcycles, trailers, and semitrailers, shall also include personal injury protection under Sections 31A-22-306 through 31A-22-309.

C. RELEVANT PART OF UTAH CODE ANNOTATED § 31A-22-303 (1998):

(1)(a) In addition to complying with the requirements of Chapter 21 and Part II of Chapter 22, a policy of motor vehicle liability coverage under Subsection 31A-22-302(1)(a) shall:

(i) name the motor vehicle owner or operator in whose name the policy was purchased, state that named insured's address, the coverage afforded, the premium charged, the policy period, and the limits of liability;

(ii)(A) if it is an owner's policy, designated by appropriate reference all the motor vehicles on which coverage is granted, insure the person named in the policy, insure any other person using any named motor vehicle with the express or implied permission of the named insured, and, except as provided in Subsection (7), insure any person included in Subsection (1)(a)(iii) against loss from the liability imposed by law for damages arising out of the ownership, maintenance, or use of these motor vehicles within the United States and Canada, subject to limits exclusive of interest and costs, for each motor vehicle, in amounts not less than the minimum limits specified under Section 31A-22-304; or

(B) if it is an operator's policy, insure the person named as insured against loss from the liability imposed upon him by law for damages arising out of the insured use of any motor vehicle not owned by him, within the same territorial limits and with the same limits of liability as in an owner's policy under Subsection (1)(ii)(A);

(iii) except as provided in Subsection (7), insure persons related to the named insured by blood, marriage, adoption, or guardianship who are residents of the named insured's household, including those who usually make their home in the same household but temporarily live elsewhere, to the same extent as the named insured; and

(iv) cover damages or injury resulting from a covered driver of a motor vehicle who is stricken by an unforeseeable paralysis, seizure, or other unconscious condition and who is not reasonably aware that paralysis, seizure, or other unconscious condition is about to occur to the extent that a person of ordinary prudence would not attempt to continue driving.

(b) The driver's liability under Subsection(1)(a)(iv) is limited to the insurance coverage.

(2)(a) A policy containing motor vehicle liability coverage under Subsection 31A-22-302(1)(a) may:

(ii) grant any lawful coverage in addition to the required motor vehicle liability coverage;

(iii) if the policy is issued to a person other than a motor vehicle business, limit the coverage afforded to a motor vehicle business or its officers, agents, or employees to the minimum limits under Section 31A-22-304, and to those instances when there is no other valid and collectible insurance with at least those limits, whether the other insurance is primary, excess, or contingent; and . . .

(7) A policy of motor vehicle liability coverage under Subsection 31A-22-302(1) may specifically exclude from coverage a person who is a resident of the named insured's household, including a person who usually makes his home in the same household but temporarily lives elsewhere, if each person excluded from coverage satisfies the owner's or operator's security requirement of Section 41-12a-301, independently of the named insured's proof of owner's or operator's security.

D. RELEVANT PART OF UTAH CODE ANNOTATED § 31A-22-304 (1998):

Policies containing motor vehicle liability coverage may not limit the insurer's liability under that coverage below the following:

(1)(a) \$25,000 because of liability for bodily injury to death of one person, arising out of the use of a motor vehicle in any one accident;

(b) subject to the limit for one person in Subsection (a), in the amount of \$50,000 because of liability for bodily injury to or death of two or more persons arising out of the use of a motor vehicle in any one accident; and

(c) in the amount of \$15,000 because of liability for injury to, or destruction of, property of others arising out of the use of a motor vehicle in any one accident; or

(2) \$65,000 in any one accident whether arising from bodily injury to or the death of others, or from destruction of, or damage to, the property of others.

E. RELEVANT PART OF UTAH CODE ANNOTATED § 41-12A-103 (1998):

(9) "Owner's or operator's security," "owner's security, or "operator's security" means any of the following:

- (a) an insurance policy or combination of policies conforming to Section 31A-22-302, which is issued by an insurer authorized to do business in Utah; . . .

F. RELEVANT PART OF UTAH CODE ANNOTATED § 41-12A-301 (1998):

(2) Except as provided in Subsection (5):

- (a) every resident owner of a motor vehicle shall maintain owner's or operator's security in effect at any time that the motor vehicle is operated on a highway within the state; and . . .

STATEMENT OF THE CASE

Nature of the Case

This is an appeal by Jimmy Calhoun (*owner* of a vehicle involved in the accident) and John Calhoun (son of Jimmy Calhoun and *operator* of the motor vehicle involved in an accident) from the trial court's Summary Judgment in favor of State Farm Mutual Automobile Insurance Company ("State Farm") and Progressive Insurance Company ("Progressive") declaring that no coverage was afforded under either a State Farm automobile liability insurance policy issued to Jimmy Calhoun nor under a Progressive automobile liability insurance policy issued to John Calhoun for the liability of John Calhoun arising from an accident.

**Course of Proceedings &
Disposition in the Court Below**

This action was commenced by the Calhouns on March 20, 2000. (R. at 1 - 4.) After discovery was concluded, Progressive filed a Motion for Summary Judgment on. (R. at 44 - 108.) Plaintiffs filed a Memorandum in Opposition to Progressive's Motion for Summary Judgment. (R. at 112 - 117.) Progressive filed a Reply. (R. at 118 - 170.)

State Farm also filed a Motion for Summary Judgment. (R. at 171 - 235.) Plaintiff filed a Memorandum in Opposition to State Farm's Motion for Summary Judgment. (R. at 236 - 242.) State Farm filed a Reply. (R. at 243 - 257.)

The Motions for Summary Judgment were heard by Judge Joseph Fratto, Third Judicial District Court, Salt Lake County, Utah on April 15, 2002. (R. at 269 - 270.) The court granted Motions for Summary Judgment for State Farm and for Progressive, finding that there were no genuine issues of material fact in dispute and that both insurers were entitled to Judgment as a matter of law. (R. at 269 - 270.) The court specifically found as to State Farm, that "the Driver Exclusion Agreement was appropriately executed and John C. Calhoun was properly excluded from coverage as a member of the Calhoun household." (R. at 273.) The court further found that, at the time of the execution of the Driver Exclusion Agreement and at the time of the accident of December 19, 1998, "John C. Calhoun had purchased automobile liability insurance to satisfy the owner's or operator's security requirements of Utah Code Annotated §41-12a-301 and such security was in effect." (R. at 273.) Moreover, the court held that "State Farm had the right to rely on the representations

and the certification that the excluded driver had obtained owner's or operator's security to satisfy the requirements of the statute." (R. at 273.)

The court found that "[a]lthough the Progressive Insurance Company policy does not extend coverage to the accident of December 19, 1998, pursuant to the terms and conditions of that [Progressive] policy, that fact does not void the State Farm Driver Exclusion Agreement excluding coverage under the State Farm policy while an insured vehicle is being operated by John C. Calhoun nor does it resurrect coverage in favor of John C. Calhoun under the State Farm Mutual Automobile Insurance Company policy." (R. at 274.) The court concluded that "the State Farm Mutual Automobile Insurance Company policy does not extend coverage nor impose any liability or coverage to any vehicle while being operated by John C. Calhoun." (R. at 274.)

The court likewise found that no coverage was afforded by the Progressive policy to John C. Calhoun's operation of the Jeep. (R. at 276 - 280.)

Statement of the Facts

I. RESPONSE TO CALHOUNS' STATEMENT OF FACTS.

Calhouns misquoted the "Driver Exclusion Agreement" at page 4 of their brief. The correct language of the exclusion states, in relevant part:

IN CONSIDERATION OF THE PREMIUM CHARGED FOR YOUR POLICY IT IS AGREED WE SHALL NOT BE LIABLE AND NO LIABILITY OR OBLIGATION OF ANY KIND SHALL ATTACH TO US FOR BODILY INJURY, LOSS OR DAMAGE UNDER ANY OF THE COVERAGES OF THE POLICY WHILE ANY MOTOR VEHICLE IS OPERATED BY John C. Calhoun.

The word “No,” (bolded above for easier identification) was (inadvertently) omitted from Calhoun’s Statement of Relevant Facts on Appeal.

Calhouns inappropriately claim that, as a household member and a permissive user, John Calhoun “qualified as an insured” under the State Farm policy. (Appellants’ Br. at 4.) As discussed hereinafter, John C. Calhoun had been properly excluded from the State Farm policy which otherwise extended coverage to the operation of the Jeep by household members and by permissive users.

Calhouns also inappropriately claim that “both John Calhoun and Jimmy Calhoun ended up uninsured for this accident. So they sued.” (Appellants’ Br. at 5.) There was no evidence presented in the trial court that any claim has been submitted against Jimmy Calhoun, the owner of the Jeep involved in this accident. There is, in fact, no legal basis for a claim against an owner of a vehicle -simply because of his status as an owner of a vehicle - in the absence of statutory liability or claims of negligent entrustment. No such claims have been asserted in this matter.

II. STATEMENT OF FACTS RELEVANT TO THE ISSUES PRESENTED.

This litigation arises from an automobile accident which occurred December 19, 1998, in which John Calhoun (age 27) was operating a 1989 Jeep Comanche pickup truck (“the Jeep”) owned by his parents. (Police Report, R. at 186 - 89.) John Calhoun (“John”) lost control of the Jeep and collided with two vehicles on the side of the road. (R. at 186-89.) John now seeks automobile liability insurance coverage under a policy he had with

Progressive Insurance Company ("Progressive") or, alternatively, under a policy of insurance his parents had with State Farm Mutual Automobile Insurance Company ("State Farm"), from which he had been specifically excluded. (R. at 1 - 4.)

In November 1996, prior to the accident, John was residing with his parents, Jimmy T. ("Jimmy") and Rosalie Calhoun. (R. at 1 - 4; Deposition of John Calhoun, R. at 190 - 92.) John's parents had obtained an owner's automobile liability insurance policy with State Farm which extended certain automobile insurance coverage, subject to the terms, conditions and limitations of the policy (State Farm Policy, R. at 204 - 32), to the Jeep owned by Jimmy (R. at 200, p. 13). As a member of the Calhoun household, John was considered an insured under the State Farm policy. (R. at 205.)

Because of John's poor driving record, State Farm indicated that it would not renew the policy issued on the Jeep, unless John was excluded from coverage (R. at 233), as was specifically allowed by Utah Code Annotated section 31A-22-303(7). On November 13, 1996, a "Driver Exclusion Agreement" was executed which read, in relevant part:

REQUEST FOR TOTAL DRIVER EXCLUSION ENDORSEMENT

I agree to amendment of the policy or policies listed above by addition of the following endorsement:

IN CONSIDERATION OF THE PREMIUM CHARGED FOR YOUR POLICY IT IS AGREED WE SHALL NOT BE LIABLE AND NO LIABILITY OR OBLIGATION OF ANY KIND SHALL ATTACH TO US FOR BODILY INJURY, LOSS OR DAMAGE UNDER ANY OF THE COVERAGES OF THE POLICY WHILE ANY MOTOR VEHICLE IS OPERATED BY John C. Calhoun.

As the named insured, I understand and certify that the named person excluded from coverage, has in fact, satisfied the owner's or operator's security requirement of Section 41-12a-301, independently of the named insured's proof of owner's or operator's security.

I further agree to have the above endorsement included in any subsequent transfer, reinstatement, or renewal of such policy or policies.

(R. at 235.)

At the time the State Farm Driver Exclusion Agreement was executed, it was certified by the Calhouns that John had satisfied the proof of financial responsibility¹ requirements of Utah Code Annotated section 41-12a-301, independently of the proof of financial responsibility security provided by the State Farm policy. (R. at 235.)

John had, in fact, satisfied the financial responsibility security requirements by purchasing an owner's policy with another (at this time unknown) insurance company. (R. at 129 - 70.) At that time, John owned a vehicle which he primarily operated. (R. at 192.) He had purchased insurance through the unknown insurance carrier because he realized he was no longer entitled to any coverage for his operation of any vehicle under the State Farm policy. (R. at 192, p. 12.)

Q. Is the reason you got that [insurance] because you felt you weren't covered under the State Farm policy?

A. I was told that State Farm would not cover me in vehicles at any time whether it was my own policy or under my parents'.

¹The term proof of "financial responsibility" is interchangeable with the term "owner's or operator's security." See UTAH CODE ANN. §41-12a-401(2).

Q. Is that why you got your own policy?

A. Yes.

Q. So that you would have your own insurance?

A. Yes.

(R. at 192, p. 12.)

Jimmy also understood that the State Farm policy would not extend insurance coverage when any motor vehicles were operated by John.

Q. Now, did you ever have a conversation with your son, John, regarding the State Farm restrictions?

A. Yes.

Q. Prior to the accident?

A. Yes.

Q. What do you recall about those conversations in essence?

A. That he had to buy insurance that covered him and any vehicle he drove because he was no longer covered with my insurance.

(R. at 202, p. 22.)

Eventually, and at the time of the accident which is the subject of this matter, John continued to satisfy the financial responsibility security required by law by obtaining a policy of insurance issued by Progressive Insurance Company ("Progressive"), which policy was in effect on the date of the accident and which extended coverage to the 1987 Suzuki Samurai he then owned. (R. at 67 - 108.)

In December 1998, John Calhoun was operating the Jeep owned by his parents (from which he had specifically been excluded under the State Farm policy). The Jeep collided with an unoccupied vehicle belonging to Grant and Tiffany Elkins (not parties to this lawsuit) and with a vehicle occupied by Sondra and Gary Cunningham (not parties to this lawsuit). All three vehicles sustained property damage, but no personal injuries resulted from the accident. (R. at 186 - 89.)

The Calhouns now assert that, despite the specific language to the contrary, coverage is extended for the accident of December 1998 under the Progressive policy which John had purchased to insure the 1987 Suzuki Samurai he owned. Calhouns claim that, in addition to providing coverage for John's use (and the permitted use by others of the Suzuki, as identified in the Progressive policy), the Progressive policy also extended (or should extend) coverage to John's use of the Jeep owned by his father.

In the alternative, Calhouns claim that, despite the specific language to the contrary in the Driver Exclusion Agreement, the State Farm policy, nevertheless extends (or should extend) to John's use of the Jeep from which he was specifically excluded.

SUMMARY OF THE ARGUMENT

An insurance policy is a contract. Parties to an insurance contract are free to contract as to the risks assumed by the insurer, as long as the terms are not contrary to Utah law or contrary to public policy. Calhouns and State Farm contracted that no insurance coverage would be provided by the State Farm policy for the operation of motor vehicles (including

the Jeep) by John Calhoun.

Utah law expressly authorizes the use of Household Member Driver Exclusions (hereinafter “Driver Exclusion”). UTAH CODE ANN. §31A-22-303(7). The form of the Driver Exclusion meets the requirements of Utah law. The Calhouns certified that John had complied with the financial security requirements of Utah Code Annotated section 41-12a-301, independent of Jimmy’s financial security. John had, in fact, satisfied the financial security requirements of Utah Code Annotated section 41-12a-301.

This Court has acknowledged the strong public policy in favor of allowing households with a family member who has a poor driving record to obtain insurance at reasonable cost by allowing the exclusion from coverage of the poor driver as authorized by Utah Code Annotated §31A-22-303(7). *See Dairyland Ins. Co. v. State Farm Mut. Auto. Ins. Co.*, 882 P.2d 1143 (Utah 1994).

This Court has acknowledged the requirement imposed by Utah law that permissive users of an automobile be covered under the vehicle’s automobile liability insurance coverage as required by Utah Code Annotated section 31A-22-303(1)(a)(i) does not supercede the *specific terms* of Utah Code Annotated section 31A-22-303(7) which allows the exclusion of a household member who may also a permissive user. *Dairyland Ins. Co. v. State Farm Mut. Auto. Ins. Co.*, 882 P.2d 1143 (Utah 1994).

The Progressive policy complied with the financial responsibility requirements of Utah Code Annotated section 31A-22-303. The Progressive policy was not required to

extend coverage to every accident involving John's operation of a motor vehicle.

Even though coverage is not afforded under the Progressive policy, the State Farm Driver Exclusion endorsement is not invalidated and coverage is not resurrected under the State Farm policy.

ARGUMENT

INTERPRETATION OF AUTOMOBILE LIABILITY INSURANCE POLICIES

The Utah Insurance Code, by its own pronouncement, "restricts otherwise legitimate business activity. What this title does not prohibit is permitted unless contrary to other provisions of Utah law." UTAH CODE ANN. §31A-1-103(2).

AN INSURANCE POLICY IS A CONTRACT

An insurance policy is a contract between the insurer and the insured. *Prince v. Bear River*, 2002 UT 60, 52 P.3d 1174, 1776 (Utah 2002). Insurance policies are to be construed pursuant to the same rules applied to ordinary contracts. *Alf v. State Farm Fire and Cas. Co.*, 850 P.2d 1272, 1274 (Utah 1993). In the absence of ambiguity, the terms of the insurance contract apply as written. *Bear River Mut. Ins. Co., v. Wright*, 770 P.2d 1019, 1020 (Utah Ct. App. 1989).

An insurer has the right to contract with an insured as to the risks it will or will not assume, as long as neither statutory law nor public policy is violated. Thus, "an insurer may include in a policy any number or kind of exceptions and limitations to which an insured will agree unless contrary to statute or public policy." *Farmers Ins. Exch. v. Call*, 712 P.2d 231,

233 (Utah 1985). An insurer may limit its obligation to provide coverage by “exclusions phrased in language which clearly and unmistakably communicates to the insured the specific circumstances under which the expected coverage will not be provided.” *Wagner v. Farmers Ins. Exch.*, 786 P.2d 763, 765 (Utah Ct. App. 1990) (quoting *Reserve Ins. Co. v. Pisciotto*, 30 Cal. 3d 800, 640 P.2d 764, 769, 180 Cal. Rptr. 628 (1982)).

FINANCIAL RESPONSIBILITY FOR OWNERS AND OPERATORS OF AUTOMOBILES

Utah Code Annotated section 41-12a-301 requires, generally, “every resident owner of a motor vehicle . . . [to] maintain owner’s or operator’s security in effect at any time . . . the motor vehicle is operated on a highway or on a quasi-public road or parking area within the state.”

Insurance policies are one method² of establishing the proof of financial responsibility mandated by Utah Code Annotated section 41-12a-301. Utah Code Annotated section 41-12a-103 provides, in relevant part:

(9) “Owner’s or operator’s security,” “owner’s security,” or “operator’s security” means any of the following:

- a. an insurance policy or combination of policies conforming to Section 31A-22-302, which is issued by an insurer authorized to do business in Utah; . . .

When the proof of financial responsibility is established through the purchase of an insurance policy, the policy is required to provide certain minimum coverages mandated by statute including extending 1) liability coverage³, 2) uninsured motorist coverage⁴, 3)

²Utah Code Annotated section 41-12a-401 also allows for the security requirements to be met by filing a copy of a surety bond under Section 41-12a-405; a certificate of deposit of money or securities issued by the state treasurer under Section 41-12a-406, or a certificate of self-funded coverage under Section 41-12a-407.

³UTAH CODE ANN. §§31A-22-303 and 304.

⁴UTAH CODE ANN. §31A-22-305.

underinsured motorist coverage⁵, and 4) personal injury protection⁶. UTAH CODE ANN. §31A-22-302. In addition to complying with the requirements of Utah Code Annotated section 31A-22-302, automobile liability insurance policies are further required to:

- 1) name the motor vehicle owner or operator in whose name the policy was purchased,
- 2) state the named insured's address,
- 3) the coverage afforded,
- 4) the premium charged,
- 5) the policy period, and
- 6) the limits of liability.

UTAH CODE ANN. §31A-22-303(1)(a).

An "owner's policy"⁷ is also required to

- a) designate by appropriate reference all the motor vehicles on which coverage is granted,
- b) insure the person named in the policy,
- c) insure any other person using any named motor vehicle with the express or implied permission of the named insured, and, *except as provided in Subsection (7)*,
- d) insure any person (including a "household member"⁸) against loss from the liability

⁵UTAH CODE ANN. §31A-22-305.

⁶UTAH CODE ANN. §§31A-22-306 - 309 Policies covering motorcycles, trailers, and semitrailers are excluded from the requirement of Personal Injury Protection benefits.

⁷State Farm's policy is an "owner's policy." The policy extends coverage to the 1989 Jeep and to certain operators of the Jeep.

⁸UTAH CODE ANN. §31A-22-303(1)(iii) states:

except as provided in Subsection (7), insure persons related to the named insured by blood, marriage, adoption, or guardianship who are residents of the named insured's household, including those who usually make their

imposed by law for damages arising out of the ownership, maintenance, or use of the described motor vehicles within the United States and Canada in amounts not less than the minimum limits specified in Section 31A-22-304.⁹ (Emphasis added.)

As the owner of the Jeep, Jimmy was required to maintain proof of financial responsibility in effect at any time the motor vehicle was to be operated on the highways of the state. The policy purchased from State Farm provided the requisite proof of financial security subject to the terms, conditions, limitations and exclusions set forth in the policy. The “owner’s policy” issued by State Farm provided the coverages required by law, to the individuals identified by law, for the accidents described by law. (R. at 204 - 232.)

**UTAH LAW AND PUBLIC POLICY
ALLOWS FOR THE EXCLUSION OF HOUSEHOLD MEMBERS**

Utah law generally requires the extension of automobile liability coverage to the named insured, his/her spouse, household members, and permissive users of the described motor vehicle. A specific exception to the general requirement of the extension of coverage to household members, however, is set forth in Utah Code Annotated section 31A-22-303(7)¹⁰:

home in the same household but temporarily live elsewhere, to the same extent as the named insured.

This class of insureds are sometimes referred to as “household members.” That term will be used in this brief as a “shortened term” for the statutory definition, since there is no issue as to whether or not John Calhoun meets the definition of a “household member.”

⁹At the time of the accident, and currently, the minimum limits specified are \$25,000 because of liability for bodily liability to or death of one person, arising out of the use of a motor vehicle in any one accident and \$50,000 because of liability for bodily injury to or death of two or more persons arising out of the use of a motor vehicle in any one accident. UTAH CODE ANN. §31A-22-304.

¹⁰The statutes dealing with the Driver Exclusion are cited as the statute was in effect at the time of this accident.

A policy of motor vehicle liability coverage under Subsection 31A-22-302(1) may specifically exclude from coverage a person who is a resident of the named insured's household, including a person who usually makes his home in the same household but temporarily lives elsewhere, if each person excluded from coverage satisfies the owner's or operator's security requirement of Section 41-12a-301, independently of the named insured's proof of owner's or operator's security.

This Court has recognized the strong public policy behind allowing Driver Exclusions to household members. In *Dairyland v. State Farm*, 882 P.2d 1143, 1146 (Utah 1994) this Court stated:

The self-evident rationale of the exclusion portion of the statute is to enable households that include a family member who has a poor driving record to obtain insurance at reasonable cost by excluding the poor driver.

Other courts have also recognized the strong public policy supporting Driver Exclusions. In *St. Paul Fire and Marine Ins. Co. v. Smith*, 787 N.E.2d 852, 2003 Ill.App. (2003), the Illinois Appellate Court observed:

Additionally, we note that other states upholding the validity of named driver exclusions have delineated several public policy reasons supporting the exclusions. A Texas appeals court found that named driver exclusions furthered Texas's public policy of protecting all potential claimants from damages resulting from automobile accidents by enabling drivers with family members having poor driving records to procure affordable insurance, rather than obtaining coverage from an assigned risk pool at a greater cost or not securing insurance at all. Further, these exclusions deterred insured drivers from entrusting their vehicles to unsafe excluded drivers which kept those unfit drivers off the road. *Zamora v. Dairyland County Mutual Insurance Co.*, 930 S.W.2d 739 (Tex.Ct.App. 1996). See also *Pierce v. Oklahoma Property & Casualty Insurance Co.*, 1995 OK 78, 9001 P.2d 819, 823 (Okla. 1995) ("our legislature realized that premiums might be too costly in some circumstances, and chose to allow the contracting parties to exclude specifically named individuals," allowing families to obtain affordable insurance); *State Farm Mutual Automobile Insurance Co. v. Washington*, 641 A.2d 449, 451-52 (Del. 1994) (named driver exclusions "ensure continued coverage of an automobile where the driving record of a household member warrants non-issuance or cancellation"); *Dairyland Insurance Co. v. State Farm Mutual Automobile Insurance Co.*, 882 P.2d 1143, 1146 (Utah 1994) (the rationale of the exclusion "is to enable households that include a family member who has a poor driving record to obtain insurance at a reasonable cost by excluding the poor driver"). We agree that these policy reasons are sound and further support our holding.

787 N.E.2d 852, 858.

THE STATE FARM DRIVER EXCLUSION

The State Farm policy which was issued to the Calhouns complied with the requirements of Utah Code Annotated section 41-12a-301. It provided the proof of financial security mandated by statute. It extended coverage to those individuals required by statute to be insured. Prior to the execution of the State Farm Driver Exclusion, the State Farm policy extended coverage to Mr. and Mrs. Calhoun, their household members, and to permissive users of the Jeep. (R. at 204 - 232.)

When State Farm discovered the poor driving record of John, it determined that it was no longer willing to assume the risk associated with John's driving history. (R. at 233.) Relying on the authority of Utah Code Annotated section 31A-22-303(7), State Farm advised Calhouns that it would not continue to assume the insurance risk unless the poor driver, John Calhoun, was excluded from coverage. Rather than placing their insurance with another insurance carrier, Calhouns expressly agreed to the execution of the Driver Exclusion.

The Driver Exclusion Agreement which the Calhouns signed stated:

REQUEST FOR TOTAL DRIVER EXCLUSION ENDORSEMENT

I agree to amendment of the policy or policies listed above by addition of the following endorsement:

IN CONSIDERATION OF THE PREMIUM CHARGED FOR YOUR POLICY IT IS AGREED WE SHALL NOT BE LIABLE AND NO LIABILITY OR OBLIGATION OF ANY KIND SHALL ATTACH TO US FOR BODILY INJURY, LOSS OR DAMAGE UNDER ANY OF THE COVERAGES OF THE POLICY WHILE ANY MOTOR VEHICLE IS OPERATED BY John C. Calhoun.

As the named insured, I understand and certify that the named person excluded from coverage, has in fact, satisfied the owner's or operator's security requirement of section 41-12a-301, independently of the named insured's proof of owner's or operator's security.

I further agree to have the above endorsement included in any subsequent transfer, reinstatement, or renewal of such policy or policies.

The Driver Exclusion Agreement was dated and signed.

(R. at 235.)

After the execution of the Driver Exclusion Agreement, John and Jimmy both expressed a clear understanding that they knew John would not have coverage under the State Farm policy if he were to operate the 1989 Jeep. The excluded driver, John, testified:

Q. Is the reason you got that [separate insurance] because you felt you weren't covered under the State Farm policy?

A. I was told that State Farm would not cover me in vehicles at any time whether it was my own policy or under my parents'.

Q. Is that why you got your own policy?

A. Yes.

Q. So that you would have your own insurance?

A. Yes.

(R. at 192, p. 12.)

Jimmy also understood the State Farm policy would not extend insurance coverage when any motor vehicles were operated by John.

Q. Now, did you ever have a conversation with your son, John, regarding the State Farm restrictions?

A. Yes.

Q. Prior to the accident?

A. Yes.

Q. What do you recall about those conversations in essence?

A. That he had to buy insurance that covered him and any vehicle he drove because he was no longer covered with my insurance.

(R. at 202, p. 22.)

Calhouns accepted the Driver Exclusion in exchange for the opportunity to continue to be insured with State Farm. The premium they paid was based on the fact that John was no longer covered by the State Farm policy. The reduction in coverage was part of the

bargained-for agreement to renew the policy. *See Seales v. State Farm Mutual Automobile Ins. Co.*, 671 So.2d 681, 683 (Ala.Civ.App. 1995).

Calhouns do not claim that the execution of the Driver Exclusion was not allowed by Utah law. They do not claim that there was any irregularity in the execution of the Exclusion. They do not claim that they did not understand the Exclusion. They do not claim that the exclusion was vague, unclear, or ambiguous. They knew that no coverage was extended under the State Farm policy.

CALHOUNS' CLAIM FOR COVERAGE

Calhouns now claim the Progressive policy extends (or should extend) coverage to John's operation of the Jeep from which he had specifically been excluded¹¹. They claim that the Progressive policy improperly excludes coverage to John's operation of the Jeep, which was owned by his father. (Appellants' Br. at 10 - 15.)

In the alternative, Calhouns claim that despite the State Farm Driver Exclusion Agreement, the State Farm policy nevertheless extends coverage for the operation of the Jeep, from which John was specifically excluded. (Appellants' Br. at 15 - 16.) Calhouns claim that an excluded household member may have coverage extended by the policy from which he has been excluded because of his status as a permissive user, rather than as a "household member." (Appellant's Br. at 4.) Utah law does not support this position.

The issue of whether the Driver Exclusion applies only when the household member is not a permissive user was answered in *Dairyland*. In that case, the named driver was specifically excluded from an automobile liability insurance policy. Notwithstanding the exclusion, the excluded driver operated, with permission, the vehicle from which he was excluded and was involved in an accident. The excluded driver argued that, even though he had been specifically excluded from the policy as a household member, he was nevertheless

¹¹This argument will be discussed in detail hereinafter.

entitled to coverage as a permissive user. In addressing this argument, this Court stated:

The Anopols [the insureds] argue that this exclusion provision applies only to household relatives of the insured, not to permissive users. The Anopols, in effect, argue that Edward Jr. [the excluded driver] was simultaneously a relative of Ms. Anopol who lived in her household and a permissive user. In short, they assert that State Farm's driver exclusion endorsement did not operate to exclude Edward Jr. because he was a permissive user. We disagree.

The Anopols' analysis finds no support in the language of section 31A-22-303 and is contrary to established principles of statutory interpretation. Nothing in the language of the statute suggests that the endorsement does not apply to a household relative who is using the vehicle with the permission of the primary insured. In fact, such an interpretation runs contrary to the established rule that when two provisions address the same subject matter and one provision is general while the other is specific, the specific provision controls. [Citations omitted]. It is undisputed that Edward Jr. fell within the provision dealing specifically with household relatives, i.e., subsection 31A-22-303(1)(c). This subsection clearly allows a household relative who would otherwise have to be included in the policy to be excluded if the parties execute a driver-exclusion endorsement that conforms with section 31A-22-303(7). See *Utah Code Ann.* §31A-22-303(1)(c). It is improper, therefore, to apply the more general permissive user portion of the statute to circumvent the provisions dealing specifically with household relatives.

Aside from ignoring the language of the statute, the Anopols' interpretation is inconsistent with the purpose of the driver-exclusion endorsement. The self-evident rationale of the exclusion portion of the statute is to enable households that include a family member who has a poor driving record to obtain insurance at a reasonable cost by excluding the poor driver. Under the Anopols' interpretation, the only time a driver-exclusion endorsement could ever be effective is when the excluded relative borrows the automobile without the primary insured's permission - - in other words, when the relative steals the car. . . . Because such situations would be extremely rare, the exclusion would seldom, if ever, apply. As a result, insurance companies would have little incentive to offer lower rates to households containing a bad driver, thereby frustrating the purpose of the statute.

Dairyland, 882 P.2d at 1145-1146.

Clearly, this Court has rejected the argument that coverage must be extended to a permissive user who operates a motor vehicle from which he has been expressly excluded.

Since this Court has already resolved the permissive user/excluded household member issue in *Dairyland*, Calhoun's "fall-back" claim for coverage against State Farm is based on a footnote in the *Dairyland* case. In footnote 5, Justice Zimmerman observed:

We note that the [plaintiff's] attorneys have failed to cross-appeal the portion of the trial court's order which held that [the excluded driver] had been

properly excluded from his parent's policy under subsection (7) of Utah Code Ann. §31A-22-303. As noted above, that subsection allows a motor vehicle insurance policy to exclude a person who is a resident of the named insured's household only if "each person excluded from coverage satisfies the owner's or operator's security requirement of Section 41-12a-301, independently of the named insured's proof of owner's or operator's security." Utah Code Ann. §31A-22-303(7). There is an issue as to whether a policy such as Dairyland's that fails to cover the primary insured when he or she is driving substitute vehicles from the same household constitutes independent insurance sufficient to satisfy the owner's and operator's security requirement under subsection (7). Although the counsel raised this argument in their brief on appeal, they neglected to appeal this issue by filing a notice of appeal and docketing statement, and we therefore decline to consider it.

Id., supra., fn. 5; emphasis added.

Initially it is important to note that there is no issue in this case about the fact that State Farm acted properly when it required the Driver Exclusion Agreement in exchange for continuing to cover the risk of insuring the Jeep owned by Jimmy Calhoun. There is no claim here that the Driver Exclusion Agreement was improperly executed or required by improper motives¹². There is no claim here that the Driver Exclusion Agreement was improperly vague, confusing, or ambiguous¹³. There is no claim here that the Calhouns had any improper understanding as to the effect of the State Farm Driver Exclusion. The only claim is that either the Progressive or the State Farm policy must extend coverage for the accident.

It is also important to note that, unlike the proposition promulgated by Plaintiffs, the statute authorizing the Driver Exclusion does not require that insurance be bought to cover every accident. Rather, Utah Code Annotated section 31A-22-303(7) requires only that the

¹²The wisdom of the decision by State Farm to not insure John Calhoun is established by the accident which underlies this suit.

¹³Several cases have held that this language is not ambiguous. For example, see *Seales v. State Farm Mutual Automobile Ins. Co.*, 671 So.2d 681 (Ala.Civ.App. 1995) which stated: "The language of the endorsement is clear. It states simply that the insurance company is not liable if [the insured's son] is operating or driving the vehicle involved in this accident." 671 So.2d 681, 682.

excluded driver “satisfies the owner’s or operator’s security requirement of Section 41-12a-301, independently of the named insured’s proof of owner’s or operator’s security.”

**JOHN CALHOUN SATISFIED THE FINANCIAL RESPONSIBILITY
REQUIREMENTS OF UTAH CODE ANNOTATED §41-12A-301,
INDEPENDENTLY OF THE STATE FARM POLICY**

At the time the Driver Exclusion agreement was executed, Jimmy Calhoun specifically certified that John had satisfied the financial responsibility requirement of Utah Code Annotated section 41-12a-301, independently from Jimmy Calhoun’s policy with State Farm. State Farm relied upon the certification by its insured in agreeing to continue to write a policy for the Jeep and in determining the premium to be charged. The trial court found that State Farm had a right to rely on that certification. (R. at 273.)

John had, in fact, established financial responsibility through the purchase of an automobile liability insurance policy. Eventually, the financial responsibility requirements were satisfied through the purchase of the Progressive policy. The trial court found that John had, in fact, “purchased automobile liability insurance to satisfy the owner’s or operator’s security requirements of Utah Code Annotated section 41-12a-301 and such security was in effect.” (R. at 273.) The trial court correctly reached this conclusion.

Utah Code Annotated section 41-12a-103 states:

(9) “Owner’s or operator’s security,” “owner’s security, or “operator’s security” means any of the following:

- i. an insurance policy or combination of policies conforming to Section 31A-22-302, which is issued by an insurer authorized to do business in Utah . . .

The purchase of the policy (eventually, the Progressive policy) is an express method of satisfying the financial responsibility requirement, if the policy conforms to Utah Code Annotated section 31A-22-302. Those requirements are very specific as to what coverage must be afforded. If the policy is an owner’s policy,¹⁴ the policy needs to extend liability

¹⁴An “owner’s policy” provides coverage for a vehicle - and certain persons who operate that vehicle; i.e., the person named in the policy and any other person using any

insurance coverage to the use of certain identified vehicles.

These policies also are required to:

1) name the motor vehicle owner or operator in whose name the policy was purchased;

The Progressive policy identified the owner or operator as John Calhoun; (R. at 67)

2) state the named insured's address;

The Progressive policy showed the insured's address as: 195 East 5th Ave #A, Dugway, Utah 84022; (R. at 67)

3) identify the coverage afforded;

The Progressive policy (R. at 67) generally, provided liability coverage (R. at 81-84), personal injury protection (R. at 85 - 88), and uninsured/underinsured motorist coverage (R. at 89 - 94);

4) identify the premium charged;

The Progressive policy identifies the premium as \$677.00; (R. at 67)

5) set forth the policy period ;

The Progressive policy sets forth the policy period as: 08-28-1998 to 02-28-1999; (R. at 67), and

6) set forth the limits of liability.

The Progressive policy sets forth the limits as: \$25,000/50,000 per person; \$3,000 PIP; \$25,000/50,000 UM/UIM; (R. at 67).

UTAH CODE ANN. §31A-22-303(1)(a).

In addition, an "owner's policy" is required to

named motor vehicle with the express or implied permission of the named insured and "household members." UTAH CODE ANN. §31A-22-303(1)(a)(ii)(A). An "operator's policy" insures the person named as insured against loss from the liability imposed upon him by law for damage arising out of the insured's use of any motor vehicle not owned by him. UTAH CODE ANN. §31A-22-303(1)(a)(ii)(B).

a) designate by appropriate reference all the motor vehicles on which coverage is granted ;

The Progressive policy designates the motor vehicle as: 1987 Suzuk Samurai; (R. at 67)

b) insure the person named in the policy;

The Progressive policy names John Calhoun; (R. at 67)

c) insure any other person using any named motor vehicle with the express or implied permission of the named insured, and,

The Progressive policy extends coverage to: "... any person with respect to an accident arising out of that person's use of a covered vehicle with the express or implied permission of you or a relative."; (R. at 81)

d) ***except as provided in Subsection (7), insure any person (including a household member) against loss from the liability imposed by law for damages arising out of the ownership, maintenance, or use of the described motor vehicles within the United States and Canada in amounts not less than the minimum limits specified in Section 31A-22-304***

The Progressive policy extends coverage to: "... any person with respect to an accident arising out of that person's use of a covered vehicle with the express or implied permission of you or a relative." (R. at 81)

An owner's policy is not required or intended to extend insurance coverage for the insured's use of any vehicle at any time. Rather, the owner's policy extends coverage specifically to the insured's use of the owned motor vehicle and extends coverage to the permissive use of the described vehicle to certain other individuals, including (unless excepted) household members. The Progressive policy meets the statutorily imposed coverage. The fact that the Progressive policy did not extend coverage to a particular accident does not mean that it did not satisfy the financial responsibility requirements mandated by statute.

However, having complied with the minimum requirements of Utah Code Annotated section 31A-22-302, a policy may (but need not) grant any lawful coverage *in addition to* the required motor vehicle liability coverage. If additional coverage is granted, such coverage may be restricted as contractually bargained for between the parties.

Here, although the Progressive policy extended coverage as required by Utah law, it also provided (without requirement to do so) additional coverage for the insured's use of certain other vehicles. The Progressive policy excluded coverage for "bodily injury or property damage resulting from the operation or use of a vehicle owned by you or a relative, other than a covered vehicle¹⁵." (R. at 83, exclusion 12.) Progressive was entitled to restrict this additional coverage. Such a restriction, however, does not mean that the financial responsibility requirements were not met.

**THE STATE FARM EXCLUDED DRIVER AGREEMENT IS NOT INVALID
EVEN THOUGH THE PROGRESSIVE POLICY DOES NOT EXTEND COVERAGE**

Calhouns urge this Court to hold that, if the Progressive policy properly excluded coverage to John's operation of the Jeep, the State Farm exclusion (which is specifically authorized by statute) is invalid. Besides going well beyond the statute (which only requires that the excluded driver satisfy the owner's or operator's security requirements independently from the named insured's proof of financial responsibility) such a holding would mean, of course, that John was excluded from coverage for his operation of the Jeep, except when he in fact operated the Jeep. Any other vehicle he operated would have coverage extended by the Progressive policy. The State Farm policy would not, in those circumstances, extend coverage to any vehicle John operated, except the Jeep. This holding would undermine the very intent of the Driver Exclusion.

The better reasoned analysis would be that the State Farm policy properly excluded coverage to any vehicle (including the Jeep) when it was operated by John. No coverage was afforded by the State Farm policy for John's use of any vehicle at any time. He was specifically excluded from the State Farm policy.

¹⁵The rationale for such an exclusion is easy to understand. If coverage were extended to the insured's use of any vehicle not owned by him - and did not exclude the extension of coverage to vehicles owned by his household members - he could insure only one vehicle and drive all others without having to obtain insurance on those vehicles.

John satisfied the financial responsibility requirement through the purchase of the Progressive policy, which policy did extend the coverage mandated by law - even if it did not extend coverage to the accident which is the subject of this matter.

CONCLUSION


Utah law allows for a Driver Exclusion to a household member who has a poor driving record. The legislative intent behind such an exclusion is to allow families who have a poor driver to continue to have affordable insurance, by excluding the poor driver.

John Calhoun was properly excluded from the State Farm policy. He certified that he had established financial responsibility which complied with the Financial Responsibility laws. He had obtained financial responsibility by the purchase of the Progressive owner's policy. Progressive's policy did, in fact, comply with the Financial Responsibility laws.

The Driver Exclusion issued by State Farm was clear, plain, and unambiguous. The Driver Exclusion excluded coverage to John under the State Farm policy for his operation of the Jeep. Therefore, this Court should affirm the lower court's grant of Summary Judgment

RESPECTFULLY SUBMITTED this 20th day of June, 2003.

SMITH & GLAUSER, P.C.

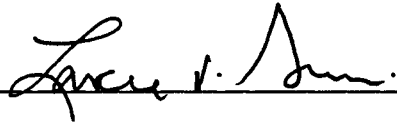

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CERTIFICATE OF SERVICE

I hereby certify that two true and correct copies of the foregoing Brief of Appellee was mailed first class mail, postage prepaid, this 28th day of June, 2003, to the following:

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*** ARCHIVE DATA ***

*** THIS SECTION CURRENT THROUGH THE 1998 SUPPLEMENT ***
*** (1998 GENERAL SESSION) ***

TITLE 31A. INSURANCE CODE
CHAPTER 1. GENERAL PROVISIONS
PART 1. PURPOSES, SCOPE, AND APPLICATION

Utah Code Ann. § **31A-1-103** (1998)

§ **31A-1-103**. Scope and applicability of title

(1) This title does not apply to:

(a) retainer contracts made by attorneys-at-law with individual clients with fees based on estimates of the nature and amount of services to be provided to the specific client, and similar contracts made with a group of clients involved in the same or closely related legal matters;

(b) arrangements for providing benefits that do not exceed a limited amount of consultations, advice on simple legal matters, either alone or in combination with referral services, or the promise of fee discounts for handling other legal matters;

(c) limited legal assistance on an informal basis involving neither an express contractual obligation nor reasonable expectations, in the context of an employment, membership, educational, or similar relationship; or

(d) legal assistance by employee organizations to their members in matters relating to employment.

(2) This title restricts otherwise legitimate business activity. What this title does not prohibit is permitted unless contrary to other provisions of Utah law.

(3) Except as otherwise expressly provided, this title does not apply to:

(a) those activities of an insurer where state jurisdiction is preempted by Section 514 of the federal Employee Retirement Income Security Act of 1974, as amended;

(b) ocean marine insurance;

(c) death and disability benefits provided by an organization where the principal purpose is to achieve charitable, educational, social, or religious objectives rather than to provide death

and disability benefits, if the organization does not incur a legal obligation to pay a specified amount and does not create reasonable expectations of receiving a specified amount on the part of an insured person;

(d) other business specified in rules adopted by the commissioner on a finding that the transaction of such business in this state does not require regulation for the protection of the interests of the residents of this state or on a finding that it would be impracticable to require compliance with this title;

(e) (i) transactions independently procured through negotiations under Section 31A-15-104;

(ii) however, the transactions described in Subsection (i) are subject to taxation under Section 31A-3-301;

(f) self-insurance;

(g) reinsurance;

(h) subject to Subsection (4), employee and labor union group or blanket insurance covering risks in this state if:

(i) the policyholder exists primarily for purposes other than to procure insurance;

(ii) the policyholder is not a resident of this state or a domestic corporation or does not have its principal office in this state;

(iii) no more than 25% of the certificate holders or insureds are residents of this state;

(iv) on request of the commissioner, the insurer files with the department a copy of the policy and a copy of each form or certificate; and

(v) the insurer agrees to pay premium taxes on the Utah portion of its business, as if it were authorized to do business in this state, and if the insurer provides the commissioner with the security the commissioner considers necessary for the payment of premium taxes under Title 59, Chapter 9, Taxation of Admitted Insurers;

(i) manufacturer's warranties issued in the ordinary course of sale;

(j) manufacturer's warranties or service contracts paid for with separate or additional consideration; or

(k) service contracts paid for with separate or additional consideration, issued in the ordinary course of sale, that are for the repair or maintenance of goods, other than motor vehicles, having a purchase price of \$3,000 or less.

(4) After a hearing, the commissioner may order an insurer of certain group or blanket contracts to transfer the Utah portion of the business otherwise exempted under Subsection (3)(h) to an authorized insurer if the contracts have been written by an unauthorized insurer. If the commissioner finds that the conditions required for the exemption of a group or blanket insurer are not satisfied or that adequate protection to residents of this state is not provided, he may require the insurer to be authorized to do business in this state or require that any of the insurer's transactions be subject to this title.

HISTORY: C. 1953, **31A-1-103**, enacted by L. 1985, ch. 242, § 6; 1986, ch. 204, § 2; 1987, ch. 2, § 15; 1987, ch. 91, § 1; 1989, ch. 68, § 1; 1989, ch. 182, § 1; 1990, ch. 327, §

*** ARCHIVE DATA ***

*** THIS SECTION CURRENT THROUGH THE 1998 SUPPLEMENT ***
*** (1998 GENERAL SESSION) ***

TITLE 31A. INSURANCE CODE
CHAPTER 22. CONTRACTS IN SPECIFIC LINES
PART 3. MOTOR VEHICLE INSURANCE

Utah Code Ann. § **31A-22-302** (1998)

§ **31A-22-302**. Required components of motor vehicle insurance policies -- Exceptions

(1) Every policy of insurance or combination of policies purchased to satisfy the owner's or operator's security requirement of Section 41-12a-301 shall include:

(a) motor vehicle liability coverage under Sections 31A-22-303 and 31A-22-304;

(b) uninsured motorist coverage under Section 31A-22-305, unless affirmatively waived under Subsection 31A-22-305(4); and

(c) underinsured motorist coverage under Section 31A-22-305, unless affirmatively waived under Subsection 31A-22-305(8)(c).

(2) Every policy of insurance or combination of policies, purchased to satisfy the owner's or operator's security requirement of Section 41-12a-301, except for motorcycles, trailers, and semitrailers, shall also include personal injury protection under Sections 31A-22-306 through 31A-22-309.

(3) First party medical coverages may be offered or included in policies issued to motorcycle, trailer, and semitrailer owners or operators. Owners and operators of motorcycles, trailers, and semitrailers are not covered by personal injury protection coverages in connection with injuries incurred while operating any of these vehicles.

HISTORY: C. 1953, **31A-22-302**, enacted by L. 1985, ch. 242, § 27; 1987, ch. 183, § 1; 1992, ch. 132, § 1.

NOTES TO DECISIONS

ANALYSIS

Liability of county.

Uninsured motorist coverage.

-- Exclusionary clause.

*** ARCHIVE DATA ***

*** THIS SECTION CURRENT THROUGH THE 1998 SUPPLEMENT ***
*** (1998 GENERAL SESSION) ***

TITLE 31A. INSURANCE CODE
CHAPTER 22. CONTRACTS IN SPECIFIC LINES
PART 3. MOTOR VEHICLE INSURANCE

Utah Code Ann. § 31A-22-303 (1998)

§ 31A-22-303. Motor vehicle liability coverage

(1) (a) In addition to complying with the requirements of Chapter 21 and Part II of Chapter 22, a policy of motor vehicle liability coverage under Subsection 31A-22-302(1)(a) shall:

(i) name the motor vehicle owner or operator in whose name the policy was purchased, state that named insured's address, the coverage afforded, the premium charged, the policy period, and the limits of liability;

(ii) (A) if it is an owner's policy, designate by appropriate reference all the motor vehicles on which coverage is granted, insure the person named in the policy, insure any other person using any named motor vehicle with the express or implied permission of the named insured, and, except as provided in Subsection (7), insure any person included in Subsection (1)(a) (iii) against loss from the liability imposed by law for damages arising out of the ownership, maintenance, or use of these motor vehicles within the United States and Canada, subject to limits exclusive of interest and costs, for each motor vehicle, in amounts not less than the minimum limits specified under Section 31A-22-304; or

(B) if it is an operator's policy, insure the person named as insured against loss from the liability imposed upon him by law for damages arising out of the insured's use of any motor vehicle not owned by him, within the same territorial limits and with the same limits of liability as in an owner's policy under Subsection (1)(ii)(A);

(iii) except as provided in Subsection (7), insure persons related to the named insured by blood, marriage, adoption, or guardianship who are residents of the named insured's household, including those who usually make their home in the same household but temporarily live elsewhere, to the same extent as the named insured; and

(iv) cover damages or injury resulting from a covered driver of a motor vehicle who is stricken by an unforeseeable paralysis, seizure, or other unconscious condition and who is not reasonably aware that paralysis, seizure, or other unconscious condition is about to occur to the extent that a person of ordinary prudence would not attempt to continue driving.

(b) The driver's liability under Subsection (1)(a)(iv) is limited to the insurance coverage.

(2) (a) A policy containing motor vehicle liability coverage under Subsection 31A-22-302(1)

(a) may:

(i) provide for the prorating of the insurance under that policy with other valid and collectible insurance;

(ii) grant any lawful coverage in addition to the required motor vehicle liability coverage;

(iii) if the policy is issued to a person other than a motor vehicle business, limit the coverage afforded to a motor vehicle business or its officers, agents, or employees to the minimum limits under Section 31A-22-304, and to those instances when there is no other valid and collectible insurance with at least those limits, whether the other insurance is primary, excess, or contingent; and

(iv) if issued to a motor vehicle business, restrict coverage afforded to anyone other than the motor vehicle business or its officers, agents, or employees to the minimum limits under Section 31A-22-304, and to those instances when there is no other valid and collectible insurance with at least those limits, whether the other insurance is primary, excess, or contingent.

(b) (i) The liability insurance coverage of a permissive user of a motor vehicle owned by a motor vehicle business shall be primary coverage.

(ii) The liability insurance coverage of a motor vehicle business shall be secondary to the liability insurance coverage of a permissive user as specified under Subsection (2)(b)(i).

(3) Motor vehicle liability coverage need not insure any liability:

(a) under any workers' compensation law under Title 34A;

(b) resulting from bodily injury to or death of an employee of the named insured, other than a domestic employee, while engaged in the employment of the insured, or while engaged in the operation, maintenance, or repair of a designated vehicle; or

(c) resulting from damage to property owned by, rented to, bailed to, or transported by the insured.

(4) An insurance carrier providing motor vehicle liability coverage has the right to settle any claim covered by the policy, and if the settlement is made in good faith, the amount of the settlement is deductible from the limits of liability specified under Section 31A-22-304.

(5) A policy containing motor vehicle liability coverage imposes on the insurer the duty to defend, in good faith, any person insured under the policy against any claim or suit seeking damages which would be payable under the policy.

(6) (a) If a policy containing motor vehicle liability coverage provides an insurer with the defense of lack of cooperation on the part of the insured, that defense is not effective against a third person making a claim against the insurer, unless there was collusion between the third person and the insured.

(b) If the defense of lack of cooperation is not effective against the claimant, after payment, the insurer is subrogated to the injured person's claim against the insured to the

person has been made whole with respect to the claim against the insured.

(7) A policy of motor vehicle liability coverage under Subsection 31A-22-302(1) may specifically exclude from coverage a person who is a resident of the named insured's household, including a person who usually makes his home in the same household but temporarily lives elsewhere, if each person excluded from coverage satisfies the owner's or operator's security requirement of Section 41-12a-301, independently of the named insured's proof of owner's or operator's security.

HISTORY: C. 1953, **31A-22-303**, enacted by L. 1985, ch. 242, § 27; 1986, ch. 204, § 156; 1988, ch. 215, § 1; 1996, ch. 240, § 11; 1997, ch. 375, § 13; 1998, ch. 181, § 1; 1998, ch. 325, § 1.

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*** (1998 GENERAL SESSION) ***

TITLE 31A. INSURANCE CODE
CHAPTER 22. CONTRACTS IN SPECIFIC LINES
PART 3. MOTOR VEHICLE INSURANCE

Utah Code Ann. § 31A-22-304 (1998)

§ 31A-22-304. Motor vehicle liability policy minimum limits

Policies containing motor vehicle liability coverage may not limit the insurer's liability under that coverage below the following:

(1) (a) \$25,000 because of liability for bodily injury to or death of one person, arising out of the use of a motor vehicle in any one accident;

(b) subject to the limit for one person in Subsection (a), in the amount of \$50,000 because of liability for bodily injury to or death of two or more persons arising out of the use of a motor vehicle in any one accident; and

(c) in the amount of \$15,000 because of liability for injury to, or destruction of, property of others arising out of the use of a motor vehicle in any one accident; or

(2) \$65,000 in any one accident whether arising from bodily injury to or the death of others, or from destruction of, or damage to, the property of others.

HISTORY: C. 1953, **31A-22-304**, enacted by L. 1985, ch. 242, § 27; 1992, ch. 132, § 2; 1993, ch. 271, § 1.

NOTES TO DECISIONS

ANALYSIS

Liability of county.

Liability of self-insurers.

Step-down coverage.

Cited.

LIABILITY OF COUNTY.

Liability of county, as self-insurer of own vehicles operated by permissive users, under former law. See Foster v. Salt Lake County, 712 P.2d 224 (Utah 1985).

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TITLE 31A. INSURANCE CODE
CHAPTER 22. CONTRACTS IN SPECIFIC LINES
PART 3. MOTOR VEHICLE INSURANCE

Utah Code Ann. § 31A-22-305 (1998)

§ 31A-22-305. Uninsured and underinsured motorist coverage

(1) As used in this section, "covered persons" includes:

(a) the named insured;

(b) persons related to the named insured by blood, marriage, adoption, or guardianship, who are residents of the named insured's household, including those who usually make their home in the same household but temporarily live elsewhere;

(c) any person occupying or using a motor vehicle referred to in the policy or owned by a self-insurer; and

(d) any person who is entitled to recover damages against the owner or operator of the uninsured or underinsured motor vehicle because of bodily injury to or death of persons under Subsection (1)(a), (b), or (c).

(2) As used in this section, "uninsured motor vehicle" includes:

(a) (i) a vehicle, the operation, maintenance, or use of which is not covered under a liability policy at the time of an injury-causing occurrence; or

(ii) (A) a vehicle covered with lower liability limits than required by Section 31A-22-304;

(B) the vehicle described in Subsection (2)(a)(ii)(A) is uninsured to the extent of the deficiency;

(b) an unidentified vehicle that left the scene of an accident proximately caused by the vehicle operator; or

(c) (i) an insured vehicle if, before or after the accident, the liability insurer of the vehicle is declared insolvent by a court of competent jurisdiction;

(ii) the vehicle described in Subsection (2)(c)(i) is uninsured only to the extent that the claim against the insolvent insurer is not paid by a guaranty association or fund.

(3) Uninsured motorist coverage under Subsection 31A-22-302(1)(b) provides coverage for covered persons who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness, disease, or death in limits that at least equal the minimum bodily injury limits for motor vehicle liability policies under Section 31A-22-304.

(4) (a) Except as provided in Subsection (4)(b), the named insured may reject uninsured motorist coverage by an express writing to the insurer that provides liability coverage under Subsection 31A-22-302(1)(a). This rejection continues for that issuer of the liability coverage until the insured in writing requests uninsured motorist coverage from that liability insurer.

(b) All persons, including governmental entities, that are engaged in the business of, or that accept payment for, transporting natural persons by motor vehicle, and all school districts that provide transportation services for their students, shall provide coverage for all vehicles used for that purpose, by purchase of a policy of insurance or by self-insurance, uninsured motorist coverage of at least \$25,000 per person and \$500,000 per accident.

(i) This coverage is secondary to any other insurance covering an injured covered person.

(ii) This coverage does not apply to an employee, who is injured by an uninsured motorist, whose exclusive remedy is provided by Title 34A, Chapter 2, Workers' Compensation Act.

(c) As used in this subsection:

(i) "Governmental entity" has the same meaning as under Section 63-30-2.

(ii) "Motor vehicle" has the same meaning as under Section 41-1a-102.

(5) When a covered person alleges that an uninsured motor vehicle under Subsection (2)(b) proximately caused an accident without touching the covered person or the vehicle occupied by the covered person, the covered person must show the existence of the uninsured motor vehicle by clear and convincing evidence consisting of more than the covered person's testimony.

(6) (a) The limit of liability for uninsured motorist coverage for two or more motor vehicles may not be added together, combined, or stacked to determine the limit of insurance coverage available to an injured person for any one accident.

(b) (i) Subsection (a) applies to all persons except a covered person as defined under Subsection (7)(b)(ii).

(ii) A covered person as defined under Subsection (7)(b)(ii) is entitled to the highest limits of uninsured motorist coverage afforded for any one vehicle that the covered person is the named insured or an insured family member.

(iii) This coverage shall be in addition to the coverage on the vehicle the covered person is occupying.

(iv) Neither the primary nor the secondary coverage may be set off against the other.

(c) Coverage on a motor vehicle occupied at the time of an accident shall be primary coverage, and the coverage elected by a person described under Subsections (1)(a) and (b) shall be secondary coverage.

(7) (a) Uninsured motorist coverage under this section applies to bodily injury, sickness, disease, or death of covered persons while occupying or using a motor vehicle only if the motor vehicle is described in the policy under which a claim is made, or if the motor vehicle is a newly acquired or replacement vehicle covered under the terms of the policy. Except as provided in Subsection (6) or (7), a covered person injured in a vehicle described in a policy that includes uninsured motorist benefits may not elect to collect uninsured motorist coverage benefits from any other motor vehicle insurance policy under which he is a covered person.

(b) Each of the following persons may also recover uninsured motorist benefits under any other policy in which they are described as a "covered person" as defined in Subsection (1):

(i) a covered person injured as a pedestrian by an uninsured motor vehicle; and

(ii) a covered person injured while occupying or using a motor vehicle that is not owned by, furnished, or available for the regular use of the covered person, the covered person's resident spouse, or the covered person's resident relative.

(c) A covered person in Subsection (7)(b) is not barred against making subsequent elections if recovery is unavailable under previous elections.

(8) (a) As used in this section, "underinsured motor vehicle" includes a vehicle, the operation, maintenance, or use of which is covered under a liability policy at the time of an injury-causing occurrence, but which has insufficient liability coverage to compensate fully the injured party for all special and general damages.

(b) The term "underinsured motor vehicle" does not include:

(i) a motor vehicle that is covered under the liability coverage of the same policy that also contains the underinsured motorist coverage; or

(ii) an uninsured motor vehicle as defined in Subsection (2).

(9) (a) Underinsured motorist coverage under Subsection 31A-22-302(1)(c) provides coverage for covered persons who are legally entitled to recover damages from owners or operators of underinsured motor vehicles because of bodily injury, sickness, disease, or death in limits of at least \$10,000 for one person in any one accident, and at least \$20,000 for two or more persons in any one accident.

(b) The named insured's underinsured motorist coverage, as described in Subsection (9) (a), is secondary to the liability coverage of an owner or operator of an underinsured motor vehicle, as described in Subsection (8). Underinsured motorist coverage may not be set off against the liability coverage of the owner or operator of an underinsured motor vehicle, but shall be added to, combined with, or stacked upon the liability coverage of the owner or operator of the underinsured motor vehicle to determine the limit of coverage available to the injured person.

(c) (i) For new policies or contracts written after January 1, 1993, a named insured may reject underinsured motorist coverage by an express writing to the insurer that provides liability coverage under Subsection 31A-22-302(1)(a). This rejection continues for that issuer of the liability coverage until the insured in writing requests underinsured motorist coverage

(ii) In conjunction with the first three renewal notices sent after January 1, 1993, for policies existing on that date, the insurer shall notify the insured of the availability of underinsured motorist coverage along with estimated ranges of premiums for the coverage. The department shall provide standard language to be used by insurers to fulfill the insurers' duty under this subsection.

(10) (a) Underinsured motorist coverage under this section applies to bodily injury, sickness, disease, or death of an insured while occupying or using a motor vehicle owned by, furnished, or available for the regular use of the insured, a resident spouse, or resident relative of the insured, only if the motor vehicle is described in the policy under which a claim is made, or if the motor vehicle is a newly acquired or replacement vehicle covered under the terms of the policy. Except as provided in Subsection (10), a covered person injured in a vehicle described in a policy that includes underinsured motorist benefits may not elect to collect underinsured motorist coverage benefits from any other motor vehicle insurance policy under which he is a named insured.

(b) (i) The limit of liability for underinsured motorist coverage for two or more motor vehicles may not be added together, combined, or stacked to determine the limit of insurance coverage available to an injured person for any one accident.

(ii) Subsection (10)(b)(i) applies to all persons except a covered person as defined under Subsection (10)(c)(i)(B).

(iii) Coverage on a motor vehicle occupied at the time of an accident shall be primary coverage, and the coverage elected by a person described under Subsections (1)(a) and (b) shall be secondary coverage.

(c) (i) Each of the following persons may also recover underinsured motorist coverage benefits under any other policy in which they are described as a "covered person" as defined under Subsection (1):

(A) a covered person injured as a pedestrian by an underinsured motor vehicle; or

(B) a covered person injured while occupying or using a motor vehicle that is not owned by, furnished, or available for the regular use of the covered person, the covered person's resident spouse, or the covered person's resident relative.

(ii) This coverage shall only be available as a secondary source of coverage.

(iii) A covered person as defined under Subsection (10)(c)(i)(B) is entitled to the highest limits of underinsured motorist coverage afforded for any one vehicle that the covered person is the named insured or an insured family member.

(iv) This coverage shall be in addition to the coverage on the vehicle the covered person is occupying.

(v) Neither the primary nor the secondary coverage may be set off against the other.

(d) A covered injured person is not barred against making subsequent elections if recovery is unavailable under previous elections.

HISTORY: C. 1953, **31A-22-305**, enacted by L. 1985, ch. 242, § 27; 1986, ch. 204, § 157; 1987, ch. 162, § 1; 1992, ch. 1, § 4; 1992, ch. 132, § 3; 1993, ch. 271, § 2; 1994, ch. 316, § 15; 1995, ch. 294, § 1; 1996, ch. 240, § 12; 1997, ch. 375, § 14.

NOTES:

AMENDMENT NOTES. --The 1994 amendment, effective May 2, 1994, added Subsection (8)(b)(i) and the (8)(b)(ii) designation and made related and other stylistic changes.

The 1995 amendment, effective May 1, 1995, designated Subsection (6)(a) and added Subsections (6)(b) and (6)(c); substituted "Subsection (6) or (7)" for "Subsection (7)(b)" in the second sentence of Subsection (7)(a); added Subsections (10)(b)(ii) through (c)(v) and made related changes; redesignated former Subsection (10)(c) as (10)(d) and deleted the first sentence authorizing elections of underinsured motorist coverage under specified circumstances; and made stylistic changes.

The 1996 amendment, effective July 1, 1997, substituted "Title 35A, Chapter 3" for "Title 35, Chapter 1" in Subsection (4)(b)(ii) and added "(10)" in Subsections (10)(b)(ii) and (10)(c)(iii).

The 1997 amendment, effective July 1, 1997, substituted "Title 34A, Chapter 2" for "Title 35A, Chapter 3" in Subsection (4)(b)(ii).

Utah Code Ann. § 31A-22-306

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TITLE 31A. INSURANCE CODE
CHAPTER 22. CONTRACTS IN SPECIFIC LINES
PART 3. MOTOR VEHICLE INSURANCE

Utah Code Ann. § **31A-22-306** (1998)

§ **31A-22-306**. Personal injury protection

Personal injury protection under Subsection 31A-22-302(2) provides the coverages and benefits described under Section 31A-22-307 to persons described under Section 31A-22-308, but is subject to the limitations, exclusions, and conditions set forth in Section 31A-22-309.

HISTORY: C. 1953, **31A-22-306**, enacted by L. 1985, ch. 242, § 27; 1986, ch. 204, § 158.

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TITLE 31A. INSURANCE CODE
CHAPTER 22. CONTRACTS IN SPECIFIC LINES
PART 3. MOTOR VEHICLE INSURANCE

Utah Code Ann. § **31A-22-307** (1998)

§ **31A-22-307**. Personal injury protection coverages and benefits

(1) Personal injury protection coverages and benefits include:

(a) the reasonable value of all expenses for necessary medical, surgical, X-ray, dental, rehabilitation, including prosthetic devices, ambulance, hospital, and nursing services, not to exceed a total of \$3,000 per person;

(b) (i) the lesser of \$250 per week or 85% of any loss of gross income and loss of earning capacity per person from inability to work, for a maximum of 52 consecutive weeks after the loss, except that this benefit need not be paid for the first three days of disability, unless the disability continues for longer than two consecutive weeks after the date of injury; and

(ii) a special damage allowance not exceeding \$20 per day for a maximum of 365 days, for services actually rendered or expenses reasonably incurred for services that, but for the injury, the injured person would have performed for his household, except that this benefit need not be paid for the first three days after the date of injury unless the person's inability to perform these services continues for more than two consecutive weeks;

(c) funeral, burial, or cremation benefits not to exceed a total of \$1,500 per person; and

(d) compensation on account of death of a person, payable to his heirs, in the total of \$3,000.

(2) (a) To determine the reasonable value of the medical expenses provided for in Subsection (1) and under Subsection 31A-22-309(1)(e), the commissioner shall conduct a relative value study of services and accommodations for the diagnosis, care, recovery, or rehabilitation of an injured person in the most populous county in the state to assign a unit value and determine the 75th percentile charge for each type of service and accommodation. The study shall be updated every other year. In conducting the study, the department may consult or contract with appropriate public and private medical and health agencies or other technical experts. The costs and expenses incurred in conducting, maintaining, and administering the

relative value study shall be funded by the tax created under Section 59-9-105. Upon completion of the study, the department shall prepare and publish a relative value study which sets forth the unit value and the 75th percentile charge assigned to each type of service and accommodation.

(b) The reasonable value of any service or accommodation is determined by applying the unit value and the 75th percentile charge assigned to the service or accommodation under the relative value study. If a service or accommodation is not assigned a unit value or the 75th percentile charge under the relative value study, the value of the service or accommodation shall equal the reasonable cost of the same or similar service or accommodation in the most populous county of this state.

(c) This subsection does not preclude the department from adopting a schedule already established or a schedule prepared by persons outside the department, if it meets the requirements of this subsection.

(d) Every insurer shall report to the Commissioner of Insurance any patterns of overcharging, excessive treatment, or other improper actions by a health provider within 30 days after such insurer has knowledge of such pattern.

(e) In disputed cases, a court on its own motion or on the motion of either party may designate an impartial medical panel of not more than three licensed physicians to examine the claimant and testify on the issue of the reasonable value of the claimant's medical services or expenses.

(3) Medical expenses as provided for in Subsection (1)(a) and in Subsection 31A-22-309(1) (e) include expenses for any nonmedical remedial care and treatment rendered in accordance with a recognized religious method of healing.

(4) The insured may waive for the named insured and the named insured's spouse only the loss of gross income benefits of Subsection (1)(b)(i) if the insured states in writing that:

(a) within 31 days of applying for coverage, neither the insured nor the insured's spouse received any earned income from regular employment; and

(b) for at least 180 days from the date of the writing and during the period of insurance, neither the insured nor the insured's spouse will receive earned income from regular employment.

(5) This section does not prohibit the issuance of policies of insurance providing coverages greater than the minimum coverage required under this chapter nor does it require the segregation of those minimum coverages from other coverages in the same policy.

(6) Deductibles are not permitted with respect to the insurance coverages required under this section.

HISTORY: C. 1953, **31A-22-307**, enacted by L. 1985, ch. 242, § 27; 1986, ch. 204, § 159; 1989, ch. 261, § 13; 1990, ch. 327, § 8; 1991, ch. 74, § 7; 1994, ch. 71, § 1.

NOTES:

AMENDMENT NOTES. --The 1994 amendment, effective May 2, 1994, added Subsection (4), renumbering former Subsections (4) and (5) as Subsections (5) and (6).

NOTES TO DECISIONS

Utah Code Ann. § 31A-22-308

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TITLE 31A. INSURANCE CODE
CHAPTER 22. CONTRACTS IN SPECIFIC LINES
PART 3. MOTOR VEHICLE INSURANCE

Utah Code Ann. § **31A-22-308** (1998)

§ **31A-22-308**. Persons covered by personal injury protection

The following may receive benefits under personal injury protection coverage:

(1) the named insured, when injured in an accident involving any motor vehicle, regardless of whether the accident occurs in this state, the United States, its territories or possessions, or Canada, except where the injury is the result of the use or operation of the named insured's own motor vehicle not actually insured under the policy;

(2) persons related to the insured by blood, marriage, adoption, or guardianship who are residents of the insured's household, including those who usually make their home in the same household but temporarily live elsewhere under the circumstances described in Section (1), except where the person is injured as a result of the use or operation of his own motor vehicle not insured under the policy; and

(3) any other natural person whose injuries arise out of an automobile accident occurring while the person occupies a motor vehicle described in the policy with the express or implied consent of the named insured or while a pedestrian if he is injured in an accident occurring in Utah involving the described motor vehicle.

HISTORY: C. 1953, **31A-22-308**, enacted by L. 1985, ch. 242, § 27; 1990, ch. 327, § 9.

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PART 3. MOTOR VEHICLE INSURANCE

Utah Code Ann. § 31A-22-309 (1998)

§ 31A-22-309. Limitations, exclusions, and conditions to personal injury protection

(1) A person who has or is required to have direct benefit coverage under a policy which includes personal injury protection may not maintain a cause of action for general damages arising out of personal injuries alleged to have been caused by an automobile accident, except where the person has sustained one or more of the following:

- (a) death;
- (b) dismemberment;
- (c) permanent disability or permanent impairment based upon objective findings;
- (d) permanent disfigurement; or
- (e) medical expenses to a person in excess of \$3,000.

(2) (a) Any insurer issuing personal injury protection coverage under this part may only exclude from this coverage benefits:

(i) for any injury sustained by the insured while occupying another motor vehicle owned by or furnished for the regular use of the insured or a resident family member of the insured and not insured under the policy;

(ii) for any injury sustained by any person while operating the insured motor vehicle without the express or implied consent of the insured or while not in lawful possession of the insured motor vehicle;

(iii) to any injured person, if the person's conduct contributed to his injury:

(A) by intentionally causing injury to himself; or

- (B) while committing a felony;
- (iv) for any injury sustained by any person arising out of the use of any motor vehicle while located for use as a residence or premises;
- (v) for any injury due to war, whether or not declared, civil war, insurrection, rebellion or revolution, or to any act or condition incident to any of the foregoing; or
- (vi) for any injury resulting from the radioactive, toxic, explosive, or other hazardous properties of nuclear materials.
- (b) The provisions of this subsection do not limit the exclusions which may be contained in other types of coverage.
- (3) The benefits payable to any injured person under Section **31A-22-307** are reduced by:
- (a) any benefits which that person receives or is entitled to receive as a result of an accident covered in this code under any workers' compensation or similar statutory plan; and
- (b) any amounts which that person receives or is entitled to receive from the United States or any of its agencies because that person is on active duty in the military service.
- (4) When a person injured is also an insured party under any other policy, including those policies complying with this part, primary coverage is given by the policy insuring the motor vehicle in use during the accident.
- (5) (a) Payment of the benefits provided for in Section **31A-22-307** shall be made on a monthly basis as expenses are incurred.
- (b) Benefits for any period are overdue if they are not paid within 30 days after the insurer receives reasonable proof of the fact and amount of expenses incurred during the period. If reasonable proof is not supplied as to the entire claim, the amount supported by reasonable proof is overdue if not paid within 30 days after that proof is received by the insurer. Any part or all of the remainder of the claim that is later supported by reasonable proof is also overdue if not paid within 30 days after the proof is received by the insurer.
- (c) If the insurer fails to pay the expenses when due, these expenses shall bear interest at the rate of 1 1/2% per month after the due date.
- (d) The person entitled to the benefits may bring an action in contract to recover the expenses plus the applicable interest. If the insurer is required by the action to pay any overdue benefits and interest, the insurer is also required to pay a reasonable attorney's fee to the claimant.
- (6) Every policy providing personal injury protection coverage is subject to the following:
- (a) that where the insured under the policy is or would be held legally liable for the personal injuries sustained by any person to whom benefits required under personal injury protection have been paid by another insurer, including the Workers' Compensation Fund of Utah, the insurer of the person who would be held legally liable shall reimburse the other insurer for the payment, but not in excess of the amount of damages recoverable; and
- (b) that the issue of liability for that reimbursement and its amount shall be decided by mandatory, binding arbitration between the insurers.

HISTORY: C. 1953, 31A-22-309, enacted by L. 1985, ch. 242, § 27; 1986, ch. 204, § 160; 1988 (2nd S.S.), ch. 10, § 10; 1991, ch. 74, § 8; 1992, ch. 230, § 9; 1994, ch. 4, § 1.

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TITLE 41. MOTOR VEHICLES
CHAPTER 12a. MOTOR VEHICLE FINANCIAL RESPONSIBILITY
PART 1. GENERAL PROVISIONS

Utah Code Ann. § 41-12a-103 (1998)

§ 41-12a-103. Definitions

As used in this chapter:

(1) "Department" means the Department of Public Safety.

(2) "Judgment" means any judgment that is final by:

(a) expiration without appeal of the time within which an appeal might have been perfected; or

(b) final affirmation on appeal, rendered by a court of competent jurisdiction of any state or of the United States, upon a cause of action for damages:

(i) arising out of the ownership, maintenance, or use of any motor vehicle, including damages for care and loss of services because of bodily injury to or death of any person, or because of injury to or destruction of property including the loss of use of the property; or

(ii) on a settlement agreement.

(3) "License" or "license certificate" have the same meanings as under Section 53-3-102.

(4) (a) "Motor vehicle" means every self-propelled vehicle that is designed for use upon a highway, including trailers and semitrailers designed for use with other motorized vehicles.

(b) "Motor vehicle" does not include traction engines, road rollers, farm tractors, tractor cranes, power shovels, and well drillers, and every vehicle that is propelled by electric power obtained from overhead wires but not operated upon rails.

(5) "Nonresident" means every person who is not a resident of Utah.

(6) "Nonresident's operating privilege" means the privilege conferred upon a person who is

not a resident of Utah by the laws of Utah pertaining to the operation by him of a motor vehicle, or the use of a motor vehicle owned by him, in Utah.

(7) "Operator" means every person who is in actual physical control of a motor vehicle.

(8) "Owner" means:

(a) a person who holds legal title to a motor vehicle;

(b) a lessee in possession;

(c) a conditional vendee or lessee if a motor vehicle is the subject of a conditional sale or lease with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession in the conditional vendee or lessee; or

(d) a mortgagor if a motor vehicle is the subject of a mortgage with the mortgagor entitled to possession.

(9) "Owner's or operator's security," "owner's security," or "operator's security" means any of the following:

(a) an insurance policy or combination of policies conforming to Section 31A-22-302, which is issued by an insurer authorized to do business in Utah;

(b) a surety bond issued by an insurer authorized to do a surety business in Utah in which the surety is subject to the minimum coverage limits and other requirements of policies conforming to Section 31A-22-302, which names the department as a creditor under the bond for the use of persons entitled to the proceeds of the bond;

(c) a deposit with the state treasurer of cash or securities complying with Section 41-12a-406;

(d) maintaining a certificate of self-funded coverage under Section 41-12a-407;

(e) a policy conforming to Section 31A-22-302 issued by the Risk Management Fund created in Section 63A-4-201.

(10) "Registration" means the issuance of the certificates and registration plates issued under the laws of Utah pertaining to the registration of motor vehicles.

(11) "Self-insurance" has the same meaning as provided in Section 31A-1-301.

HISTORY: C. 1953, **41-12a-103**, enacted by L. 1985, ch. 242, § 48; 1987, ch. 137, § 73; 1991, ch. 203, § 1; 1993, ch. 212, § 21; 1993, ch. 234, § 40.

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*** ARCHIVE DATA ***

*** THIS SECTION CURRENT THROUGH THE 1998 SUPPLEMENT ***
*** (1998 GENERAL SESSION) ***

TITLE 41. MOTOR VEHICLES
CHAPTER 12a. MOTOR VEHICLE FINANCIAL RESPONSIBILITY
PART 3. OWNER'S OR OPERATOR'S SECURITY REQUIREMENT

Utah Code Ann. § 41-12a-301 (1998)

§ 41-12a-301. Definition -- Requirement of owner's or operator's security -- Exceptions

(1) As used in this section, "highway" has the same meaning as provided in Section 41-1a-102.

(2) Except as provided in Subsection (5):

(a) every resident owner of a motor vehicle shall maintain owner's or operator's security in effect at any time that the motor vehicle is operated on a highway within the state; and

(b) every nonresident owner of a motor vehicle that has been physically present in this state for:

(i) 90 or fewer days during the preceding 365 days shall maintain the type and amount of owner's or operator's security required in his place of residence, in effect continuously throughout the period the motor vehicle remains within Utah; or

(ii) more than 90 days during the preceding 365 days shall thereafter maintain owner's or operator's security in effect continuously throughout the period the motor vehicle remains within Utah.

(3) (a) Except as provided in Subsection (5), the state and all of its political subdivisions and their respective departments, institutions, or agencies shall maintain owner's or operator's security in effect continuously for their motor vehicles.

(b) Any other state is considered a nonresident owner of its motor vehicles and is subject to Subsection (2)(b).

(4) The United States, any political subdivision of it, or any of its agencies may maintain owner's or operator's security in effect for their motor vehicles.

(5) Owner's or operator's security is not required for any of the following:

- (a) off-highway vehicles registered under Section 41-22-3 when operated either:
 - (i) on a highway designated as open for off-highway vehicle use; or
 - (ii) in the manner prescribed by Section 41-22-10.3;
- (b) off-highway implements of husbandry operated in the manner prescribed by Subsections 41-22-5.5(3) through (5);
- (c) electric assisted bicycles as defined under Section 41-6-1; or
- (d) motor assisted scooters as defined under Section 41-6-1.

HISTORY: C. 1953, **41-12a-301**, enacted by L. 1985, ch. 242, § 48; 1987, ch. 162, § 29; 1993, ch. 189, § 1; 1993, ch. 202, § 2; 1994, ch. 179, § 1; 1996, ch. 128, § 1; 1996, ch. 208, § 3; 1998, ch. 245, § 5.

Utah Code Ann. § 41-12a-401

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*** ARCHIVE DATA ***

*** THIS SECTION CURRENT THROUGH THE 1998 SUPPLEMENT ***
*** (1998 GENERAL SESSION) ***

TITLE 41. MOTOR VEHICLES
CHAPTER 12a. MOTOR VEHICLE FINANCIAL RESPONSIBILITY
PART 4. PROOF OF OWNER'S OR OPERATOR'S SECURITY

Utah Code Ann. § **41-12a-401** (1998)

§ **41-12a-401**. Means of providing proof of owner's or operator's security

(1) Whenever proof of owner's or operator's security is required under this chapter, it may be provided by filing with the department any of the following:

- (a) a certificate of insurance under Section 41-12a-402 or 41-12a-403;
- (b) a copy of a surety bond under Section 41-12a-405;
- (c) a certificate of deposit of money or securities issued by the state treasurer under Section 41-12a-406; or
- (d) a certificate of self-funded coverage under Section 41-12a-407.

(2) Whenever the term "proof of financial responsibility" is used in this title, it shall be read as "proof of owner's or operator's security."

HISTORY: C. 1953, **41-12a-401**, enacted by L. 1985, ch. 242, § 48; 1991, ch. 203, § 2.

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*** STATUTES CURRENT THROUGH THE 2002 6TH SPECIAL SESSION ***
*** ANNOTATIONS CURRENT THROUGH 2003 UT 1, 2003 UT APP 13 ***
*** AND JANUARY 17, 2003 (FEDERAL CASES) ***

TITLE 78. JUDICIAL CODE
PART I. COURTS
CHAPTER 2. SUPREME COURT

♦ **GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION**

Utah Code Ann. § 78-2-2 (2003)

§ 78-2-2. Supreme Court jurisdiction

(1) The Supreme Court has original jurisdiction to answer questions of state law certified by a court of the United States.

(2) The Supreme Court has original jurisdiction to issue all extraordinary writs and authority to issue all writs and process necessary to carry into effect its orders, judgments, and decrees or in aid of its jurisdiction.

(3) The Supreme Court has appellate jurisdiction, including jurisdiction of interlocutory appeals, over:

(a) a judgment of the Court of Appeals;

(b) cases certified to the Supreme Court by the Court of Appeals prior to final judgment by the Court of Appeals;

(c) discipline of lawyers;

(d) final orders of the Judicial Conduct Commission;

(e) final orders and decrees in formal adjudicative proceedings originating with:

(i) the Public Service Commission;

(ii) the State Tax Commission;

(iii) the School and Institutional Trust Lands Board of Trustees;

(iv) the Board of Oil, Gas, and Mining;

(v) the state engineer; or

(vi) the executive director of the Department of Natural Resources reviewing actions of the Division of Forestry, Fire and State Lands;

(f) final orders and decrees of the district court review of informal adjudicative proceedings of agencies under Subsection (3)(e);

(g) a final judgment or decree of any court of record holding a statute of the United States or this state unconstitutional on its face under the Constitution of the United States or the Utah Constitution;

(h) interlocutory appeals from any court of record involving a charge of a first degree or capital felony;

(i) appeals from the district court involving a conviction or charge of a first degree felony or capital felony;

(j) orders, judgments, and decrees of any court of record over which the Court of Appeals does not have original appellate jurisdiction; and

(k) appeals from the district court of orders, judgments, or decrees ruling on legislative subpoenas.

(4) The Supreme Court may transfer to the Court of Appeals any of the matters over which the Supreme Court has original appellate jurisdiction, except:

(a) capital felony convictions or an appeal of an interlocutory order of a court of record involving a charge of a capital felony;

(b) election and voting contests;

(c) reapportionment of election districts;

(d) retention or removal of public officers;

(e) matters involving legislative subpoenas; and

(f) those matters described in Subsections (3)(a) through (d).

(5) The Supreme Court has sole discretion in granting or denying a petition for writ of certiorari for the review of a Court of Appeals adjudication, but the Supreme Court shall review those cases certified to it by the Court of Appeals under Subsection (3)(b).

(6) The Supreme Court shall comply with the requirements of Title 63, Chapter 46b, Administrative Procedures Act, in its review of agency adjudicative proceedings.

HISTORY: C. 1953, **78-2-2**, enacted by L. 1986, ch. 47, § 41; 1987, ch. 161, § 303; 1988, ch. 248, § 5; 1989, ch. 67, § 1; 1992, ch. 127, § 11; 1994, ch. 191, § 2; 1995, ch. 267, § 5; 1995, ch. 299, § 46; 1996, ch. 159, § 18; 2001, ch. 302, § 1.

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SMITH & GLAUSER

2180 South 1300 East, Suite 600
Salt Lake City, Utah 84106
Telephone: (801) 466-4228

*Attorneys for Defendant State Farm
Mutual Automobile Insurance Co.*

FILED

MAY 14 2002

THIRD DISTRICT COURT
MURRAY DEPARTMENT

IN THE THIRD JUDICIAL DISTRICT COURT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

JIMMY CALHOUN and JOHN CALHOUN,

Plaintiffs,

v.

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY, and
PROGRESSIVE INSURANCE COMPANY,

Defendants.

JUDGMENT OF DISMISSAL WITH
PREJUDICE OF STATE FARM
MUTUAL AUTOMOBILE
INSURANCE COMPANY

Civil No. 000202450

Judge Joseph C. Fratto

State Farm Mutual Automobile Insurance Company's Motion for Summary Judgment, pursuant to Rule 56, Utah Rules of Civil Procedure, came on regularly for hearing on April 15, 2002. Lowell V. Smith appeared on behalf of State Farm Mutual Automobile Insurance Company. Joseph J. Joyce appeared on behalf of Progressive Insurance Company. Daniel F. Bertch appeared on behalf of Jimmy T. Calhoun and John C. Calhoun.

The Court, having reviewed the memoranda in support of and in opposition to State Farm Mutual Automobile Insurance Company's Motion for Summary Judgment, having

heard oral argument, and having concluded that there are no genuine issues of material fact in dispute, now issues the following Judgment of Dismissal with Prejudice of State Farm Mutual Automobile Insurance Company.

As agreed by the parties, this lawsuit arises from an automobile accident which occurred on December 19, 1998. At the time of the accident, Plaintiff John C. Calhoun was operating a 1989 Jeep Comanche owned by his father, Jimmy Calhoun. Jimmy Calhoun had insured the 1989 Jeep Comanche with a policy of automobile liability insurance issued by State Farm Mutual Automobile Insurance Company. Although John C. Calhoun resided with Jimmy Calhoun, he was excluded from the State Farm Mutual Automobile Insurance Company policy pursuant to a Driver Exclusion Agreement executed on November 13, 1996. That exclusion provided:

IN CONSIDERATION OF THE PREMIUM CHARGED FOR YOUR POLICY IT IS AGREED WE SHALL NOT BE LIABLE AND NO LIABILITY OR OBLIGATION OF ANY KIND SHALL ATTACH TO US FOR BODILY INJURY, LOSS OR DAMAGE UNDER ANY OF THE COVERAGES OF THE POLICY WHILE ANY MOTOR VEHICLE IS OPERATED BY John C. Calhoun.

The exclusion certified that John C. Calhoun had satisfied the owner's or operator's security requirement of Section 41-12a-301, independently of the named insured's proof of owner's or operator's security.

At the time the Driver Exclusion Agreement was executed, John C. Calhoun had purchased an automobile liability insurance policy with an unidentified insurance carrier to satisfy the owner's or operator's security requirements of Utah Code Annotated Section 41-12a-301. That policy was eventually terminated and John C. Calhoun purchased an

automobile liability insurance policy from Progressive Insurance Company to satisfy the owner's or operator's security requirements of Utah Code Annotated §41-12a-301. The Progressive Insurance Company policy was in effect, subject to the terms, conditions, limitations and exclusions contained in the policy, at the time of the accident of December 19, 1998.

Utah Code Annotated §31A-22-302(7), at the time the exclusion was executed and at the time the accident occurred, provided:

A policy of motor vehicle liability coverage under Subsection 31A-22-302(1) may specifically exclude from coverage a person who is a resident of the named insured's household, including a person who is a resident of the named insured's household but temporarily lives elsewhere, if each person excluded from coverage satisfies the owner's or operator's security requirement of Section 41-12a-301, independently of the named insured's proof of owner's or operator's security.

The Court finds that, as a matter of law, the Driver Exclusion Agreement was appropriately executed and John C. Calhoun was properly excluded from coverage as a member of the Calhoun household.

At the time of the execution of the Driver Exclusion Agreement and at the time of the accident of December 19, 1998, John C. Calhoun had purchased automobile liability insurance to satisfy the owner's or operator's security requirements of Utah Code Annotated §41-12a-301 and such security was in effect.

State Farm had the right to rely on the representation and the certification that the excluded driver had obtained owner's or operator's security to satisfy the requirements of the statute.

Although the Progressive Insurance Company policy does not extend coverage to the accident of December 19, 1998, pursuant to the terms and conditions of that policy, that fact does not void the State Farm Driver Exclusion Agreement excluding coverage under the State Farm policy while an insured vehicle is being operated by John C. Calhoun nor does it resurrect coverage in favor of John C. Calhoun under the State Farm Mutual Automobile Insurance Company policy.

IT IS HEREBY ORDERED AND ADJUDGED:

Pursuant to Rule 56, Utah Rules of Civil Procedure, Summary Judgment is entered in favor of State Farm Mutual Automobile Insurance Company. The State Farm Mutual Automobile Insurance Company policy does not extend coverage nor impose any liability or coverage to any vehicle while being operated by John C. Calhoun. Plaintiffs' claims against State Farm Mutual Automobile Insurance Company are dismissed with prejudice and upon the merits.

DATED this 13th day of May, 2002.

BY THE COURT

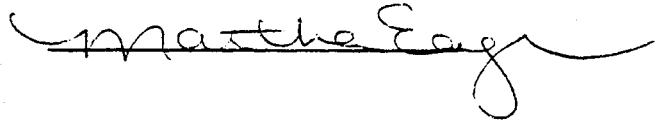
HONORABLE JOSEPH C. FRATTO
DISTRICT COURT JUDGE

CERTIFICATE OF SERVICE

I certify that on the 24th day of April, 2002, a true and correct copy of the foregoing was mailed, postage prepaid, to:

Daniel F. Bertch
BERTCH ROBSON
1996 East 6400 South, Suite 100
Salt Lake City, Utah 84121

Joseph J. Joyce
STRONG & HANNI
9 Exchange Place, 6th Floor
Salt Lake City, Utah 84111





State Farm Sells Life Insurance.

PAGE 01 OF 01

1424/44

DEDE3

D R I V E R E X C L U S I O N A G R E E M E N T

NOV 18 1999

Agent: Mike Gubler 1424/F617

Insured: JIMMY T CALHOUN

Policy Number

Effective Date of Agreement
(12:01 A.M. Standard Time)

Vehicle

712 3464-C29-44F

March 29, 1997

1989 Jeep

REQUEST FOR TOTAL DRIVER EXCLUSION ENDORSEMENT

I agree to amendment of the policy or policies listed above by addition of the following endorsement:

IN CONSIDERATION OF THE PREMIUM CHARGED FOR YOUR POLICY IT IS AGREED WE SHALL NOT BE LIABLE AND NO LIABILITY OR OBLIGATION OF ANY KIND SHALL ATTACH TO US FOR BODILY INJURY, LOSS OR DAMAGE UNDER ANY OF THE COVERAGES OF THE POLICY WHILE ANY MOTOR VEHICLE IS OPERATED BY John C Calhoun.

As the named insured, I understand and certify that the named person excluded from coverage, has in fact, satisfied the owner's or operator's security requirement of Section 41-12a-301, independently of the named insured's proof of owner's or operator's security.

I further agree to have the above endorsement included in any subsequent transfer, reinstatement, or renewal of such policy or policies.

Jimmy T Calhoun
Named Insured

96-11-13
DATE

157-5083UT.4 lw

OT 11-13 6023 John C Calhoun
6023 9-97
6023 Nancy Calhoun 92989

State Farm Insurance Companies



DOCUMENT HAS BEEN TRANSMITTED TO AGENT
November 11, 1996

Mountain States Office
3001 8th Avenue
Greeley, Colorado 80638-0001

|||||

JIMMY T CALHOUN
195A E 5TH AVE
DUGWAY UT 84022-1055

POLICY NUMBER
712 3464-C29-44F

VEHICLE
1989 Jeep

Dear Mr. Calhoun:

Thank you for allowing us the opportunity to provide your car insurance. Based on information developed from a current review, we are requesting that a restriction on the driving of John C Calhoun be placed on your policy.

The reason for this action is:

Driving record of John C Calhoun:

08 07 93 accident

04 14 96 speed

09 27 96 accident

The forms which must be completed to add this exclusion have been mailed to your agent. Please contact your agent as soon as possible to review and sign these forms.

Sincerely,

John McGrath
Underwriting Specialist
State Farm Mutual Automobile Insurance Company

cc: Mike Gubler Ph. (801) 882-0202
44-1424/F617

JIMMY T CALHOUN
712 3464-C29-44F
November 11, 1996
Page 2

INFORMATION REGARDING CONSUMER REPORT.

This action was influenced by information in a consumer report obtained from Equifax Services. Questions concerning the consumer report may be sent to Equifax National Consumer Service Center, 1505 Windward Concourse, Alpharetta, GA 30202, or you may call toll free 1-800-456-6004.