

1958

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Curtis M. Elliott  
*University of Nebraska*

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### Recommended Citation

Curtis M. Elliott, *The Family Automobile Policy*, 37 Neb. L. Rev. 581 (1958)  
Available at: <https://digitalcommons.unl.edu/nlr/vol37/iss3/6>

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## Comments

# The Family Automobile Policy

Curtis M. Elliott\*

## I. INTRODUCTION

The Family Automobile Policy was inaugurated about eighteen months ago, and was designed to become the leading contract for the insurance of private passenger automobiles. Some time prior to its introduction, competition had become extremely intense in the automobile insurance field. Bureau companies needed a competitive device for the purpose of maintaining their position with respect to the growing volume of automobile insurance and particularly to keep the higher class risks from insuring in the major independent carriers.<sup>1</sup> Rather than reduce rates, the Bureau carriers decided to formulate and file a contract with considerably more liberal features of coverage than those in the contracts of competing independents. This contract was the Family Automobile Policy.

The Family Policy has set the pattern for present-day automobile insurance contracts.<sup>2</sup> In many respects it is a considerably more liberal contract than its predecessor, the so-called National Standard Policy.<sup>3</sup> The main function of this paper is that of describ-

\*B.A. 1934, M.A. 1935, Ph.D. 1940, University of Illinois; Consultant, Nebraska State Insurance Department; Educational Adviser, National Association of Insurance Agents and Nebraska Association of Insurance Agents; insurance consulting work for both insurance carriers and businesses; presently Professor of Economics and Insurance and Chairman, Insurance Section, College of Business Administration, University of Nebraska.

<sup>1</sup> The majority of automobile insurance companies operate as members and subscribers of the National Bureau of Casualty Underwriters, the National Automobile Underwriters' Association, and the Mutual Insurance Rating Bureau. These organizations make premium rates and policy forms and file these on behalf of their members and subscribers with the various State insurance departments. A few large insurance carriers operate independently, rather than through Bureaus, in the filing of their policy forms and rates. The competitive struggle in the automobile insurance field is primarily between the Bureau companies and the independents.

<sup>2</sup> The independent carriers have liberalized their contracts since inception of the Family Automobile Policy. However, major differences still exist.

<sup>3</sup> A statutory standard automobile policy does not exist. The Bureau form is usually referred to, fallaciously, as the National Standard Policy, mainly because of its use by the majority of automobile insurance carriers.

ing, discussing, and interpreting the most important liberalized changes in coverage introduced by the Family Automobile Policy. It is hoped that this analysis will help provide a more rapid and solid approach for the attorney to an understanding of an important and complicated insurance contract.

## II. ELIGIBILITY CONSIDERATIONS

The Family Policy was a hastily drawn contract. A number of apparent inconsistencies and actual omissions leave much to be desired in a well-constructed and easily-comprehensible insurance contract.<sup>4</sup>

One rather important inconsistency exists between the manual rules and the policy provisions concerning the type of automobile eligible for coverage under the Family Policy.<sup>5</sup> Under all insuring agreements in the contract—liability, medical payments, and physical damage—coverage is provided for all “owned automobiles,” and an owned automobile is defined as including a private passenger or utility automobile or trailer owned by the named insured, including a temporary substitute automobile. A utility automobile includes those with a load capacity of fifteen hundred pounds or less of the pick-up body, sedan delivery, or panel truck type. A private passenger car includes a private passenger, station wagon, or jeep-type automobile. Under condition 2, newly-acquired automobiles, constituting either replacements or additional cars, are automatically insured, and notice to the Company of such acquisition is necessary only during the policy period.<sup>6</sup>

It would appear from the contractual provisions that insurance is to be provided for all private passenger and utility automobiles. However, the manual rules of eligibility differ considerably from these provisions. Only private passenger automobiles owned by the named insured, or joint ownership by husband and wife, are eligible.<sup>7</sup> The only utility automobiles eligible are farm pickups

<sup>4</sup> For example, the policy does not contain a definition of an automobile. This would mean that valid use-of-other-automobiles coverage could exist for the insured and spouse for motorcycles and motor scooters.

<sup>5</sup> The manual rules are filed with the State insurance departments by the various Bureaus or by independent carriers and must be adhered to strictly.

<sup>6</sup> The Standard Policy required notice of a change of car or an additionally-acquired automobile within 30 days after its acquisition, but only with respect to physical damage coverages. It is also possible under the Family Policy to require, by special endorsement, the same 30 days' notice.

<sup>7</sup> Ineligible cars must be insured under the Standard Policy.

having a load capacity of fifteen hundred pounds or less, and other types of utility cars, but only if they are not customarily used in the occupation, profession, or business of the insured other than in the course of driving to and from work.

It should be obvious that the manual rules do not constitute contract provisions and that the acquisition by the insured of, for example, a utility automobile to be used in his business is automatically covered under all provisions of the contract during the term of the policy. If insurance was intended to be provided on utility cars only in the most unusual situations—pleasure purposes—the contract should never have included them in the definition of an owned automobile. In addition, it should be obvious that if the Family Policy is inadvertently written on an ineligible car, the carrier, under the contract provisions, cannot disclaim coverage because of the manual rules.

### III. PERSONS INSURED

The conditions under which persons are considered insureds in the Family Policy are decidedly more liberal than those in the Standard Policy, especially with respect to non-owned automobiles. In the Family Policy, the definition of the insured includes residents of the household of the named insured. The effect is that of automatically including the children as insureds, thus eliminating the technical requirement, existing under the Standard Policy, that children must obtain the permission of the parents in order to have the insurance apply while they are driving the family car.

In the Family Policy there is an attempt to be much more specific with respect to a grant of permission to use the owned automobile. The named insured and spouse, under the contract provisions, have the sole right to grant permission, and until this point is resolved in the courts, it is best to consider that the right to grant permission rests solely with the named insured and spouse.<sup>8</sup>

The traditional application of coverage to "any person or organization legally responsible for the use of the automobile" is included in the Family Policy. It is intended automatically to provide

<sup>8</sup>The grant of permission, especially that of delegation to another, has always been a confusing issue in the automobile contract, and it is doubtful if the Family Policy will produce any significant change. The courts have been divided on this point and probably will remain so in the future. For an excellent discussion of recent cases see Norman E. Risjord, *The Automobile Liability Policy Today*, Section of Insurance Law, Proceedings of the American Bar Association, 80-81 (1956).

coverage for a principal under an agent's insurance contract in those instances in which an agent uses his car in the business of the principal. There is considerable confusion concerning this coverage. In many instances an employer will demand that an employee have the employer named as an additional insured in the contract. This probably results from a failure to realize that coverage exists or that the employer desires notice in the event of a cancellation of the employee's contract of insurance. The designation of the employer as an additional insured is not only unnecessary, but wholly undesirable. Under such circumstances the employer may be required to adhere to all conditions of the contract, even to that of paying the premium if the employee fails to do so. In addition, the employer could not seek indemnity under the contract if the employee negligently damages or destroys some of the employer's property through the use of the insured car. If the employer desires notice of cancellation, without becoming an additional insured, most carriers will provide an endorsement upon the employee's contract, without charge, requiring that notice of cancellation be given both to the employee and to the employer.

#### IV. NON-OWNED AUTOMOBILE COVERAGE

The definition of the persons insured includes those with respect to a non-owned automobile. However, the use-of-other-automobiles coverage is so important, and the changes in the Family Policy so significant, that it was considered desirable to include all references to the subject in one specific section of this paper.

For purposes of discussion the coverage must be separated into several distinct parts. The first is that applicable to the named insured and spouse. Here there are few limitations. The liability and medical payments coverage will follow the named insured and spouse while operating or occupying any non-owned automobile with but two exceptions. One limits the coverage relative to a car furnished for regular use to a private passenger automobile; the other limits the coverage on automobiles other than private passenger to a non-business use. Under the physical damage section of the policy the coverage applies only to non-owned private passenger automobiles. In addition, non-owned utility-type trailers are covered up to a limit of \$500.

The Family Policy also provides an automatic use-of-other-automobiles coverage for other members of the named insured's family. But here the limitations are more pronounced. Liability, medical payments, and physical damage coverages are applicable but only with respect to private passenger automobiles and only if

such cars are not furnished for the regular use of the family member.<sup>9</sup>

The coverage on non-owned cars is excess over other valid and collectible insurance. In other words, the insurance on the car being operated or occupied, if it exists, is always primary and the use-of-other-automobiles coverage is always excess. Application of this coverage to other cars owned by the insured or members of his household is eliminated by the simple expedient of excluding them from the definition of a non-owned automobile.

It is connection with the use-of-other-automobiles coverage that the Family Policy provides the greatest and most significant changes over its predecessor.<sup>10</sup> Now, for example, a governmental employee does not need to purchase a special endorsement in order to provide himself with insurance protection while operating a government car furnished for his regular use unless the car is something other than a private passenger automobile. It is even possible that the automatic coverage would apply to a state highway patrol car.

Apparently the formulators of the Family Policy have felt for some time that the use-of-other-automobiles coverage is too liberal, especially with respect to private passenger automobiles furnished for regular use. This has necessitated consideration of some retrenchment. For some months an endorsement has been available eliminating physical damage coverage to private passenger automobiles furnished for regular use. And at this time a new edition of the Family Policy is being filed with State insurance departments which, among other changes, may eliminate the application of all use-of-other-automobiles coverage to cars furnished for regular use.

## V. TRAILERS

Coverage for trailers is broader in the Family Policy than that provided in the Standard Policy. Liability and medical payments coverages are applicable automatically to all trailers designed for

<sup>9</sup> The Standard Policy provided use-of-other-automobiles coverage only for the named insured and spouse and it was applicable to an automobile furnished for regular use only by endorsement and with the payment of a sizeable additional premium. Other members of the family had use-of-other-automobiles coverage only by endorsement.

<sup>10</sup> In its historical development, the automobile contract has changed somewhat from that of providing insurance upon a specifically described vehicle to one that provides insurance for a person. The changes in the Family Policy relative to non-owned automobiles is a significant development in this direction.

use with a private passenger automobile, including house trailers, and if not being used for business purposes with other than a private passenger or utility automobile. However, medical payments does not apply to any vehicle while located for use as a residence or premises. Under the physical damage section of the contract, coverage is automatically applicable, up to \$500, to non-owned utility-type trailers. The term "utility," as used here, excludes home, office, store, display, and passenger trailers.

#### VI. STOLEN AUTOMOBILES

The Family Policy, under Condition 17, resolves an age-old dispute concerning the burden of expenses in the return of a stolen automobile. It makes it clear that the Company may return any stolen property "at its expense to the named insured, or at its option to the address shown in the declarations." This is another example of the liberality of the Family Policy.

#### VII. THE FUTURE

The Family Policy contains many liberal features that are not found in the Standard Policy. Its introduction and use by the Bureau companies was a product of the extremely competitive situation that developed in the automobile insurance industry, and the immediate effect has been that of bringing the provisions of the Bureau and the independent carriers' contracts closer together.

But fate can proceed on peculiar paths. The liberalized coverage was introduced at a time when automobile losses on all lines were increasing significantly; a marked trend in this direction exists at the present time and gives all appearances of continuing the same course in the future. In a highly competitive situation retrenchment in coverage is not feasible, and premium rate increases, even though justified, are unthinkable. To alleviate an untenable situation, both classes of carriers are attempting to insure only the higher class risks. If this continues, it may leave many people with inadequate coverage through assigned risk plans or with no insurance at all. If this situation does not change, it may lead to universal acceptance of compulsory automobile insurance and a statutory limitation of recoveries in automobile accidents similar to that in workmen's compensation statutes.

These conclusions are enlightened speculations based upon the present. The future will tell the story.