
LOYOLA LAW REVIEW

ARTICLE

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A Prospective Analysis Into the Next Millennium
Stephen D. Villavaso

SPEECH

Judge Robert A. Ainsworth, Jr. Memorial Lecture:
Four Louisiana Giants in the Law
Justice Ruth Bader Ginsburg

COMMENT

CASENOTES

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Casenotes

**WILLIAMS V. WATSON: A DEAL IS A DEAL-THE LOUISIANA SUPREME COURT UPHOLDS
THE LONGSTANDING CONCEPT OF FREEDOM TO CONTRACT IN INSURANCE POLICIES**[Keith L. Magness](#)

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I. INTRODUCTION

In 1952, the Louisiana Legislature adopted the Motor Vehicle Safety Responsibility Law¹ to assure compensation to accident victims injured by the negligence of others.² The original statute required motorists to provide proof of insurance upon conviction of certain traffic offenses.³ On July 1, 1978, the Compulsory Motor Vehicle Liability Security Law went into effect.⁴ As a result, the owner of a motor vehicle is now required to provide either: (1) a liability bond; (2) a certificate of self-insurance; or (3) an insurance policy for at least the statutory minimum⁵ before the owner can register his vehicle.⁶ This *354 coverage extends to other drivers operating the covered vehicle with the express or implied permission of the named insured.⁷

In 1992, the Louisiana legislature amended the Compulsory Motor Vehicle Liability Security Act to allow for the exclusion of specific drivers by name.⁸ The goal of Louisiana Revised Statute Title 32, section 900(L) is to allow an insured the option of paying a lower premium in exchange for insurance that provides no protection while the excluded driver operates a covered vehicle.⁹ Shortly after the legislature passed the statute, Louisiana courts were presented with the issue of whether the language of section 900(L) required the excluded driver to be a resident of the insured's household at the time of the accident.¹⁰ On October 16, *355 2001, the Louisiana Supreme Court had to decide whether a named excluded driver's subsequent residency status was essential to the validity of the exclusion.¹¹

Section II of this casenote will describe the relevant facts and procedural history of the noted case in addition to the court's holding. Section III will discuss the development of the named driver exclusion. Section IV will analyze the court's decision in the noted case. Finally, in section V, this note will argue that the reasoning of the Louisiana Supreme Court does not violate public policy because it is in accord with the intent of the legislature to allow an insurer and its insured exclude coverage for any named person regardless of whether the excluded person continues to remain a resident of the same household.

II. FACTS AND PROCEDURAL HISTORY OF WILLIAMS V. WATSON

On October 16, 1995, Ms. Jodi Williams, the plaintiff, was involved in an auto accident when Mr. Donald Watson, the defendant, struck her vehicle from behind.¹² Mr. Watson's vehicle was rented by his mother because her car was being repaired.¹³ Upon rental of the car, Ms. Watson declined to accept the insurance option in the rental agreement and opted to have her own auto insurance policy issued by Allstate cover the leased vehicle.¹⁴ Ms. Williams filed a petition for damages for injuries suffered as a result of the accident and named Allstate as a defendant¹⁵ as the alleged insurer of the leased vehicle.¹⁶

*356 Prior to this accident, on April 19, 1995, Ms. Watson signed a named driver exclusion, excluding her son from coverage under her Allstate Insurance policy.¹⁷ In response to this exclusion, Allstate reduced her premium.¹⁸

Based upon the exclusion, Allstate filed a motion for summary judgment denying coverage of the accident.¹⁹ In support of its motion, Allstate listed as a fact that Mr. Watson was a resident of his mother's household on the date of the accident;²⁰ however, in her deposition, Ms. Watson testified that her son had moved prior to the date of the accident and was living with his girlfriend.²¹ The trial judge denied Allstate's motion for summary judgment stating that the policy “. . . presented a conflict and was thus ambiguous as to coverage given it ‘excludes the driver, but it also covers persons who are non-residents of the household at the time of the accident.’”²² On appeal, the Fourth Circuit followed the reasoning of the Third Circuit in *John v. Cloud*²³ and affirmed the trial court's decision finding that residency is “fact sensitive” and relevant to coverage.²⁴

Upon grant of writ of certiorari,²⁵ the Louisiana Supreme *357 Court resolved the split²⁶ among the circuits and held that once an insurer and insured validly agree to exclude a driver who is a resident of the insured's household, that driver's subsequent residency status is immaterial to the validity of the exclusion. *Williams v. Watson*, 798 So. 2d 55, 59 (La. 2001).

III. NAMED DRIVER EXCLUSIONS AND PUBLIC POLICY

Under Louisiana law, the parties to a contract are free to contract²⁷ for any object that is lawful.²⁸ When the words of a contract are clear, the courts may make no further interpretation in search of the parties' intent.²⁹ Louisiana courts have established that an insurance policy is a contract that forms the law between the parties.³⁰ In keeping with the policy of freedom *358 of contract, an insured may agree to reduce an insurer's liability as long as the limitation does not offend public policy or statute.³¹

The law of some states³² allows for insurers to exclude specific persons from coverage if they are driving an insured vehicle when it is involved in an accident.³³ The Louisiana legislature provides for such an exclusion with Title 32, section 900(L) of the Louisiana Revised Statutes.³⁴ Pursuant to this section, an insured may agree to exclude from coverage a named driver residing in their household and obtain a lower premium.³⁵ The Louisiana Supreme Court and various appellate courts have held that named driver exclusions are valid and do not violate public policy.³⁶

While named driver exclusions have been held to not violate public policy, the language of section 900(L) of the has been analyzed closely resulting in differing outcomes on the issue of materiality of residency to the exclusion.³⁷ In *Johns v. Cloud*,³⁸ *359 the Third Circuit Court of Appeal examined the language of section 900(L)³⁹ and determined that residency is an essential element of the exclusion. In *Johns*, the defendant was operating his mother's car when involved in an accident.⁴⁰ When the defendant's mother obtained insurance for the vehicle, she executed a named driver exclusion excluding her son from coverage.⁴¹ Although her son was a resident of his mother's house at the time the exclusion was executed, a question of fact existed as to his residential status at the time of the accident.⁴² The Third Circuit concluded that section 900(L) required that the excluded driver be a resident of the household of the insured on the date of the accident for the exclusion to apply.⁴³ Particularly, the court found that “[o]nce he [the excluded driver] moves away from that particular residence, the exclusion no longer applies.”⁴⁴

Contrary to *Johns*, the Second Circuit Court of Appeal in *Hodge v. Austin*⁴⁵ opined that the language of title 32, section 900(L) of the Louisiana Revised Statutes “. . . refers to the exclusion . . . of a named person, not some residential status.”⁴⁶ In *Hodge*, the parents of the defendant excluded him from coverage on their vehicle.⁴⁷ Although the defendant was a resident of his

parent's household at the time the insurance policy *360 was written, he subsequently moved into his own apartment where he lived on the date of the accident.⁴⁸ Upon submission of the claim, the insurer denied coverage based upon the named driver exclusion.⁴⁹ The Second Circuit agreed with the insurer and found no coverage existed.⁵⁰ In support of its ruling, the Second Circuit cited the well established contract principle that the “obligations of the parties to a contract are fixed at the time the contract is entered into.”⁵¹ “The insurer agrees to, and the insured obtains, lower premiums in return for excluding a higher risk driver, regardless of where that driver continues to live.”⁵²

IV. THE SUPREME COURT SETTLES THE DISPUTE

In the shadow of this legal setting, the Louisiana Supreme Court granted a writ of certiorari to consider the noted case and resolve the differences between Hodge and Cloud regarding the relevancy of the excluded driver's residency status on the date of the accident.⁵³

The court began its analysis by examining section 900.⁵⁴ The court found that section 900(L) provided for an exception to omnibus coverage in favor of persons operating the named insured's vehicle with permission.⁵⁵ The court adopted the reasoning of Hodge⁵⁶ and held that once an insured and insurer agree to exclude a named driver who is a resident of the insured's household, the subsequent residency status of that named driver is immaterial to the validity of the exclusion.⁵⁷ The court enumerated five reasons to support its conclusion.⁵⁸

First, the court found that the exclusion provided within the statutory language of section 900(L) refers to a named person, not *361 residential status.⁵⁹ As such, the excluded driver's residential status on the date of the accident is immaterial as to the validity of the exclusion.⁶⁰ The only requirement is that the excluded driver resides with the insured upon confection of the contract of insurance.⁶¹

Second, the court determined that the purpose for a named driver exclusion was premium reduction.⁶² If the exclusion were held invalid, the insured would be provided coverage disproportionate with the premium paid.⁶³ The court ascertained that to allow an insured to expand coverage based upon the excluded driver's subsequent relocation would defeat the purpose of the exception provided by section 900(L).⁶⁴

Third, the court cited the general rule that obligations are fixed at the time of contracting.⁶⁵ Applying this principle, the insured obtains a lower premium in return for excluding a high-risk driver, regardless of where the excluded driver continues to live.⁶⁶ The court determined that adopting a contrary view would result in an alteration of the contractual obligation of Ms. Watson and Allstate.⁶⁷

Fourth, the court found that Title 32, section 32:863.1(A)(1)(a)(v) of the Louisiana Revised Statutes,⁶⁸ the *362 enforcement provisions of the compulsory motor vehicle liability security statutes requiring the name of any excluded driver to be listed on the certificate of insurance altering law enforcement to a particular driver's status, supported this view.⁶⁹

Finally, the court focused on pragmatic problems with the alternative conclusion that residency is material to the validity of Title 32, section 900(L) of the Louisiana Revised Statutes.⁷⁰ The court reasoned that if the statutory exception provided by section 900(L) were tied to the “fact sensitive” issue of residency, every summary judgment motion will be precluded when a change of residency is alleged.⁷¹ As such, the court concluded that the legislature could not have intended such a result.⁷²

Thus, the court held that once a policyholder validly agrees to exclude a driver residing in their household, the validity of that exclusion does not depend on the named driver's successive residency status.⁷³

Justice Johnson, in her dissent, contended that the majority's holding was inconsistent with the recent case of *Calogero v. Safeway Insurance Co.*⁷⁴ In *Calogero*, the court ruled that the exclusion provided by title 32, section 900(L) of the Louisiana Revised Statutes "applie[d] only to losses or damages caused by the named driver."⁷⁵ Relying on the language of the exclusion in *Calogero* and the holding therein, Justice Johnson believed the issue of residency was material to coverage and *363 summary judgment should not have been granted.⁷⁶

V. ANALYSIS

Although public policy⁷⁷ favors a finding of coverage, insurance companies have the right to limit their liability.⁷⁸ Louisiana law clearly allows an insured to obtain lower premiums by excluding specific drivers.⁷⁹ Keeping with the policy of freedom of contract, an insurance policy should be enforced as written.⁸⁰ In the noted case, Ms. Watson requested that her son be excluded from her policy of insurance.⁸¹ In exchange for this exclusion, she received lower premiums.⁸² Ms. Watson neither advised Allstate of his alleged change in residency nor paid an additional premium for coverage of her son. As such, the court properly concluded that the named driver exclusion executed by Ms. Watson, with full knowledge of its terms, barred her claim of coverage.

In her dissent,⁸³ Justice Johnson argued that the majority's holding in the noted case was improper because it conflicts with the court's holding in *Calogero v. Safeway Insurance Co. of Louisiana*.⁸⁴ However, *Calogero* is factually distinguishable from the present case. In *Calogero*, the exclusion⁸⁵ signed by the plaintiffs expressly stated that coverage ". . . shall not apply with *364 respect to loss, damage, or injury . . . caused by the excluded driver(s)."⁸⁶ The court in *Calogero* interpreted the policy as worded and determined that the only losses excluded were those attributable to the fault of the excluded driver.⁸⁷ In the noted case, the language of the exclusion⁸⁸ does not refer to fault on part of the excluded driver; it merely refers to the operation of the insured motor vehicle by Mr. Watson.⁸⁹ Given the difference in terminology, it is unnecessary to allocate fault to determine the applicability of the exclusion provision in the present case.

Recently, the Louisiana legislature amended title 32, section 900(L) of the Louisiana Revised Statutes in an effort to legislatively overrule the decision of *Williams v. U.S. Agencies Casualty Insurance Co.*⁹⁰ Through a clear statement, the Louisiana legislature voiced its opinion regarding the relevancy of residential status on the date of the accident.⁹¹ So long as the named excluded driver is a "resident of the same household as the named insured at the time the written agreement is entered into," the subsequent relocation of that driver is immaterial as to the validity of that exclusion.⁹²

Historically, in a civil law jurisdiction, the courts are simply vessels of legislative intent.⁹³ As such, a civil law judge is denied *365 the interpretive power of his common law counterpart.⁹⁴ His job is to systematically apply the law as the legislature intended.⁹⁵

In the future, courts within Louisiana will be required to ignore the "fact sensitive" issue of residency when interpreting the applicability of named driver exclusions. Not only is this demanded by the Supreme Court's holding in the noted case, but the legislature has voiced its own opinion.⁹⁶ As harsh as it may seem, if an insured validly agrees to exclude a high-risk driver in exchange for a reduced premium, no coverage will be afforded; thus, a deal is a deal.

Footnotes

- 1 1952 La. Acts 52 (“An Act to eliminate the reckless and irresponsible driver from the highways, and to provide for the giving of security and proof of financial responsibility by owners and operators of motor vehicles...”) (enacting [La. Rev. Stat. Ann. § 32:851-1043](#)) (West Supp. 2001).
- 2 [Williams v. U.S. Agencies Cas. Ins. Co., Inc.](#), 779 So. 2d 729, 732 (La. 2001), cited in [Williams v. Watson](#), 798 So. 2d 55, 58 n.4 (La. 2001); see also [Haley v. Badon](#), 98 So. 2d 109, 112 (La. App. 4th Cir. 1957).
- 3 [La. Rev. Stat. Ann. § 32:896\(A\)](#) (West 1989); [Hearty v. Harris](#), 574 So. 2d 1234, 1237, n.8 (La. 1991) (“The LMVSRL [Louisiana Motor Vehicle Safety Responsibility Law] requires individual operators of a motor vehicles to provide proof of financial responsibility... if they have been convicted of violating one of the major traffic laws.”).
- 4 1977 La. Acts 115 (enacting [La. Rev. Stat. Ann. § 32:861-865](#)) (West Supp. 2001).
- 5 Title 32, section 900(B) of the Louisiana Revised Statutes provides in pertinent part:
B. Such owner’s policy of liability insurance:
(2) Shall insure the person named therein and any other person, as insured, using any such motor vehicle with the express or implied permission of such named insured against loss from the liability imposed by law for damages... subject to the limits exclusive of interest and costs with respect to each such motor vehicle as follows:
Ten thousand dollars because of bodily injury to or death of one person in any one accident, and,
Subject to said limit for one person, twenty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and
Ten thousand dollars because of bodily injury to or destruction of property of others in any one accident.
[La. Rev. Stat. Ann. § 32:900\(B\)\(2\)](#) (West Supp. 2002).
- 6 Title 32, section 861(A)(1) of the Louisiana Revised Statutes provides:
Every self-propelled motor vehicle registered in this state except those motor vehicles used as agricultural or forest vehicles during seasons when they are not used on the highway, those used primarily for exhibit or kept primarily for use in parades, exhibits, or shows, and lease-bound mobile rig haulers as defined in Subsection D of this Section, shall be covered by an automobile liability policy with liability limits as defined by [R.S. 32:900\(B\)\(2\)](#) or 900(M), or a binder for same, or by a motor vehicle liability bond as defined by Subsection B of this Section, or by a certificate of the state treasurer stating that cash or securities have been deposited with said treasurer as provided by Subsection C of this Section, or by a certificate of self-insurance as provided by [R.S. 32:1042](#).
[La. Rev. Stat. Ann. § 32:861\(A\)\(1\)](#) (West Supp. 2001).
- 7 [La. Rev. Stat. Ann. § 32:900\(B\)\(2\)](#) (West Supp. 2001); [Hearty](#), 574 So. 2d at 1238.
- 8 1992 La. Acts 979 § 1. Title 32, section 900(L) of the Louisiana Revised Statutes provides: “Notwithstanding the provisions of Paragraph B(2) of this Section, an insurer and an insured may by written agreement exclude from coverage any named person who is a resident of the same household as the named insured.” (emphasis added). [La. Rev. Stat. Ann. § 32:900\(L\)](#) (West Supp. 2002).
- 9 [Joseph v. Dickerson](#), 754 So. 2d 912, 917 (La. 2000), cited in [Williams v. Watson](#), 798 So. 2d 55, 58 (La. 2001).
- 10 Compare [Hodge v. Austin](#), 732 So. 2d 608, 611 (La. App. 2d Cir. 1999) (holding that a named driver exclusion remained valid despite the excluded individual’s subsequent move from the insured’s residence where the exclusion was executed when the excluded driver was a resident of the insured’s household) (cited in [Williams](#), 798 So. 2d at 57) with [Johns v. Cloud](#), 696 So. 2d 12, 14 (La. App. 3d Cir. 1997) (holding that once an excluded individual moves away from the insured’s residence, the exclusion provided by Title 32, section 900(L) no longer applies) (cited in [Williams](#), 798 So. 2d at 57).
- 11 [Williams](#), 798 So. 2d at 55-56.
- 12 *Id.* at 56.
- 13 *Id.*
- 14 *Id.*

- 15 Title 22, section 655 of the Louisiana Revised Statutes provides:
A. No policy or contract of liability insurance shall be issued or delivered to in this state, unless it contains provisions to the effect that the insolvency or bankruptcy of the insured shall not release the insurer from the payment of damages for injuries sustained or loss occasioned during the existence of the policy, any judgment which may be rendered against the insured for which the insurer is liable which shall have become executory, shall be deemed prima facie evidence of the insolvency of the insured, and an action may thereafter be maintained within the terms and limits of the policy by the injured person, or his or her survivors, mentioned in [Civil Code Art. 2315.1](#), or heirs against the insurer.
B. (1) The injured person or his or her survivors mentioned in Subsection A, at their option, shall have a right of direct action against the insurer within the terms and limits of the policy; and, such action may be brought against the insurer alone, or against both the insured and the insurer jointly and in solido...
[La. Rev. Stat. Ann. § 22:655](#) (West 1995).
- 16 [Williams, 798 So. 2d at 56.](#)
- 17 The exclusion signed by Ms. Watson on April 19, 1995, provided:
I authorize the person(s) listed below to be excluded from my insurance policy: THIS MEANS THAT NONE OF THE COVERAGES AFFORDED BY THE POLICY WILL APPLY TO ANY DAMAGES, LOSSES, OR CLAIMS OF ANY PERSON OR ORGANIZATION CAUSED WHILE ANY MOTOR VEHICLE IS BEING USED OR OPERATED BY THE EXCLUDED DRIVER(S) LISTED BELOW EXCEPT AS PROVIDED IN THE FOLLOWING PARAGRAPH. This exclusion applied regardless of any provision in the auto policy defining Insured Persons.
NAME OF EXCLUDED DRIVER(S)
Name: DONALD WATSON
Date of Birth: 1/31/1978 Relationship to Insured: CH[ILD]
Id.
- 18 Id.
- 19 Id.
- 20 Id.
- 21 [Williams, 798 So. 2d at 56.](#)
- 22 [Id. at 57.](#)
- 23 [696 So. 2d 12 \(La. App. 3d Cir. 1997\)](#) (holding that once an excluded individual moves away from the insured's residence, the exclusion provided by title 32, section 900(L) no longer applies), cited in [Williams, 798 So. 2d at 57.](#)
- 24 [Williams, 798 So. 2d at 57.](#)
- 25 See [La. Supreme Court Rule X, § 1\(a\)\(1\)](#) (providing that conflicting appellate court decisions favor granting of writs).
- 26 See [supra](#) note 10 and accompanying text.
- 27 Although abstract, the concept of freedom to contract has been associated with the Due Process Clause of the Fifth and Fourteenth Amendments. [U.S. Const. amend. V & XIV](#). See also [16B Am. Jur. 2d Constitutional Law § 594 \(1998\)](#). Absent statutory conflict or public policy obstruction, parties are free to bargain for both good and bad deals. Id.
- 28 [La. Civ. Code Ann. art. 1971](#) (West 1987) (“Parties are free to contract for any object that is lawful, possible, and determined or determinable.”); [Salles v. Stafford, Derbes & Roy, Inc., 137 So. 62, 63 \(La. 1931\)](#) (maintaining that all men of lawful age have the utmost liberty in contracting); [Sunrise Constr. and Dev. Corp. v. Coast Waterworks, Inc., No. 2000-0303, 2001 WL 700352, at *9 \(La. App. 1st Cir. 2001\)](#) (stating that parties to a contract are free to construct their own bargains); [Terrick v. State, 787 So. 2d 350, 353 \(La. App. 4th Cir. 2001\)](#) (advocating that parties are free to contract subject to the limits imposed by law); [J. Calderera & Co., Inc. v. La. Stadium & Exposition Dist., 750 So. 2d 284, 289 \(La. App. 5th Cir. 1999\)](#) writ denied, [756 So. 2d 1144 \(La. 2000\)](#) (stating that parties are free to contract for any lawful object); [Ziegler v. Pleasant Manor Nursing Home, 600 So. 2d 819, 822 \(La. App. 3d Cir. 1992\)](#) (stating that parties are free to contract as they choose).

- 29 La. Civ. Code Ann. art. 2046 (West 1987); *Etienne v. Nat'l Auto. Ins. Co.*, 759 So. 2d 51, 54 (La. 2000) (“... if the words of an insurance policy are clear and explicit... no further interpretation may be made in search of the parties' intent .. [.]”); *Union Tank Car Co. v. La. Oil Ref. Corp.*, 165 So. 638, 640 (La. 1936) (stating that courts must give legal effect to contracts according to the intent of the parties); *Sanders v. Ashland Oil, Inc.*, 696 So. 2d 1031, 1036 (La. App. 1st Cir. 1997) writ denied, 703 So. 2d 29 (La. 1997) (stating that the intent of a contract is to be determined by the words); *Frost v. David*, 673 So. 2d 340, 343 (La. App. 1st Cir. 1996) (“... where the policy language is clear unambiguous and expressive at the parties' intent, the agreement must be enforced as written.”).
- 30 La. Civ. Code Ann. art. 1983 (West 1987); *Am. Deposit Ins. Co. v. Myles*, 783 So. 2d 1282, 1286 (La. 2001) (“[t]he terms of an insurance contract have the effect of law between the parties”); *Peterson v. Schimek*, 729 So. 2d 1024, 1028 (La. 1999) reh'g denied, 729 So. 2d 1024 (La. 1999) (“[a]n insurance policy is a conventional obligation that constitutes the law between the insured and the insurer...”); *Jackson v. Rogers*, 665 So. 2d 440, 442 (La. App. 1st Cir. 1995) (confirming that an insurance contract constitutes the law between the parties); *Roberts v. State Farm Mut. Auto. Ins. Co.*, 662 So. 2d 821, 824 (La. App. 2d Cir. 1995) (“A valid insurance policy is a contract between the insurer and insured, and has the effect of law between them.”).
- 31 *Reynolds v. Select Props. Ltd.*, 634 So. 2d 1180, 1183 (La. 1994) (citing *Oceanonics, Inc. v. Petroleum Distrib. Co.*, 292 So. 2d 190, 192 (La. 1974)); see also 44 *Am. Jur. 2d Insurance* § 1551 (1982) (stating that absent conflict with public policy, the extent of loss covered by a contract of insurance should be determined by the language of the policy itself).
- 32 See, e.g., Md. Code Ann., *Insurance* § 27-606 (Michie Supp. 2001) (An insurance policy covering a private passenger automobile... may by written agreement with the named insured exclude a named individual from coverage); S.D. *Codified Laws* § 58-11-9.3 (Michie 2000) (stating that if an insurer is authorized to cancel, increase, or nonrenew premiums, the insurer may offer to exclude coverage when the vehicle is driven by a specifically named individual).
- 33 See 7 *Am. Jur. 2d Automobile Insurance* § 246 (1997) (known as a “named driver exclusion” or a “designated persons coverage exclusion”).
- 34 See supra note 8 and accompanying text (discussing *La. Rev. Stat. Ann.* § 32:900(L)).
- 35 *Williams*, 798 So. 2d at 59.
- 36 *Am. Deposit Ins. Co. v. Myles*, 783 So. 2d 1282, 1286 (La. 2001) (stating that a named driver exclusion is valid); *Bellard v. Johnson*, 694 So. 2d 225 (La. 1997) (excluding a spouse); *Green v. Bailey*, 698 So. 2d 715, 718 (La. App. 2d Cir. 1997) (excluding a husband), cited in *Williams*, 798 So. 2d at 59; *Carter v. Patterson Ins. Co.*, 675 So. 2d 736, 740 (La. App. 4th Cir. 1996), writ denied, 679 So. 2d 1384 (La. 1996) (excluding a daughter), cited in *Williams*, 798 So. 2d at 59.
- 37 See supra note 10 and accompanying text. It is interesting to note that the Louisiana Supreme Court recently determined that an excluded driver's residency status on the date of the accident was important. *Joseph v. Dickerson*, 754 So. 2d 912, 917 (La. 2000). In *Dickerson*, the insured's daughter was operating her mother's vehicle and was listed on the policy as an excluded driver when she was involved in an accident. *Id.* at 914-15. The mother's insurance company was named in the suit as the alleged insurer of the vehicle. *Dickerson*, 754 So. 2d at 915. In response, the insurance company denied coverage citing the exclusion contained within the policy. *Id.* The Supreme Court reasoned that if the excluded driver did not reside in the same household of the insured, the exclusion would have no effect; therefore, the driver's residency status on the date of the accident was important as to coverage. *Id.* at 917.
- 38 696 So. 2d 12 (La. App. 3d Cir. 1997).
- 39 See supra note 8 and accompanying text (discussing *La. Rev. Stat. Ann.* § 32:900(L)).
- 40 *Johns*, 696 So. 2d at 13.
- 41 *Id.*
- 42 *Id.*
- 43 *Id.* at 14.
- 44 *Id.* The *Johns* court went on to explain that subsequent to relocation, the previously excluded driver will be treated as other individuals who would use the car and are not residents of the insured's household. *Id.* As such, the formerly excluded driver will be afforded

protection under the “omnibus driver” clause of [Louisiana Revised Statute section 32:900\(B\)\(2\)](#) which provides that an owner's policy of liability insurance shall insure any other person using an insured motor vehicle with the express or implied consent of the insured person. [La. Rev. Stat. Ann. § 32:900\(B\)\(2\) \(West Supp. 2001\)](#).

45 [732 So. 2d 608 \(La. App. 2d Cir. 1999\)](#).

46 [Id.](#) at 610.

47 [Id.](#) at 609.

48 [Hodge](#), 732 So. 2d at 609.

49 [Id.](#)

50 [Id.](#) at 611.

51 [Id.](#) at 610 (citing [La. Smoked Prod., Inc. v. Savoie's Sausage & Food Prod.](#), 696 So. 2d 1373 (La. 1997) and [Block v. Reliance Ins. Co.](#), 433 So. 2d 1040 (La. 1983)).

52 [Id.](#)

53 [Williams v. Watson](#), 798 So. 2d 55 (La. 2001).

54 [Id.](#) at 58. See *supra* notes 5 and 8 for the relevant text of title 32, section 900 of the Louisiana Revised Statutes.

55 [Id.](#) (citing [Joseph v. Dickerson](#), 754 So. 2d 912, 917 (La. 2000)).

56 See *supra* note 46 and accompanying text (discussing [Hodge](#)).

57 [Williams](#), 798 So. 2d at 59.

58 [Id.](#)

59 [Williams](#), 798 So. 2d at 59 (citing [Hodge v. Austin](#), 732 So. 2d 608, 610 (La. App. 2d Cir. 1999)). In support of its finding, the [Hodge](#) court cited the principle that the obligations of the parties to a contract are fixed at the time of confection. [Hodge](#), 732 So. 2d at 610.

60 [Id.](#)

61 [Id.](#)

62 [Id.](#) (citing [Joseph v. Dickerson](#), 754 So. 2d 912, 917 (La. 2000)).

63 [Id.](#)

64 [Williams](#), 798 So. 2d at 59.

65 [Id.](#)

66 [Id.](#)

67 [Id.](#)

68 Title 32, section 863.1(A)(1)(a)(v) of the Louisiana Revised Statutes provides:

A. No owner or lessee of a self-propelled motor vehicle registered in this state... shall operate or allow the operation of such vehicle upon any public road, street, or highway in this state unless there is contained within the vehicle one of the following documents evidencing that the motor vehicle is in compliance with [R.S. 32:861](#) relative to compulsory motor vehicle liability security:

(1) A certificate of insurance... in the form of one of the following:

(a) An identification card issued by an insurer to its insured which shall contain the following information:

(v) The name of any person who is excluded from coverage as authorized by [R.S. 32:900\(L\)](#).

La. Rev. Stat. Ann. § 32:863.1(A)(1)(a)(v) (West Supp. 2001).

69 Williams, 798 So. 2d at 59.

70 Id.

71 Id.

72 Id.

73 Id.

74 Williams, 798 So. 2d at 60. See also *Calogero v. Safeway Ins. Co.*, 753 So. 2d 170 (La. 2000), cited in Williams, 798 So. 2d at 60 (Johnson, J. dissenting). In *Calogero*, the plaintiffs sued their own insurance policy to cover damage to their vehicle suffered as a result of an accident when their son was driving. Id. at 172. The plaintiffs excluded their son from coverage in return for a reduced premium. Id. at 171. The exclusion signed by the plaintiffs in *Calogero* provided: “[i]t is agreed that the Insurance afforded by this policy shall not apply with respect to loss, damage, or injury to person(s) or property caused by the excluded driver(s)... while operating the automobile(s) described in the policy....” Id.

75 *Calogero*, 753 So. 2d at 173.

76 Williams, 798 So. 2d at 60.

77 See *Williams v. U.S. Agencies Cas. Ins. Co.*, 779 So. 2d 729, 730 (La. 2001) (cited in Williams, 798 So. 2d at 58, n.4 (La. 2001)) (stating that the purpose of Louisiana's compulsory insurance law is to provide compensation to persons injured by the negligence of others); see also Thomas C. Cady, *West Virginia's Automobile Insurance Policy Laws: A Practitioner's Guide*, 97 W. Va. L. Rev. 583, 586 (1995) (discussing the right of redress of the non-negligent party for personal injuries and property damage in an automobile accident).

78 Williams, 779 So. 2d at 731; *Oceanonics, Inc. v. Petroleum Distrib. Co.*, 292 So. 2d 190, 192 (La. 1974) cited in *Williams v. Watson*, 798 So. 2d 55, 58 n.4 (La. 2001).

79 La. Rev. Stat. Ann. § 32:900(L) (West Supp. 2001).

80 See *Whiddon v. Hutchinson*, 668 So. 2d 1368, 1379 (La. App. 1st Cir. 1996) (stating “[i]f the language of the policy is clear... the agreement must be enforced as written); see also, *Dunn v. Potomac Ins. Co. of Illinois*, 657 So. 2d 660, 663 (La. App. 1st Cir. 1995) (asserting that the intent of the parties should be determined by the plain language used in the policy).

81 Williams, 798 So. 2d at 56.

82 Id.

83 Id. at 60.

84 *Calogero v. Safeway Ins. Co.*, 753 So. 2d 170 (La. 2000), cited in Williams, 798 So. 2d at 60 (Johnson, J. dissenting).

85 See supra note 74 for the language of the exclusion at issue in *Calogero*.

86 See supra note 74 .

87 *Calogero*, 753 So. 2d at 173.

88 See supra note 17 and accompanying text (discussing the language of the named driver exclusion signed by Ms. Williams).

89 Williams, 798 So. 2d at 56.

90 See 2001 La. Acts 368 (An Act to amend and reenact [Revised Statute Section 32:900\(L\)](#)). Section 2 of the act reads: “It is the intent of this Act to legislatively overrule the decision in the case of *Williams v. U.S. Agencies Casualty Insurance Company*, No. 00-C-1693 (La. February 21, 2001).” Id.

- 91 As amended, Title 32, section 900(L) of the Louisiana Revised Statutes will read:
(1) Notwithstanding the provisions of Paragraph (B)(2) of the Section...THE INSURER AND THE INSURED MAY ALSO EXCLUDE FROM COVERAGE any OTHER named person who is the resident of the same household as the named insured AT THE TIME THAT THE WRITTEN AGREEMENT IS ENTERED INTO, AND THE EXCLUSION SHALL BE EFFECTIVE, REGARDLESS OF WHETHER THE EXCLUDED PERSON CONTINUES TO REMAIN A RESIDENT OF THE SAME HOUSEHOLD SUBSEQUENT TO THE EXECUTION OF THE WRITTEN AGREEMENT...
[La. Rev. Stat. Ann. § 32:900\(L\)](#) (as amended by 2001 La. Acts 368).
- 92 Id.
- 93 John Henry Merryman, *The Civil Law Tradition: An Introduction To The Legal Systems Of Western Europe And Latin America* 39 (2d ed. 1985) (discussing the role of the civil law judge in interpreting statutes).
- 94 See Merryman, *supra* note 93.
- 95 Id.
- 96 See *supra* notes 90 and 91 (discussing the 2001 amendment to title 32, section 900(L) of the Louisiana Revised Statutes).

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