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Automobile Insurance: The Requirement of Permission for the Named Insured's Operation of a Non-Owned Automobile

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Comments

AUTOMOBILE INSURANCE: THE REQUIREMENT OF PERMISSION FOR THE NAMED INSURED'S OPERATION OF A NON-OWNED AUTOMOBILE

The Family Automobile Policy, a product of the Insurance Rating Board and the Mutual Insurance Rating Bureau, was introduced in 1956.[1] The necessity of an important revision soon became apparent. Under the 1956 form, the definition of an insured, "with respect to a non-owned automobile," was "(1) the named insured, (2) any relative, but only with respect to a private passenger automobile or trailer not regularly furnished for the use of such relative. . . ."[2] There was no express requirement that the insured have the permission of the owner of the non-owned automobile for coverage to apply, and the courts refused to write in such a proviso.[3] In *Sperling v. Great American Indemnity Co.*,[4]

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1. F.C.&S. BULLETINS, CASUALTY & SURETY SECTION, *Revised Family Policy* (Oct. 1968):

> The Family Automobile Policy of the Insurance Rating Board and Mutual Insurance Rating Bureau is used under standard provisions by member companies and many non-member insurers. The policy, introduced in 1956, has been revised extensively twice, most recently in January, 1963. Once a revolutionary contract, because its approach and language differed so sharply from previous policies, its wide use has made it familiar to most insurance men.

Id. at Af-1.

2. Sperling v. Great Am. Indem. Co., 7 N.W.2d 442, 446, 166 N.E.2d 482, 484, 199 N.Y.S.2d 465, 468 (1960); RISJORD & AUSTIN, AUTOMOBILE LIABILITY INSURANCE CASES, STANDARD PROVISIONS AND APPENDIX 37 [hereinafter cited as RISJORD & AUSTIN].

3. In Bowman v. Preferred Risk Mut. Ins. Co., 348 Mich. 531, 83 N.W.2d 434 (1957), a car was taking up two spaces in front of the plaintiff's house. He tried to move it about six feet, but the brakes failed and he collided with another automobile. The defendant contended there was no coverage because: (1) he had not "used" the automobile within the meaning of the policy, and (2) if he had, it was without authorization

the court held the insurer liable under the policy when the insured's sixteen year old daughter had been operating a stolen car. Following the leading decision in *Sperling*, the omnibus or extended coverage clause of the Family Automobile Policy was revised to read as follows:

> (b) With respect to a non-owned automobile
> (1) the named insured,
> (2) any relative, but only with respect to a private passenger automobile or trailer, provided the actual use thereof is with the permission of the owner, and
> (3) any other person or organization not owning or hiring the automobile, but only with respect to his or its liability because of acts or omissions of any insured under (b) (1) or (2) above.[5]

The exclusion of regular use was retained by defining a non-owned automobile as "[A]n automobile or trailer not owned by or furnished for the regular use of either the named insured or any relative. . . ."[6] The requirement of permission of the owner was modified in the 1963 revision by changing the (b) (2) clause to read:

> (2) any relative, but only with respect to a private passenger automobile or trailer, provided his actual operation or (if he is not operating) the other actual use thereof is with the permission, or *reasonably believed to be* with the permission, of the owner and is within the scope of such permission.[7]

Since the question of what constitutes permission frequently occurs regarding the operation or use of the owned automobile by a "permittee" and the operation of a non-owned automobile by a relative of the named insured, the subject has been extensively litigated and discussed.[8] Although there is considerable law on the sub-

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and thus criminal barring recovery on grounds of public policy. The court held there was no public policy demanding invalidation of the claim and stated:

> Defendant could by clear language in the policy have limited its liability to the insured's own automobile or to only such use of automobiles of others as was authorized by them. Failing to find any such limitations in the policy, we decline to infer them.

Id. at 547-48, 83 N.W.2d at 437.

4. 7 N.Y.2d 442, 166 N.E.2d 482, 199 N.Y.S.2d 465 (1960). *See also* Home Indem. Co. v. Ware, 285 F.2d 852 (3d Cir. 1960); State Farm Mut. Auto. Ins. Co. v. Walker, 334 S.W.2d 458 (Tex. Civ. App. 1960).

5. RISJORD & AUSTIN 57.

6. *Id.*

7. *Id.* at 185; F.C.&S. BULLETINS, CASUALTY & SURETY SECTION, *Family Policy—Non-Owned Automobiles* Af-7 (Aug. 1966) (emphasis added).

8. *See generally* Fireman's Fund Ins. Co. v. Brandt, 217 F. Supp. 893 (D.N.H. 1962); Sunshine Mut. Ins. Co. v. Mai, 169 F. Supp. 702 (D.N.D. 1959); State Farm Mut. Auto. Ins. Co. v. Mohan, 85 Ill. App. 2d 10, 228 N.E.2d 283 (1967); U.S.F.&G. Co. v. Brann, 297 Ky. 381, 180 S.W.2d 102 (1944); Haspel v. Treece, 150 So. 2d 120 (La. App. 1963); Anderson v. Adams, 148 So. 2d 347 (La. App. 1963); Coco v. State Farm Mut. Auto. Ins. Co., 136 So. 2d 288 (La. App. 1962); Nye v. James, 373 S.W.2d 655 (Mo. App. 1963); Globe Indem. Co. v. French, 382 S.W.2d 771 (Tex. Civ. App. 1964); Olgin v. Employers Mut. Cas. Co., 228 S.W.2d 552 (Tex. Civ.

ject, a determination that permission has or has not been granted must depend on the fact of each case. Before such an inquiry is reached, however, it must first be established that permission is a condition precedent to coverage. The advent of the 1958 revision brought with it the issue of whether the named insured must have the permission of the owner[9] of a non-owned automobile for his policy to afford coverage.

PERMISSION A CONDITION PRECEDENT TO COVERAGE

In order to hold that permission is a condition precedent to coverage, the phrase following "any relative" in part (2) must relate back to part (1) of section (b).[10] One of the first cases following the 1958 revision was *Gray v. International Service Insurance Co.*[11] Only a brief statement of the facts was given.

App. 1950). *See also* Risjord, *Some Phases of Omnibus Automobile Liability Insurance*, 40 DEN. L.C.J. 241 (1963); Austin, *Permissive Use Under the Omnibus Clause of the Automobile Liability Policy*, 29 INS. COUN. J. 49 (1962); Note, *Automobile Insurance—Permissive User Under the Omnibus Clause*, 41 N.C.L. REV. 232 (1963); Note, *Insurance—Automobile Liability Policy—Omnibus Clause—Authority to Grant Permission*, 36 TUL. L. REV. 862 (1962).

9. Although only a few cases have raised the issue, a split of authority appears to have developed over the word "owner." In Phillips v. Government Emp. Ins. Co., 258 F. Supp. 114 (E.D. Tenn. 1966) the court stated:

> It appears to the Court that the word "owner" as used in the policy is sufficiently broad in its meaning to include not only the holder of the legal or equitable title, but also to include one in legal possession of the automobile, although not himself holding title thereto. The word "owner" is not defined in the policy. . . .
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> . . . [T]he objective of adding the phrase "provided the actual use thereof is with the permission of the owner" was to avoid liability where a member of the insured household was driving a stolen vehicle. This purpose may be accomplished without limiting the definition of "owner" to mean "the holder of the legal or equitable title." Had the insurer so intended to limit the meaning, it could readily have used such language.

Id. at 116. *See also* Carlsson v. Pennsylvania Gen. Ins. Co., 214 Pa. Super. 479, — A.2d — (1969). *Contra*, Jones v. Indiana Lumb. Mut. Ins. Co., 161 So. 2d 445 (La. App. 1964), which stated, "[W]e must conform to the clear and unambiguous language of the policy. . . ." *Id.* at 448.

10. A common criticism of insurance policies is, "They give it (coverage) to you in one place, and take it away in another." There is no question, however, that the coverage must be interpreted by reading the policy as a whole to properly determine the interrelation of the insuring agreements, definitions, exclusions and conditions. *See, e.g.*, McMichael v. American Ins. Co., 351 F.2d 665, 669 (8th Cir. 1965).

11. 73 N.M. 158, 386 P.2d 249 (1963). Haspel v. Treece, 150 So. 2d 120 (La. App. 1963), was decided in the same year. The "Persons Insured" portion was not reprinted in the opinion and the court merely stated:

> The policy issued (in the state of North Carolina) by Security to

"Appellant was driving a non-owned automobile, which subsequently turned out to be stolen. . . ."[12] The court did not state how the named insured came into possession of the vehicle.[13] To reach its decision that the named insured was required to have permission, the court cited *Home Indemnity Co. v. Ware*[14] involving a sixteen year old step son of the named insured driving a stolen car and stated:

> We think his language falls short of making it obvious to the ordinary reader that a *relative* of the named insured is covered while driving a stolen automobile.
>
> Thus, we are of the opinion that, in the policy before us, with respect to a non-owned automobile, permission for its use was made a condition of coverage as to both the named insured and to a relative of the named insured, and that no ambiguity appears in the policy.[15]

In *American Insurance Co. v. McMichael*,[16] Updegraff owned an uninsured automobile. He asked Karns, who was insured by the plaintiff, to accompany him on a trip and to share the driving. The following day they were together in a bar. Updegraff had last driven the car and had placed the keys above the sun visor. Updegraff went to get a haircut. When he returned, Karns and the car were gone. Updegraff thought Karns had gone to a nearby town and that he would return momentarily. He said he would have given Karns permission if he had asked and that he had done so in the past. Karns was killed while operating the automobile, and his personal representative defended the declaratory judgment action. The court evidently assumed permission was a condition precedent. Not recognizing that issue, the court stated:

> It would appear that *the sole issue* to be decided in this action *is whether or not Doyle Victor Karns had permission* to use the automobile of Harry Updegraff at the time of the collision.[17]

The court went on to find no express permission and noted that

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Treece states that he is insured while driving a non-owned automobile ". . . provided the actual use thereof is with the permission of the owner."

Id. at 122.

12. 73 N.M. at 159, 386 P.2d at 251.

13. This could become quite important. Public policy would not permit coverage to be afforded to a thief. *See, e.g.*, Bowman v. Preferred Risk Mut. Ins. Co., 348 Mich. 531, 83 N.W.2d 434 (1957). But note, the 1963 revision would afford coverage if the insured her permission to operate the non-owned automobile from one whom he "reasonably believed" was the owner.

14. 285 F.2d 852 (3d Cir. 1960). The court also discussed *Bowman*, note 2 *supra* and *Sperling*, note 3 *supra*. All three of these cases involved the pre-1958 policy form.

15. 73 N.M. at 161, 386 P.2d at 252. (emphasis added).

16. 238 F. Supp. 154 (E.D. Mo. 1964), *rev'd*, 351 F.2d 665 (8th Cir. 1965).

17. *Id.* at 156 (emphasis added).

implied permission could not arise without the owner's knowledge. The court then held:

> It is the opinion of this Court that all of the evidence fails to establish that Updegraff's car was being driven with permission of the owner and therefore under the terms of the policy there is no coverage and it is the judgment of this Court that the policy of insurance issued to Doyle Victor Karns does not cover the accident in question.[18]

American Surety Co. v. McCarthy,[19] evidently involved the 1963 form although the court did not quote from the policy. A U.S. Air Force pick up truck was assigned to Lt. Col. Jewell. He was riding in the right front seat. Mrs. Doris Purser, the named insured, was driving when they were involved in an accident. The court went into a lengthy discussion to hold that, since Mrs. Purser could reasonably believe Jewell had authorization to permit her to drive, she therefore was covered. The court apparently assumed that permission was a condition precedent, but made no mention of it.

National Grange Mutual Insurance Co. v. Churchill,[20] held coverage did not apply. The defendant, the named insured, took one of his employer's trucks without permission. Section (b) of the 1963 form was quoted in the opinion. The court stated that even if the defendant was within the scope of his employment, scope of permission for purposes of coverage was a different consideration. As in *American Surety*, the court assumed, but did not discuss, a requirement that the named insured have permission of the owner.[21]

Permission Not a Condition Precedent to Coverage

In *Harleysville Mutual Casualty Co. v. Nationwide Mutual Insurance Co.*,[22] the insured was driving an automobile owned by the parents of his companion without their permission. In holding permission not to be a condition precedent to coverage, the court stated:

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18. *Id.* at 157.
19. 395 S.W.2d 665 (Tex. Civ. App. 1965).
20. 126 Vt. 428, 234 A.2d 334 (1967).
21. In American Univ. Ins. Co. v. Dykhouse, 219 F. Supp. 62 (N.D. Iowa 1963), the court found the named insured had permission to operate the non-owned automobile. Therefore, the requirement of permission *per se* was not at issue. *See also* Preister v. Vigilant Ins. Co., 268 F. Supp. 156 (S.D. Iowa 1967), holding the insurance of the owner was primary.
22. 248 S.C. 398, 150 S.E.2d 233 (1966).

In light of the universal rule that an insurance policy must be construed most strongly against the insurer, resolving any ambiguity in favor of the insured, the question is whether the policy is reasonably susceptible to a construction that the permissive use proviso applies *only* to clause (b) (2) of the omnibus clause, with which it is juxtaposed.[23] We think that question must be answered affirmatively. This is the meaning which the clause would convey to a person of ordinary intelligence and experience.[24]

McMichael v. American Insurance Co.[25] involved an appeal of the lower court's judgment in favor of the carrier.[26] The court reprinted the policy provisions,[27] presented the contentions of both parties and stated:

> We believe that the spacing argument[28] relied upon by the plaintiff is an extremely thin thread upon which to base a contention which deprives a named insured of coverage when he has reason to believe he has bargained for. The wording of (b) (2) reads exactly the same, however it may be spaced. There is nothing in the record to indicate that the spacing is intentional rather than inadvertent. We believe it to be significant that in the model policy shown adjoining page 106 of the Insurance Law Journal, January 1963 issue, no such spacing is shown.[29]

The insurance company called the court's attention to the history behind the 1958 revision, but it appeared to work to the appellee's disadvantage:

> Thus it would appear that the stimulus for the change

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23. The policy was printed as follows:
(b) with respect to a non-owned automobile,
(1) the named insured,
(2) any relative . . .
provided the actual use thereof. . . .

24. 248 S.C. at 401, 150 S.E.2d at 234 (footnote added).

25. 351 F.2d 665 (8th Cir. 1965), *rev'g*, 238 F. Supp. 154 (E.D. Mo. 1964).

26. The facts are contained in the opinion of the district court discussed at p. 94 *supra*. To sustain the appeal, the court stated:

> The defendants as a primary basis for reversal urge: "The Court erred in finding that the named insured was required to have permission to drive a non-owned automobile as a condition of coverage under plaintiff's policy of insurance."
>
> The court did not expressly pass upon such issue, which was properly raised in the trial court by the defendants, but impliedly rejected the contention made in reaching its conclusion that permission of the owner Updegraff was the sole issue for determination.

351 F.2d at 666.

27. 351 F.2d at 667:
(b) With respect to a non-owned automobile,
(1) the named insured,
(2) any relative but only with respect to a private passenger automobile or trailer,
provided the actual use thereof is with the permission of the owner; . . . .

28. *See* note 27 *supra*. The court was referring to the printer's skipping a space and beginning a new line with the word "provided."

29. 351 F.2d at 667 (footnote added).

> was the holding in the cases last cited,[30] that relatives of the named insured were covered with respect to stolen non-owned automobiles. The cases did not involve improper use of a non-owned automobile by the named insured.[31]

The *McMichael* court cited *Gray v. International Service Insurance Co.*,[32] which it noted could be distinguished on its facts as involving a "stolen" car. The court stated, however, that it would not follow *Gray* "to the extent that such decision is inconsistent with the result we here reach."[33] The result, the court recognized, must depend on the construction of the policy, not on the good faith of the insured. Thus, *McMichael* held:

> We are inclined to believe that when the insurer's policy is read as a whole it covers the named insured's non-business use of any non-owned automobile. If such policy does not in fact clearly provide such coverage, we are satisfied that it is at least ambiguous with respect to the coverage.
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> . . . It is a rule of long standing that where "the meaning of a policy provision is doubtful and the language thereof is fairly susceptible of different constructions, the courts must adopt the construction most favorable to the insured". . . .
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> . . . .
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> Also bearing on the rules of construction . . . is the fact that "courts do not necessarily accept the construction according to policy terms by astute insurance specialists or perspicacious counsel but rather are concerned with the meaning which the ordinary insured of average intelligence and common understanding reasonably would give to the words or language under consideration". . . .
>
> When the controversial provisions of the policy here involved are construed in the light of the rules just stated, we are forced to the conclusion that Karns' policy covered him as the named insured in the operation of the Updegraff automobile at the time of the collision here involved.[34]

The discussion heretofore has been confined solely to the Family Automobile Policy. *Anderson v. State Farm Mutual Automobile Insurance Co.*[35] involved a non-standard policy, but with similar

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30. Home Indem. Co. v. Ware, 285 F.2d 852 (3d Cir. 1960); Sperling v. Great Am. Indem. Co., 7 N.Y.2d 442, 166 N.E.2d 482, 199 N.Y.S.2d 465 (1960).
31. 351 F.2d at 668 (footnote added).
32. 73 N.M. 158, 386 F.2d 249 (1963).
33. 351 F.2d at 668.
34. *Id.* at 669 (citations omitted).
35. 270 Cal. App. 2d 377, 75 Cal. Rptr. 739 (1969).

provisions. The plaintiff went to a fair with her husband and some relatives. There she met a Mr. Larson, and without telling anyone, left with him in his Ford Falcon. The plaintiff cashed two checks and gave Larson over $100. At about 4:00 P.M. they went to a restaurant. About three hours later the plaintiff said she wished the waiters would hurry up and serve dinner. She was getting anxious. Larson then excused himself, apparently to go to the men's room and never returned. Plaintiff, who had no money, had to sign for the bill. At trial, plaintiff remembered nothing after signing for the bill before regaining consciousness in a hospital. It was stipulated she was involved in an accident at 7:52 P.M. while driving a Cadillac. In a prior statement, plaintiff said after Larson disappeared, she got into a car which she thought was his and drove off.[36] She did not have permission from anyone to use the Cadillac or Larson's Falcon. The plaintiff was the named insured under the policy issued by the defendant which read:

> Such insurance as is afforded by this policy . . . with respect to the owned automobile applies to the use of a non-owned automobile by the named insured . . . and any other person or organization legally responsible for the use by the named insured . . . of an automobile not owned or hired by such other person or organization *provided such use is with the permission of the owner or person in lawful possession of such automobile.*[37]

The issue was whether permission was required. In holding that it was not, the court stated:

> Semantically and grammatically the policy is not even ambiguous. A limiting clause is to be confined to the last antecedent, unless the context or evident meaning requires a different construction.[38]

It appears ironic that the court did not note the limiting clause said, "Provided such *use* . . . is with the permission. . . ." in holding that clause related only to "any other person or organization legally responsible." This latter phrase clearly extends coverage to a principal for the negligence of his insured agent. Such principal is not *using* the automobile, but is vicariously *responsible* for its use. In the quoted portion of the policy,[39] the only party mentioned whose use is contemplated is the named insured. The explanation for this apparent oversight is not that the court wanted to give this policy the same interpretation as they would the Family Automobile Policy:

> It is suggested that it shocks the conscience that cover-

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36. The owner testified he had not left the keys in his Cadillac. It was never established how the plaintiff got the car started.

37. 270 Cal. App. 2d at 381, 75 Cal. Rptr. at 741.

38. *Id.*

39. Presumably, coverage for "any relative" was provided, but omitted in the quoted portion.

age should be extended to a thief. There are two answers to this: first, plaintiff was not necessarily a thief in the criminal sense; second, in the past the insurance industry has extended such coverage from time to time. . . . The 1958 Family Automobile Liability Policy does contain a proviso which proports to restrict the coverage to permissive driving.[40]

OBSERVATIONS AND CONCLUSIONS

McMichael v. American Insurance Co.[41] stated that the stimulus for the 1958 revision was evidently the decisions in *Sperling v. Great American Indemnity Co.*[42] and *Home Indemnity Co. v. Ware*[43] holding the children of a named insured covered although driving automobiles which they had stolen. It is unrealistic, however, to believe that the policy framers did not have in mind *Bowman v. Preferred Risk Insurance Co.*,[44] which was decided in

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40. 270 Cal. App. 2d at 382, 75 Cal. Rptr. at 742. Applying the same rules of construction, the court could be expected to hold that permission is not required for the named insured under the F.A.P. But note, if the court were to compare the policies, they would find no mention of permission with respect to anyone vicariously liable in the F.A.P. Since the basis for the court's holding rests on the conclusion that the permissive use clause refers to one who does not use the automobile, it must be regarded as clearly erroneous. In Cooper v. Firemen's Fund Ins. Co., — S.C. —, 167 S.E.2d 745 (1969), the defendant insured the owner of a pick up truck operated by a State Farm Mutual insured. In that case, the court held:

> This policy extends coverage to the named insured's use of a non-owned automobile, "provided such use, operation, occupancy or custody is with the permission of the owner or person in lawful possession of such automobile."

Id. at —, 167 S.E.2d at 746. *See also* State Farm Mut. Auto. Ins. Co. v. Mohan, 85 Ill. App. 2d 10, 228 N.E.2d 283 (1967), which held coverage extended only to the insured's "use of a non-owned vehicle used with the permission of the owner or person in lawful possession thereof." *Id.* at 14, 228 N.E.2d at 285.

It should be noted in passing that the State Farm Mutual policy extends coverage in a significant area not included in the F.A.P., except in a few jurisdictions following the "initial permission rule." *See* National Grange Mut. Liab. Co. v. Matroka, 250 F.2d 933 (3d Cir. 1958); Hays v. Country Mut. Ins. Co., 28 Ill. 2d 601, 192 N.E.2d 855 (1963); Helmkamp v. American Fam. Mut. Ins. Co., 407 S.W.2d 559 (Mo. App. 1966). Coverage is extended, under his own policy, to a complete stranger to the owner if he receives permission from the owner's permittee. *See* Jones v. Indiana Lumbermen's Mut. Ins. Co., 161 So. 2d 445 (La. App. 1964); Manock v. Donley, 139 N.W.2d 391 (N.D. 1966).

41. 351 F.2d 665, 668 (8th Cir. 1965), *rev'g*, 238 F. Supp. 154 (E.D. Mo. 1964).

42. 7 N.Y.2d 442, 166 N.E.2d 482, 199 N.Y.S.2d 465 (1960).

43. 285 F.2d 852 (3d Cir. 1960).

44. 348 Mich. 531, 83 N.W.2d 434 (1957). For discussion, *see* note 3 *supra*.

1957. *Bowman* held there was coverage for the named insured who, with good intentions, wished to move an automobile parked in front of his house only far enough so that he would have room to park his own car. However, in reaching this decision, the court stated:

> Defendant could by clear language in the policy have limited its liability to the insured's own automobile or to only such use of automobiles of others as was authorized by them. Failing to find any such limitations in the policy, we decline to infer them.[45]

Thus, assuming that *Bowman* had some bearing on the change, the permissive use requirement was intended to include the named insured.

Although it could have been expressed much more clearly, the policy itself indicates the intent. The language used in (a)(2) of the "persons Insured" provisions[46] clearly indicates that "any other person using such automobile with the permission of the named insured" applies only to "any other person" and not to the persons named in (1) above. The distinction becomes apparent when this language is compared with the (b)(2) permission clause, which is set apart by commas and an intervening clause.[47] Further, the actual printing or spacing is different. The permission clause in (a)(2) continues on the second line directly below the first word on the preceding line.[48] Therefore, "the named insured and a resident of the same household" are not required to have permission to operate an owned automobile. In (b)(2), however, the following lines are extended to the left intending to encompass (1) above. Then, in both (a)(3) and (b)(3), all the lines are indented indicating that the content pertains only to that part. *McMichael* stated that the spacing argument was not a sufficient basis on which to deny coverage.[49] It does, however, demonstrate the intent of the policy framers.

In the *F.C.&S. Bulletins*, only the second line of (b)(2) is indented.[50] The third line begins with "provided" and is extended

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45. *Id.* at 547-48, 83 N.W.2d at 437.

Persons Insured . . .
(a) with respect to the owned automobile,
  (1) the named insured and any resident of the same household,
  (2) any other person using such automobile with the permission of the named insured, provided his actual operation or (if he is not operating) his other actual use thereof is within the scope of such permission, and
  (3) any other person or organization but only with respect to his or its liability because of acts or omissions of an insured under (a)(1) or (2) above;

46. Section (b) is reprinted in the text accompanying note 5 *supra.*
47. RISJORD & AUSTIN 57:
48. See note 46 *supra.*
49. 351 F.2d at 667.
50. F.C.&S. BULLETINS, CASUALTY & SURETY SECTION, *Family Policy—Non-Owned Automobiles* Af-7 (Aug. 1966). The printing and spacing are

to the left. This is to show that "but only with respect to a private passenger automobile or trailer" applies solely to "any relative," but that permission applies also to the named insured. The accompanying text states:

> Note that both the named insured and relatives are required to have *permission of the owner* and to be acting *within the scope of that permission* for coverage, so the statements made previously about permissive use and scope of permission also apply.[51]

It is significant that in all the cases stating or assuming that permission is a condition precedent to coverage for the named insured, none has analyzed the policy language or cited any authority to that effect before reaching its conclusion. On the other hand, those cases holding permission is not a prerequisite generally rely on a detailed analysis of the policy provisions in question. As previously stated, it was clearly the *intent* to require permission, but the policy as written did not accomplish that result. The reader may firmly *believe* that permission is or is not required, but any reasonable interpretation would have to concede that there is ambiguity. Consequently, regardless of the equities in a particular case, the result, at least by the better reasoned view, becomes mandatory by the strict rules of construction in favor of the insured.

By the "reasonably believed" language of the 1963 revision, the insurance industry has conceded that a strict requirement of permission is unjust. This concession still leaves a wide area where coverage *should* be afforded. It is possible for a named insured in all good faith to be operating a non-owned automobile where, *if* he stopped to think about it, he could not reasonably believe it to be with the permission of the owner. In such situations, short of any wrongdoing, conscious or unconscious, the named insured should be justified in relying upon his insurer. The courts, by the better reasoned decisions, support this reliance, *but* under the present policy language may be required to extend coverage

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similar to that used in McMichael v. American Ins. Co., 351 F.2d 665 (8th Cir. 1965) shown at note 27 *supra*.

51. F.C.&S. BULLETINS, CASUALTY & SURETY SECTION, *Family Policy—Non-Owned Automobiles* Af-7 (Aug. 1966). In view of this unequivocal authority, it begs the question why there are not more reported cases on this issue. The most probable explanation is that when the average claimsman reads the coverage, he concludes permission is not required for the named insured. This is perhaps evidenced by the preponderance of State Farm Mutual cases with their non-standard policy in relation to the vast majority of companies using the standard form. *See* text accompanying note 40 *supra*.

too far. In order that the insurance industry protect itself against liability where it is not justly warranted, another revision can be anticipated. By specifically stating that the permission proviso in section (b) applies to the named insured, the intent of the present form would be realized. The courts have held implied permission cannot arise without the knowledge of the owner.[52] It is suggested, therefore, that coverage extend to situations where the insured could reasonably believe he would have permission if he had a reasonable opportunity to ask, thus including all good faith use of a non-owned automobile.[53]

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52. *See, e.g.*, American Ins. Co. v. McMichael, 238 F. Supp. 154 (E.D. Mo. 1964), *rev'd. on other grounds*, 351 F.2d 665 (8th Cir. 1965).

53. This recommendation is not nearly as extreme as the present coverage in (a) (1) which applies to any resident of the same household as the named insured even though he may have been expressly forbidden to operate the owned automobile. *See* note 46 *supra*.