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The Indiana Supreme Court Held That the Household Exclusion Clause Does Not Violate Public Policy

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Federal Bankruptcy
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vice, but also to inform them of procedures available to prevent a termination of service. Detroit Code § 56-4-23. Under the termination provisions, tenants were permitted to pay rent into an escrow account held by the Department of Buildings and Safety Engineering which in turn would use those funds to pay the utility bills. Detroit Code § 56-4-26(c). The utility was permitted to discontinue service for nonpayment if it did not receive payment from the account within five days of its request. Detroit Code § 56-4-30.

The court found that section 366 of the federal bankruptcy statute, 11 U.S.C. § 366 (1989), was silent regarding the procedures a utility must take in terminating service. Section 366 merely allowed a utility to discontinue service in the event a debtor failed to assure payment within twenty days of the filing of the bankruptcy petition or actually failed to pay for the service. Because the statute neither controlled procedures nor prevented termination of utility service, the court found that no conflict existed between it and the local code. Accordingly, the court ruled that the Federal Bankruptcy Code did not preempt the local procedural regulations.

MichCon argued, however, that the federal law implicitly preempted local law in view of the federal court’s exclusive jurisdiction over a debtor’s property in bankruptcy. 28 U.S.C. § 1334 (1989). The Sixth Circuit emphasized that this grant of jurisdiction alone did not compel federal and bankruptcy courts to apply federal law in resolving matters pending before them. The court observed the Bankruptcy Code directed a trustee to administer the bankrupt’s estate pursuant to state law. 28 U.S.C. § 959(b) (1989). Furthermore, federal law could not preempt state law unless Congress, at the time of enacting a federal statute, clearly expressed its intent to preempt state law. The court cautioned that bankruptcy law preemption should be narrowly construed with respect to state health and safety laws.

The Sixth Circuit thus determined that because the utility termination provisions of the Detroit Code does not conflict with federal law, the federal bankruptcy statute did not preempt the local code. Therefore, the court concluded that because the tenants had alleged valid claims under the local ordinance, the district court had erred in granting MichCon’s motion for summary judgment.

The tenants next alleged that Allard violated city and state laws by causing the termination of gas service through his failure to pay MichCon. The tenants limited their appeal to the district court’s denial of their claim for damages under the remedy provision of Michigan bankruptcy law. Mich. Comp. Laws Ann. § 600.2918(2)(f) (West 1986). The statute provided that a tenant may recover damages if the owner of a building or his agent unlawfully interfered with a tenant’s possessory interest in the property, including termination or interruption of gas service. However, the provision denied the remedy if the owner or his agent acted pursuant to a court order. Mich. Comp. Laws Ann. § 600.2918(3)(a) (West 1986).

In this case, the bankruptcy court had instructed Allard to use rent receipts to pay MichCon for gas service. Yet, the district court concluded that Allard had insufficient rental income from which to pay MichCon. Because the tenants presented no facts to dispute this conclusion, the court of appeals affirmed the district court’s finding that the bankruptcy court order allowed Allard to forego paying MichCon.

The tenants contended that even if the order permitted Allard to discontinue payments to MichCon, the bankruptcy court could not authorize violations of state and local law; they asserted that a court order to violate state and local law is not a valid order for purposes of interpreting Michigan law.

The Sixth Circuit stated, however, that the tenants’ actual challenge was against the content of the bankruptcy court’s order, not the court’s jurisdiction to issue it. Therefore, the court rejected the tenants’ argument on the ground that the remedy exception set forth under Michigan law included actions taken in response to a court order, even if the order was legally unsound. Consequently, the court determined that the district court properly dismissed the claims against Allard, as set forth in the original complaint.

Finally, the Sixth Circuit concluded that, despite having properly held in favor of Allard on the basis of the tenants’ original complaint, the district court erred in refusing to consider the tenants’ motion to amend. The Sixth Circuit found that the district court failed to exercise its discretion in any manner with respect to the motion to amend. The court directed the lower court to consider the motion on remand.

The Sixth Circuit thus vacated the decision of the district court and remanded the case for further proceedings.

Concurring Opinion

In a concurring opinion, Senior Judge Brown confirmed the opinion of the majority that federal bankruptcy law did not regulate utility termination procedures, and state and local laws controlled. Judge Brown suggested, however, that because the tenants properly relied on local law, the district court erred not only by holding that federal bankruptcy law preempted state law, but also by not applying the only law applicable—state law.

Linda J. Urbanik

The Indiana Supreme Court Held That the Household Exclusion Clause Does Not Violate Public Policy

In Transamerica Insurance Co. v. Henry, 563 N.E.2d 1265 (Ind. 1990), the Indiana Supreme Court held that the household exclusion clause does not violate Indiana public policy because it did not hinder the essential protection of automobile owners, their families, and friends from damage inflicted...
on them by other motorists.

**Background**

Clifford and Elizabeth Henry ("the Henrys") held a Transamerica Insurance Co. ("Transamerica") automobile insurance policy. This policy contained a clause which excluded liability coverage for physical injury to any person related to the insured by blood, marriage, or adoption, if that person lived with the insured at the time of the loss.

Amy Anderson ("Anderson") drove the Henrys' automobile with permission from the Henrys. The Transamerica policy covered the automobile, in which the Henrys' son, Michael, was a passenger. The Henrys' car collided with a truck; Michael was seriously injured in the collision. The Henrys sued the owner of the truck, the operator of the truck, and Anderson.

The court dismissed Anderson's insurer from the case after it paid Michael the policy limit under Anderson's policy. Anderson then claimed coverage under the Henrys' policy and asked Transamerica to defend her in the Henrys' suit and to pay any settlement or judgment resulting from the suit. Transamerica claimed that it was not required to provide liability coverage to Anderson for Michael's injuries because of the applicability of the household exclusion clause. Anderson appealed to the Seventh Circuit which deferred judgment to the Indiana Supreme Court because no clear controlling precedent resolved the case. The court of appeals refused to predict how the Indiana courts would decide the issue and instead certified two questions to the Supreme Court of Indiana: (1) whether Indiana was a compulsory insurance state and therefore endorsed a policy of guaranteeing compensation to all automobile accident victims, and (2) whether the household exclusion clause was against the public policy of Indiana when applied to preclude coverage for injuries similar to those in this case.

**Supreme Court of Indiana Decision**

Prior to the enactment of § 9-1-4-3.5, Ind. Code § 9-1-4-3.5 (West Supp. 1990), Indiana was a compulsory insurance state; Indiana required a driver to prove financial responsibility only after the driver's first accident. The prior statute provided that a driver who had passed the "one free accident" threshold could prove financial responsibility through bond, deposit of funds or securities, and self-insurance. The adoption of § 9-1-4-3.5 changed Indiana law by requiring proof of financial responsibility before a car could be registered. The new statute also required that such financial responsibility be maintained throughout the operation of the car. Therefore, § 9-1-4-3.5 abolished the "one free accident" scheme.

The Indiana Supreme Court characterized Indiana as a "compulsory financial responsibility" state, but it concluded that the enactment of § 9-1-4-3.5 did not evince an intent to guarantee compensation to all automobile accident victims. Instead, the court found that the new statute simply reiterated the state policy of facilitating recovery for injuries sustained by individuals other than those defined as "insureds" under the insurance policy. Indiana public policy favored protection of automobile drivers and passengers from injuries inflicted on them by others. This policy was similarly applicable under the previous statute in that drivers were protected from damages inflicted by another person's second accident. Thus, the court concluded that it was never Indiana policy to protect insureds from themselves. The court held that although Indiana was a compulsory insurance state, the state's public policy did not support compensation for all victims of automobile accidents.

With respect to the second certified question, the court found that since 1977, the Indiana courts had held that a household exclusion clause in an automobile insurance policy did not conflict with the public policy of Indiana. In support of its position, the court noted that the legislature had taken no action to nullify the household exclusion clause in insurance policies. The recent enactment of § 9-1-4-3.5 did not interfere with the agreement of the legislature and the courts on this issue. Section § 9-1-4-3.5 also did not change the prior policy of protecting motorists from drivers other than themselves.

Mira Djordjic

**Insurance Company Had No Duty to Notify Loss Payee of Policy’s Expiration or Policyholder’s Failure to Renew**

In *First National Bank of Sioux City v. Watts*, 462 N.W.2d 922 (Iowa 1990), the Supreme Court of Iowa held that an insurer of an automobile was under no duty to notify a loss payee of the automatic termination of the policy or of the insured's failure to renew the policy. Moreover, the court concluded that the insured's failure to renew the policy was not an act or neglect of the owner covered by the loss payable clause.

**Background**

Jerome E. Watts ("Watts") purchased a 1987 Pontiac from Bob Tagatz Pontiac, Inc. ("Tagatz") in Sioux City, Iowa. Watts and Tagatz entered into a retail sales installment contract and security agreement. Tagatz then assigned