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TEXAS INSURANCE LAW NEWSBRIEF

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BLOOD IS THICKER THAN FAMILY MEMBER POLICY EXCLUSIONS—DALLAS COURT OF APPEALS UPHOLDS FAMILY MEMBER EXCLUSION AS APPLICABLE TO STEP-CHILD.

Last week, the Dallas Court of Appeals upheld a family-member policy exclusion as applying to the step-child of the insured in *John Kidd, Individually and as Wrongful Death Beneficiary and on Behalf of the Estate of Laurenne Krystean Hall v. State Farm Mutual Automobile Ins. Co., and State Farm Fire and Casualty Co.*, No. 05-16-01387-CV, 2018 WL 1755487 (Tex. App.—Dallas, Apr. 12, 2018).

In July 2008 Laurenne Hall was killed in an auto accident in a vehicle with her stepfather David MacDonald. Hall was eighteen at the time and lived with MacDonald and her mother Kristina MacDonald. MacDonald was insured under both a personal auto policy and personal liability umbrella policy. The auto policy contained a family member exclusion stating:

"We do not provide Liability Coverage for you or any family member for bodily injury to you or any family member, except to the extent of the minimum limits of Liability Coverage required by Texas Civil Statutes, Article 6701h, entitled "Texas Motor Vehicle Safety-Responsibility Act."

The declarations showed David and Kristina MacDonald as the named insured and defined "family member" as "a person who is a resident of your household and related to you by blood, marriage or adoption." The umbrella policy contained a similar family member exclusion extending to the named insured, their spouse, the named insured's relatives, as well as anyone under the age of 21 who was under the named insured's care.

Following the accident, John Kidd sued David MacDonald's estate asserting causes of action under wrongful death and survival statutes and obtained a judgment for $427,347.40. State Farm issued Kidd a check for the $25,000 minimum liability asserting that the family member exclusion excluded coverage over and above the $25,000 limit. Kidd refused the check and filed suit for the full judgment amount. On summary judgment, the sole issue was whether Hall was a family member within the meaning of the policies, and if so, if the exclusion limited coverage to the $25,000 minimum.

On appeal, Kidd argued that the auto policy's exclusion does not apply because the term "you" applied exclusively to David MacDonald and, as a step-parent, Macdonald was not related to Hall by blood, marriage or adoption. Alternatively, Kidd argued that if the policy was ambiguous, the exclusion could not preclude coverage because the ambiguity was to be construed against the insurer. The Court rejected this argument concluding that not only were David and Kristina both named insureds in the policy declaration, but David became related to Hall through marriage to her mother. Accordingly, Hall, as a resident of MacDonald's household and blood relative to an insured, fell within the auto policy's definition of "family member." Based on this finding among others, the Court affirmed the trial Court and concluded Kidd was entitled only to the minimum $25,000.