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The Impact of State Farm v. Alexander on Uninsured and Underinsured Motorist Coverage Generally, and in Relation to the Owned-But-Not-Insured Exclusion

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THE IMPACT OF STATE FARM V. ALEXANDER ON
UNINSURED AND UNDERINSURED MOTORIST COVERAGE
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not-insured exclusion

I. INTRODUCTION

Since its decision in January, 1992, State Farm v. Alexander's broad holding has puzzled many jurists and practitioners as to its scope and effect. While the law stated in the syllabus of Alexander seems clear enough,

an automobile insurance policy may not eliminate or reduce uninsured or underinsured motorist coverage, required by R.C. 3937.18, to persons injured in a motor vehicle accident, where the claim or claims of such persons arise from causes of action that are recognized by Ohio tort law.

the question arises as to whether Alexander's prohibition applies to all exclusions in an automobile insurance policy which violate R.C. § 3937.18's purpose, or whether Alexander's interdiction is specific only to "household exclusions" which was the specific exclusion at issue in the facts of Alexander. If one subscribes to the notion that the plain meaning of the syllabus should apply, then any exclusion violative of the uninsured motorist statute's purpose should be void as against public policy. As such, the discussion contained herein will commence with a brief examination of the uninsured and underinsured motorist statute's purpose.

Following the discussion of the uninsured motorist statute's purpose, the discussion will proceed to survey all cases to date which have had occasion to deal with Alexander in a substantive manner. Nine of the twelve Ohio appellate districts have considered the Alexander decision in some respect. Likewise, the

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2 See Thackery v. Helfrich, 175 N.E. 449 (Ohio 1931) (the syllabus of an Ohio Supreme Court opinion states the law in Ohio).
3 Alexander, 583 N.E.2d at 309.
5 Generally, "household exclusions" contained in the uninsured motorist section of a policy eliminates coverage based on the fact that the insured's automobile is covered under the liability section of the policy and the vehicle is owned by or furnished for the regular use of the insured, his spouse or any relative which resides with the named insured. The purpose for such an exclusion is to prevent collusive claims among family members.
6 Alexander, 583 N.E.2d at 311.
7 Henceforth the author shall refer only to the uninsured motorist statute for simplicity. While differences do exist between the uninsured and underinsured motorist sections of R.C. § 3937.18, the legislative purpose of both is identical, as discussed infra. See infra text accompanying notes 11-29.
8 See infra part III B.
Ohio Supreme Court has cited to *Alexander* as authority for reversing appellate court decisions which upheld exclusions violative of R.C. § 3937.18's purpose. Each decision shall be presented and examined in turn, grouped either by Ohio Supreme Court decision or by appellate district.

Subsequently, the discussion will turn its focus to *Alexander's* impact on the "owned-but-not-insured" exclusion contained in most automobile liability policies. Case law established prior to *Alexander* will be explored and will attempt to be reconciled with *Alexander* if possible. Intertwined, a survey of case law from other jurisdictions outside of Ohio which have dealt with this exclusion will be presented, though by no means in an exhaustive sense. This discussion will focus in part on the premise that uninsured motorist coverage is not risk related as is liability coverage, and that uninsured motorist coverage is portable, following the insured person and not the insured vehicle.

II. THE PURPOSE OF OHIO'S UNINSURED MOTORIST LAW - R.C. § 3937.18

Ohio Revised Code § 3937.18 mandates insurance carriers offer uninsured motorist coverage to their insureds. Stated numerous times in Ohio case law, the legislative purpose of R.C. § 3937.18 is to provide uninsured and underinsured motorist coverage for injured persons who have a legal cause of action against a tortfeasor, but who are uncompensated because the tortfeasor is either not covered by liability insurance or covered in an amount that is less than the insured's uninsured motorist coverage. In other words, the objective of uninsured motorist coverage is to place the insured in the same position he would have been in had the tortfeasor had insurance coverage.
Any contractual restrictions on full uninsured motorist coverage must be approved by the Ohio Legislature. Otherwise, any policy limitation should comply with R.C. § 3937.18's purpose. Any restrictions in the policy that deviate from the statute's requirements will be unenforceable. Therefore, the validity of a policy exclusion depends on whether the exclusion conforms to the requirements of R.C. § 3937.18. Upon inspection of R.C. § 3937.18(G), it is apparent that the Ohio Legislature has expressly provided for only one permissible exclusion or limitation to uninsured motorist coverage, namely the permission to preclude stacking of uninsured motorist benefits. Based on the existence of only one permissible exclusion, a strict interpretation would suggest that no other exclusions are authorized. If one subscribes to this construction, then State Farm v. Alexander sets forth the clearest interpretation of the legislative intent of R.C. § 3937.18 to date.

From Alexander, particularly the syllabus, only two requirements must be present to determine if the insured is entitled to recover uninsured motorist benefits. First, the injured insured must have a legal cause of action against the tortfeasor. Second, the injured person must be "uncompensated because the tortfeasor is either (1) not covered by liability insurance or (2) covered in an amount that is less than the insured's uninsured motorist coverage." Thus, Alexander expresses, in no uncertain terms, that the uninsured motorist statute is based upon the underlying premise of the tortfeasor's legal liability to the insured.

In Alexander, State Farm denied uninsured motorist benefits to its insured under the automobile liability policy it issued to the policyholder based upon a "household exclusion." The Ohio Supreme Court reasoned that State Farm had a duty under R.C. § 3937.18 to provide the insured with the uninsured motorist coverage expressly contracted for. The Court concluded that this exclusion violated R.C. § 3937.18's purpose because it impermissibly attempted to change...
Ohio tort law through contractual definition and the Court thereby voided the exclusion.\textsuperscript{26}

Some may argue that Alexander's holding was specific to household exclusions only, thus invalidating only that particular exclusion. However, those proponents fail to consider the framework which the Court set when it shaped the issue early in Alexander as follows:

The \textit{sole issue} before the court is whether State Farm may, by policy definition, eliminate uninsured and underinsured motorist coverage to persons injured in a motor vehicle accident where the claim or claims of such persons arise from causes of action that are recognized by Ohio tort law.\textsuperscript{27}

Neither the issue stated by the Court, nor the holding as presented in the syllabus show any intent on the part of the Court to limit the invalidation to household exclusions only. As further evidence for this conclusion, decisions prior to Alexander in which the Court adjudged whether an exclusion was valid or invalid identify the specific exclusion in its holding or issue.\textsuperscript{28} Alexander did not identify one specific exclusion. Instead, the Court expresses what some consider to be a broad, all-encompassing policy statement which addresses attempts by insurers to contractually eliminate uninsured or underinsured motorist coverage.\textsuperscript{29} This conclusion is logically correct since the Court broke with its prior consistency of naming specific exclusions when deciding validity or invalidity. However, such a conclusion will gain credence only through the Ohio Supreme Court's as well as lower appellate court's interpretations of Alexander.

\textsuperscript{26} Id.
\textsuperscript{27} Id. at 311.
\textsuperscript{28} Dairyland Ins. Co. v. Finch, 513 N.E.2d 1324 (Ohio 1987): "Public policy does not prevent the issuance and enforcement of an automobile liability policy containing reasonable exclusionary clause, within the uninsured motorist provision, prohibiting \textit{intrafamilial} recovery of damages against the insurer of the policy." (emphasis added); Curran v. State Auto Mut. Ins. Co., 266 N.E.2d 566 (Ohio 1971):

Where an insurer provides uninsured motorist protection, as required by R.C. § 3937.19, it may not avoid indemnification of its insured under that coverage by including in the insurance contract an "other insurance" clause, which, if applied, would relieve the insurer from liability in circumstances where the insured has other similar insurance available to him from which he could be indemnified.

\textit{Id.} (emphasis added).
\textit{See} Hedrick v. Motorists Mut. Ins. Co., 488 N.E.2d 840 (Ohio 1986): "An insurance policy provision which denies uninsured motorist coverage, when bodily injury is sustained by any person while occupying a motor vehicle \textit{owned by an insured but which vehicle is not specifically insured under the policy}, is a valid exclusion." (emphasis added).
III. STATE FARM V. ALEXANDER CONSTRUED

A. Ohio Supreme Court Decisions Subsequent to the Rendering of State Farm v. Alexander

The first post-Alexander instance in which the Ohio Supreme Court has had occasion to refer to its holding from Alexander was in Wright v. State Farm Mut. Auto. Ins. Co.30 Factually, this case is identical to Alexander. The insured-plaintiff in Wright was a passenger in her own automobile being driven by a friend.31 The vehicle was involved in an accident in which the plaintiff suffered injuries.32 At the time of the accident, the plaintiff carried underinsured motorist coverage with limits of $50,000/$100,000.33 The driver of plaintiff’s vehicle carried an insurance policy with limits of $12,500 for which the plaintiff settled.34 Plaintiff then made an underinsured claim against her own insurer for underinsured policy limits.35 This claim was denied by plaintiff’s insurer and summary judgment was ultimately granted to the insurer-defendant.36

The intermediate appellate court upheld the grant of summary judgment to the insurer based upon a policy definition which excluded plaintiff’s vehicle from underinsured motorist coverage because plaintiff’s vehicle was not "uninsured" under the policy definition of "uninsured motor vehicle."37 One week after the State Farm v. Alexander decision was handed down,38 the tenth district’s ruling in Wright was reversed by the Ohio Supreme Court on the authority of State Farm

32 Id.
33 Id.
34 Id.
35 Id.
36 Id. at *9.
37 Id. at *6-9. The policy in question defined an uninsured motor vehicle in relevant part as: "1. a land motor vehicle, the ownership, maintenance or use of which is: a. not insured or bonded for bodily injury liability at the time of the accident . . . ." Id. at *5. The policy goes on to provide that: "An uninsured motor vehicle does not include a land motor vehicle: 1. insured under the liability coverage of this policy; 2. furnished for the regular use of you, your spouse or any relative . . . ." Id. at *5.

The Tenth Appellate District of Ohio, in deciding this case prior to the decision rendered by the Ohio Supreme Court in State Farm v. Alexander, based its holding on Dairyland Ins. Co. v. Finch, 513 N.E.2d 1324 (Ohio 1987), which was subsequently overruled by Alexander. The appellate court concluded that the aforementioned policy definitions acted in effect as an exclusion to the plaintiff since they rendered her car an "insured" as opposed to an "uninsured" vehicle. As such, under the uninsured motorist statute which requires insurers to offer coverage to insureds legally entitled to recover damages from the owner or operator of an uninsured vehicle, the appellate court determined that plaintiff’s car had liability protection and was therefore an "insured" vehicle, thereby precluding any underinsured recovery. Wright, 1991 Ohio App. LEXIS 1332 at *8-9.

v. Alexander. The Court provided no details other than the statement of reversal, presumably because of the factual similarities existent between Wright and Alexander. A similar situation was presented in Woods v. Cincinnati Ins. Co., the next chronological case in which the Court relied upon Alexander. Woods involved the same exclusion and almost identical facts contained in both Wright and Alexander, including a judgment at the appellate level for the insurer. Precisely in the same brief manner as it had done in Wright, the Ohio Supreme Court reversed and remanded the Fourth Appellate District's decision for the insurer in Woods on the authority of Alexander. Likewise, the identical facts, procedural history and ultimate outcome are found in Millar v. Beacon Ins. Co. of America, where the Supreme Court of Ohio reversed the Fifth Appellate District on the authority of Alexander.

While an obvious pattern has developed as to "household exclusions," the Ohio Supreme Court has not provided any insight as to how it will apply Alexander in cases which involve exclusions other than "household exclusions." As such, a survey of how the various appellate districts in Ohio have applied Alexander may lend some guidance as to how the Ohio Supreme Court may rule in the future.

B. Ohio Appellate Court Decisions Subsequent to State Farm v. Alexander

1. Third Appellate District of Ohio

As of this writing, the Third Appellate District of Ohio has made reference only once to Alexander. In Dion v. State Farm, the Third District considered whether a policy endorsement which modified the policy definition of "an

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39 Wright, 583 N.E.2d at 963.
40 Id. The exact language of the opinion of the Ohio Supreme Court, in its entirety, is as follows: "The judgment of the court of appeals is reversed and the cause is remanded to the trial court on authority of State Farm Auto. Ins. Co. v. Alexander. . . ." Id. (citation omitted).
43 The Woods case on remand, Woods v. Cincinnati Ins. Co., No. 1743, 1992 Ohio App. LEXIS 2572 (4th App. Dist. Ohio March 12, 1992) represents the only occasion in which the Fourth District Court of Appeals for Ohio has referenced Alexander. Because the Fourth District summarily reversed its prior decision for the insurer in that case on the holding contained in Alexander without any extent of substantive discussion, the author has found little need to include an analysis of Fourth District cases in Section III B. of this paper.
44 Woods, 590 N.E.2d at 279.
47 Millar, 592 N.E.2d at 828. At the time of this writing, Millar is the last instance in which the Supreme Court of Ohio can be found making any reference to Alexander.
48 See supra text accompanying notes 24-39.
insured” was contrary to the rule announced in *State Farm v. Alexander.*\(^5\)\(^{10}\) Briefly, the insured in *Dion* was killed as a result of a collision caused by the negligence of an underinsured motorist.\(^5\)\(^1\) Prior to the accident, the insurer, State Farm, issued an endorsement to its insured which effectively eliminated claims of persons not living with the named insured by contractually changing the definition of "an insured".\(^5\)\(^2\) As a result of this endorsement, State Farm denied uninsured motorist benefits to the decedent-insured's children who brought an action under Ohio's wrongful death statute.\(^5\)\(^3\) State Farm contended that the endorsement to the policy contractually eliminated the decedent-insured's children as a category of insureds as previously defined prior to the issuance of the endorsement.\(^5\)\(^4\) The trial court agreed with State Farm's assertion that the amendment was a valid contractual limitation to the policy, and granted the insurer summary judgment.\(^5\)\(^5\) However, the Third Appellate District of Ohio disagreed.\(^5\)\(^6\)

The third district hinged its decision on the rule announced by *State Farm v. Alexander* which prevents an auto insurer from eliminating or reducing uninsured or underinsured motorist coverage required by Ohio law to injured persons with recognized causes of action against the uninsured tortfeasor under Ohio tort law.\(^5\)\(^8\) The Court reasoned that the endorsement in question attempted to

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\(^{10}\) *Id.*

\(^{1}\) *Id.* at *1.*

\(^{2}\) *Id.* at *3-5.* State Farm contended that the endorsement eliminated the fifth category of insureds as previously defined by the policy before the amendment was issued. The definition of "insured" prior to the endorsement was as follows:

*Insured -- means the person or persons covered by uninsured motor vehicle coverage. This is:
1. the first person named in the declarations;
2. his or her spouse;
3. their relatives; and
4. any other person while occupying:
   a. your car, a temporary substitute car, a newly acquired car, or a trailer attached to such car ...
   b. a car not owned by you, your spouse or any relative, or a trailer attached to such a car. It has to be driven by the first person named or that person's spouse . . . .
   Such other person occupying aa vehicle used to carry persons for a charge is not an insured.
5. *any person entitled to recover damages because of bodily injury to an insured under 1 through 4 above.*

*Id.* at *3 (emphasis added).

\(^{3}\) *Id.* at *3-6.* The decedent-insured was divorced and living apart from his ex-wife at the time of his death. Likewise, decedent-insured's children did not live with him and were therefore precluded from recovering benefits as "relatives" under the policy which required relatives to live in the insured's household in order to be insureds.

\(^{4}\) *See supra* note 52.

\(^{5}\) *Dion,* 1992 Ohio App. LEXIS 1556 at *5-6.

\(^{6}\) *Id.*

\(^{7}\) *Id.* at *12-13.

\(^{8}\) *Id.* at *11.*
preclude the insured-decedent's beneficiaries from recovering under their wrongful death claim, a valid legal cause of action under Ohio tort law.\(^{59}\) As such, the Court concluded that State Farm's policy amendment was contrary to the rule of law set forth in *Alexander* and void as against the intent of R.C. § 3937.18.\(^{60}\) Thus, for the first time, an appellate court invalidated a policy provision somewhat different\(^{61}\) than the *Alexander* "household exclusion" by utilizing the broad authority of the *Alexander* syllabus.

2. Fifth Appellate District of Ohio

In *Stagg v. Riddlebarger*,\(^{62}\) the Fifth Appellate District invalidated a policy definition of "uninsured automobile."\(^{63}\) The definition in question prevented a vehicle listed in the declarations of the policy from ever qualifying as an uninsured vehicle even when the vehicle was involved in a one-car accident.\(^{64}\) The fifth district found that the insurance company's rationale for denying coverage in this case was the same as in *Alexander*,\(^{65}\) and the Court therefore required the insurer to provide uninsured motorist coverage to the insured.\(^{66}\)

The plaintiff-insured in *Stagg* also raised an assignment of error stating that "the 'family exclusion' contained within the definitional provisions of uninsured motorist coverage\(^{67}\) is void as a blatant contravention of statutory mandates and public policy."\(^{68}\) The Court held that *Alexander* did not require courts to strike all "family exclusion" language as a matter of law and public policy.\(^{69}\) The Court reasoned that it was possible for such an exclusion to be valid, enforceable and not against public policy under uninsured motorist coverage, particularly if the

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\(^{59}\) Id.

\(^{60}\) Id.

\(^{61}\) Here, the policy provision was one which defined who is "an insured."


\(^{63}\) Id.

\(^{64}\) Id. at *2. The policy stated that "insured vehicle" means: "(a) an automobile described in the policy for which a specific premium charge indicates that coverage is afforded . . . ." Id. The policy also went on to state that an "uninsured vehicle" did not include: "(1) an insured automobile or an automobile furnished for the regular use of the named insured or a relative . . . ." Id.

\(^{65}\) Id. at *4. That is, to contractually eliminate a vehicle which the insured has listed on the declarations page of his policy from ever being uninsured because of the mere reason that the vehicle is insured under the declarations.

\(^{66}\) Id.

\(^{67}\) Id. at *5. While the court did not specifically quote the "family exclusion" language contained in the uninsured motorist coverage section of the policy, the court did recite the "family exclusion" language contained in the liability coverage section of the policy, as follows: "this policy does not apply under [liability] . . . (k) to bodily injury to any person who is related by blood, marriage or adoption to the insured if that person resides in the named insured's household at the time of loss." Id. The author contends that it is reasonable to assume that the language of the "family exclusion" above, contained in the liability policy is virtually identical to the "family exclusion" contained in the uninsured motorist coverage section.

\(^{68}\) Id.

\(^{69}\) Id.
liability portion of the policy did not exclude coverage to family members. 70 Indeed it goes without saying, if the liability section of an auto insurance policy did not contain a "family" or "household" exclusion, 71 an injured family member would never find a need to resort to an attempt to collect under the uninsured section of the policy since coverage would be available under the liability section. Thus, the fifth district declined to extend its holding beyond the stricture of Alexander. 72

What is interesting is Stagg's reluctance to apply Alexander's syllabus in its broad sense. It would seem that even if the liability portion of a policy did not contain a "family exclusion," the fact that the uninsured motorist coverage did contain such an exclusion would violate Alexander's mandate that a policy may not contractually eliminate uninsured motorist coverage to an uncompensated insured with a legal cause of action against the tortfeasor. Arguably, Alexander's syllabus requires that uninsured motorist coverage restrictions be examined without reference to any other provisions contained in other sections of the policy, including the liability coverage section, in order to determine validity. As such, it is debatable whether, as the fifth district contends, a "family exclusion" can ever be a valid exclusion.

3. Sixth Appellate District of Ohio

While it has invalidated "household exclusions" 73 on the command of State Farm v. Alexander, the Sixth Appellate District has gone further than most other appellate districts in applying Alexander's broad syllabus to other uninsured motorist coverage exclusions and limitations. In Delacerva v. State Auto Mut. Ins. Co., 74 the sixth district concluded that an "intrafamilial exclusion" 75 was against public policy under the Alexander holding. 76 The Court's deduction was

70 id.
71 These terms are used synonymously when courts have discussed the type of exclusion which eliminates coverage to members of a named insured's household.
75 Id. at *3. The intrafamilial exclusion in this case provided that: "[An] 'uninsured motor vehicle' [a requirement to collect under the uninsured motorist coverage of the policy] does not include any vehicle or equipment: 1. Owned by or furnished or available for the regular use of you or any 'family member.'" Id.
76 Id. at *5-6. The trial court granted the insurer's motion for summary judgment prior to the decision of State Farm v. Alexander being rendered. As such, the trial court relied upon Dairyland Ins. Co. v. Finch, 513 N.E.2d 1324 (Ohio 1987), overruled by State Farm Auto. Ins. Co. v. Alexander, 583 N.E.2d 309 (Ohio 1992), which expressly provided that intrafamilial exclusions contained within an uninsured motorist provision of an automobile liability policy are valid and not against public policy. Id. However, as previously stated, State Farm v. Alexander expressly overruled the second paragraph of the syllabus in Finch which states that "[p]ublic policy does not prevent the issuance and enforcement of an automobile liability insurance policy containing a
founded on the fact that the exclusion eliminated the insured's uninsured motorist coverage, thereby violating R.C. § 3937.18 and causing the exclusion to be unenforceable.77

The next occasion in which the sixth district relied on Alexander was in Farley v. Progressive Casualty Ins. Co.78 There, the insurer sought to deny uninsured motorist coverage to the policyholder's children whose mother, the policyholder, had instituted a loss of parental consortium claim against the tortfeasor on the children's behalf.79 The insurer based its denial of coverage upon policy language omitting uninsured motorist coverage for minor children of the named insured under certain conditions.80 The insured, however, claimed that the definition of "insured" used in the policy did not afford uninsured motorist coverage to her minor children to the same extent that it afforded coverage to the named insured herself and was therefore contrary to the intent of R.C. § 3937.18.81 The court of appeals reasoned that since the children's loss of consortium claim was a claim which was entitled to be compensated under Ohio law, and that the policy restrictions in question ignored the driver-tortfeasor's legal liability to the insured's minor children, the policy in effect divested the children of their ability to bring an uninsured motorist claim under the policy.82 This effect, said the Court, conflicted with R.C. § 3937.18, just as the "household exclusion" contained in the insurance policy in State Farm v. Alexander did, the result of which caused the restriction on coverage to be unenforceable.83

Similarly, the sixth district struck down an exclusion other than the "household exclusion" in Gaddis v. State Farm Mut. Auto. Ins. Co.84 First, the Court invalidated a limiting definition of "uninsured motor vehicle," which it found to be the same provision State Farm unsuccessfully relied upon in

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77 Delacerva, 1992 Ohio App LEXIS 413 at *5-6.
79 Id. at *1-2. In this case, the children's (plaintiffs') father was divorced from the children's mother at the time when he was involved in a motor vehicle accident which left him a quadriplegic. Neither the father nor the driver of the vehicle in which he was a passenger had automobile insurance. Debbie Farley, as parent and next friend of her minor children, filed a complaint for declaratory judgment asking the court to declare that the minors had a valid uninsured motorist claim against Debbie Farley's insurer for the children's loss of their father's care, support, love, affection and consortium as a result of the uninsured tortfeasor-driver's negligence. Id.
80 Id. at *32-35. The policy omitted coverage for minor children of the named insured when not occupying the insured vehicle or when they were not present in another car driven by the named insured.
81 Id. The named insured argued that she was provided uninsured motorist coverage for any injury, including derivative claims such as loss of consortium, caused by an uninsured motorist, whereas her children were not afforded the same coverage due to the policy definition of "insured." Id.
82 Id.
83 Id.
Impact of State Farm v. Alexander. Next, the Court determined that an exclusion known as an "owned-but-not-insured" exclusion was against public policy. Stating that although the Court's opinion in Alexander was not directly on point, the Gaddis Court commented that the syllabus of that opinion was quite broad. As such, it reasoned that the "owned-but-not-insured" exclusion at issue must fail, as did the "household" exclusion in Alexander. The Court went on to express the notion that Alexander made it clear that the focus in determining whether uninsured motorist coverage is applicable should be on the status of the tortfeasor, not on the status of the various vehicles.

The Gaddis decision is one of the leading cases decided thus far which gives full force and effect to Alexander's broad syllabus. Gaddis extends Alexander's mandate to exclusions other than the "household" exclusion and other exclusions which attempt to eliminate uninsured motorist coverage by excluding the policyholder, his family, or their vehicle as an "insured" or "uninsured vehicle" under the uninsured motorist coverage section of the policy. In fact, one can see what seems to be a willingness on the sixth district's part, especially from Gaddis, to apply the Alexander principals by focusing on the status of the tortfeasor, not the status of the various vehicles.

4. Eighth Appellate District of Ohio

On two occasions, the Eighth District Court of Appeals has negated attempts by insurers to exclude uninsured motorist coverage based upon policy definitions of "uninsured vehicles." In both instances, the eighth district, citing State Farm v. Alexander, concluded that the insurer was attempting to contractually exclude coverage for torts that occur in the insured's vehicle. Both Courts rendered the exclusions unenforceable because the exclusions

85 Id. at *6. The limiting definition of "uninsured motor vehicle" stated that: 
[A] uninsured motor vehicle does not include a land motor vehicle: 1. insured under the liability coverage of this policy; 2. furnished for the regular use of you . . . your spouse or any relative." Id.
86 Id. at *10. The "owned-but-not-insured" exclusion in question provided: "We do not provide Uninsured Motorists Coverage for bodily injury sustained . . . while occupying, or when struck, by a car owned by you or any family member which is not insured for this coverage under this policy." Id.
87 Id. Gaddis cites to Thackery v. Helfrich, 175 N.E.2d 449 (Ohio 1931) which held that the syllabus of an opinion of the Supreme Court states the applicable law.
89 Id. See supra part III B. 3.
93 In both Worldwide Ins. Group v Duchak and Lawrence v. Safeco Ins. Co., the uninsured motorist section of the policy precluded recovery by the insured since, by definition, a vehicle covered by the liability insurance section of the policy could not be an "uninsured vehicle."
attempted to avoid, and thereby conflicted with, the requirements of R.C. § 3937.18.95

5. Ninth Appellate District of Ohio

Invalidating an exclusion which sought to avoid interspousal claims under the uninsured motorist provision of an insurance policy, the Ninth Appellate District in O'Connor v. Westfield Ins. Co. reversed a lower Court's decision upholding the insurer's attempt to contractually limit uninsured motorist coverage.96 In that case, the insurer sought to contractually eliminate coverage through a limiting policy definition of an "uninsured vehicle" which prevented a vehicle furnished for the use of a family member from ever being classified as an "uninsured vehicle."97 The trial Court correctly rendered its decision for the insurer on the authority of Dairyland Ins. Co. v. Finch,98 the state of the law prior to the Ohio Supreme Court's ruling in Alexander.99 However, prior in time to the Plaintiff's appeal, the Supreme Court of Ohio returned the Alexander decision.100 The Ninth District took notice of Alexander which expressly overruled the provision in Finch upon which the trial Court had based its ruling.101 As such, the appellate court reversed the trial court and invalidated the policy exclusion since its conflicted with the Ohio Uninsured Motorist Statute's purpose.102

6. Tenth Appellate District of Ohio

On three occasions thus far, the Tenth Appellate District has found cause to cite to Alexander,103 however only two of the cases provide any substantive insight into construction of uninsured motorist policy exclusions.104 In Windsor

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95 In effect, both of the policies in these cases sought to avoid R.C. § 3937.18 requirements by causing the policyholder's vehicle to become "uninsured" under the statute when the insurer denied coverage under the liability portions of the insurance policies, but then defining the vehicle as "insured" under the uninsured motorists portions of the policies thereby precluding coverage. See Duchak 1992 Ohio App. LEXIS 2221 at *7; Lawrence 1992 Ohio App. LEXIS 3140 at *11.
97 Id. at *2. Westfield Insurance Co. attempted to deny coverage to the insured who was injured while riding as a passenger in a car driven by her husband, the tortfeasor in the action. Westfield based its denial of coverage on a "family exclusion" contained in an endorsement to the policy claiming that the Plaintiff, Mrs. O'Connor, was excluded pursuant to the policy definition of an uninsured vehicle. Id.
98 513 N.E.2d 1324 (Ohio 1987).
99 Id.
100 O'Connor 1992 Ohio App. LEXIS 3140 at *3-4.
101 Id.
102 Id. The court cited Alexander which stated that Finch was decided incorrectly because it conflicted with R.C. 3937.18 by allowing the insurer to contractually eliminate uninsured motorist coverage where one spouse became legally liable to the other for personal injuries. Id.
Ins. Co. v. Henry, the tenth district considered the validity, under the provisions of the Ohio Financial Responsibility Act, of an "intrafamilial exclusion" contained in the liability, as opposed to the uninsured motorist, section of the insurance policy in question. The Henry Court upheld the exclusion stating that the rationale expressed in Alexander related only to exclusions of uninsured and underinsured motorist coverage, and in no way affected the validity of an exclusionary clause in the liability section of the insurance policy. While this decision is correct as it relates to Alexander's effect on exclusions contained in the liability portion of an insurance policy, it is interesting to note that Henry may have narrowly construed Alexander when it stated that Alexander "held that a 'household exclusion' violated the provisions of R.C. 3937.18." It is not apparent whether Henry construes the holding to apply only to "household exclusions," or if the Court was merely singling out the particular exclusion at issue in Alexander to provide factual background without intending to limit the holding to one particular type of exclusion. Thus, it will be necessary to observe how the Tenth District construes Alexander in later cases.

In addition to Henry, the tenth district construed Alexander in Leahy v. United Servs. Auto Ass'n. In Leahy, the policy in question expressly limited uninsured motorist coverage to bodily injury to the insured and family members who resided in the named insured's household. Factually, the Plaintiff's father was killed as the result of an accident with an uninsured motorist. Plaintiff was an emancipated adult child at the time of the accident and did not reside in the same household with his father. As such, the Defendant-insurer denied coverage under the "covered person" definition because Plaintiff's father was not a "covered person" unless he resided in the Plaintiff's household. In upholding the trial court's invalidation of this coverage restriction, the tenth district relied upon the purpose of the Ohio Uninsured Motorist Statute as stated in Alexander. Since Plaintiff had suffered the loss of his father for which he was uncompensated due to the lack of insurance coverage on the tortfeasor's behalf,

105 See OHIO REV. CODE ANN. Ch. 4509 (Baldwin 1992).
107 Id. The court stated that the liability coverage intrafamilial exclusionary clause was valid and enforceable under the first paragraph of Dairyland Ins. Co. v. Finch which survived the Ohio Supreme Court decision in Alexander. Id.
108 Id.
110 Id.
111 Id. at *2.
112 Id.
113 Id. at *4.
114 Id. at *7. The court relied upon language in Alexander which "identified the purpose of R.C. 3937.18 to be that of providing uninsured and underinsured motorist coverage for injured persons who have a legal cause of action against a tortfeasor, but who are uncompensated because the tortfeasor is either (1) not covered by liability insurance or (2) covered in an amount that is less than the insured's uninsured motorist coverage." Id. (quoting State Farm Auto. Ins. Co. v. Alexander, 583 N.E.2d 309, 312 (Ohio 1992)).
and because Plaintiff had a legal cause of action against the uninsured tortfeasor through a wrongful death action, the Court concluded that the policy's coverage restriction did not comply with the statute's purpose and was therefore unenforceable.115

7. Eleventh Appellate District of Ohio

In Weed v. State Farm Ins. Co.,116 the Eleventh District Court of Appeals considered a fact situation nearly identical to that in Alexander.117 As in Alexander, the Plaintiff in Weed was denied coverage because of explicit language in the policy excluding the policyholder's vehicle from being an "uninsured motor vehicle" since it was the policyholder's own vehicle furnished for her own regular use.118 Under State Farm's "household exclusion," Weed noted that an insured's own vehicle could never be an "uninsured vehicle" in a one-car accident.119 As such, the Court found that State Farm's attempt to exclude uninsured motorist coverage for torts that occur in the insured's vehicle violated the coverage requirements of R.C. § 3937.18, the same as it did in Alexander.120

Two weeks after Weed, the eleventh district decided Mezerkor v. Mezerkor121 which involved the legality of an "intrafamilial exclusionary clause."122 Like the decisions rendered by other Ohio appellate districts previously mentioned which have considered similar "intrafamilial exclusions,"123 the Mezerkor Court found this exclusion to be void because an insurer may not contractually eliminate uninsured motorist coverage where one spouse becomes legally liable to the other for personal injuries.124 To do so would deny coverage to a class of plaintiffs under Ohio tort law who would otherwise be entitled to recovery.125

115 Id.
117 Id. Both Weed and Alexander involved one car automobile accidents in which the plaintiff-policyholder was injured while riding as a passenger in his own vehicle, and the driver of the plaintiff-policyholder's vehicle was uninsured. Additionally, in both cases, the insurer, State Farm, denied coverage claiming that the policyholder's vehicle did not meet the policy's definition of an "uninsured vehicle." Id.
118 Id. at *2.
119 Id. at *4.
120 Id. at *5.
122 Id.
123 See cases cited supra notes 60-65, 67-70, 88-93, 96-99 and accompanying text.
125 Id. at *15 (citing State Farm Auto. Ins. Co. v. Alexander, 583 N.E.2d 309, 312 (Ohio 1992)).
8. Twelfth Appellate District of Ohio

In addition to the Gaddis opinion previously discussed, the decision rendered by the Twelfth Appellate District of Ohio in Nationwide Ins. Co v. Tobler is likewise extremely useful in examining the extent to which Ohio appellate courts are willing to extend the broad holding and rationale of Alexander. The Tobler Court held that pursuant to Alexander, an exclusion to uninsured motorist coverage based upon the use of a motor vehicle without permission is invalid. Tobler concluded that if the insured was entitled to recover damages due to the tortious conduct of an uninsured motorist, but would be uncompensated because of the tortfeasor’s lack of liability insurance, then the issue of whether the victim was driving with permission was irrelevant. This is so because to hold such an exclusion valid would be to preclude recovery under Ohio tort law and thus contravene the provisions of R.C. § 3937.18. In addition to Tobler, the twelfth district also invalidated a “household exclusion clause” in Nationwide Ins. Co. v. Johnson on grounds substantially similar to those already discussed in Weed and Leahy.

IV. THE IMPACT OF STATE FARM V. ALEXANDER ON THE “OWNED-BUT-NOT-INSURED” EXCLUSION

Examine any automobile liability insurance policy containing uninsured and underinsured motorist coverage and you will find a myriad of exclusions contained within it. While the number of possible exclusions is certainly finite, it is beyond the constraints of this paper to attempt to examine every possible exclusion and the impact which the State Farm v. Alexander ruling has had upon it. As such, a representative exclusion, the "owned-but-not-insured" exclusion, has been chosen in order to examine, in detail, to what extent State Farm v. Alexander invalidates exclusions other than the "household" exclusion which Alexander unquestionably invalidated.

Thus, the question to be examined is whether the "owned-but-not-insured" vehicle exclusion contained in the uninsured motorist coverage provision of an automobile liability insurance policy is contrary to the intent of R.C. 3937.18, and therefore, void as against public policy. Undoubtedly, the contention will be

126 See supra notes 77-84 and accompanying text.
128 Id. at *17.
129 Id.
130 Id.
132 See supra notes 108-110 and accompanying text.
133 See supra notes 100-106 and accompanying text.
made by insurers that a literal interpretation of the broad syllabus from Alexander, which would invalidate "owned-but-not-insured" exclusions, would expand coverage in a way inconsistent with the uninsured motorist statute's purpose. These contentions and valid concerns will be addressed herein.

One case often cited in numerous jurisdictions for setting forth insightful rationales for examining the validity of uninsured motorist exclusions is Bradley v. Mid-Century Ins. Co. Bradley plainly states that "[t]he legislative objective in enacting [Michigan's] uninsured [motorist] amendment [sic] was that all persons be protected against the negligent uninsured motorist." This language is parallel to that cited from Ohio case law in Alexander and other Ohio case law decisions. Bradley also states that the insurer's obligation to provide uninsured motorist coverage is tied to liability coverage for the "purpose of facilitating the purchase of uninsured [motorist] coverage and determining who must be provided with uninsured [motorist] coverage." Further, insurers are not permitted to limit uninsured motorist coverage to situations in which liability coverage would be in effect. This indicates that liability and uninsured motorist coverages are distinct and separate coverages. Bradley clarifies this point when it states:

The legislative declaration that no policy shall be delivered unless coverage is provided for the protection of persons "insured thereunder" leaves no room for contractual limitations modifying the generality of 'insured thereunder' or exclusions based on circumstances of the accident. The words 'insured thereunder' refer to persons primarily insured for public liability by the policy and not to the circumstances or times that the public liability coverage is actually operative . . . The amendment contemplated that all such persons would have fully portable coverage.

Bradley clearly delineates the same reasoning relied upon by an Ohio Court in Motorists Mutual Ins. Co. v. Bittler.

When an insurance carrier provides liability and bodily injury coverage under an automobile liability policy, the insured status of the vehicle is undoubtedly important. If the vehicle is not named in the policy and a premium

134 294 N.W.2d 141 (Mich. 1980).
135 Id. at 150.
137 Bradley, 294 N.W.2d at 151.
138 Id.
139 Id. (emphasis added).
140 235 N.E.2d 745 (Cuyahoga County, Ohio C.P. 1968).
is not paid, no liability insurance attaches. However, compare liability insurance with uninsured motorist coverage, which is not limited to the circumstances or times when liability coverage is actually operative. As Justice Fogleman pointed out in his well-reasoned dissent in Holcomb v. Farmers Ins. Exchange:

[a] motorist who purchases liability insurance on his automobile does so for the benefit of an unidentified third party. On the other hand, the motorist who purchases uninsured [motorist] coverage does so for his own benefit...uninsured motorist insurance is not liability insurance. To the contrary, it is, in effect, accident and health insurance, very similar to automobile medical payments insurance.

It is clear that the uninsured motorist coverage required has nothing to do with the vehicle for which the liability policy is issued.

The decision rendered by the Ohio Supreme Court in Hedrick v. Motorists Mutual Ins. Co. has often been cited as authority for the validating "owned-but-not-insured" exclusions. However, it can be debated that Hedrick failed to make the distinction between liability coverage and uninsured motorist coverage as Justice Fogleman pointed out in Holcomb. If this is the case, then the majority in Hedrick erroneously upheld the "owned-but-not-insured" exclusion in that case.

In a four to three decision, the majority in Hedrick held that "an insurance policy provision which denies uninsured [motorist] coverage, when bodily injury is sustained by any person while occupying a motor vehicle owned by an insured but which vehicle is not specifically insured under the policy, is a valid exclusion." Hedrick involved an accident between an insured motorcyclist and an uninsured automobile. The motorcyclist-insured was injured as a result of the negligence of the uninsured motorist. The motorcycle, owned by the injured cyclist's father, was insured for both liability and uninsured motorist coverage. Following the accident, the insurer of the motorcycle paid uninsured motorist benefits to the insured. The insured then sought to recover uncompensated benefits through a separate insurance policy issued to his father
which covered two automobiles.\textsuperscript{151} This second policy contained an "owned-but-not-insured" exclusion upon which the insurer denied the insured uninsured motorist coverage.\textsuperscript{152}

The Ohio Supreme Court recognized the exclusion in \textit{Hedrick} to be in accordance with the purpose of R.C. § 3937.18.\textsuperscript{153} The Court reasoned that the insured was attempting to "stack" coverage in violation of an anti-stacking provision contained in the policy.\textsuperscript{154} The Court then noted that the legislature did not include a definition of "stacking" in the statute.\textsuperscript{155} As such, the Court relied upon the definition of "stacking" set out in \textit{Karabin v. State Automobile Mut. Ins. Co.}\textsuperscript{156} to interpret the meaning.\textsuperscript{157} \textit{Karabin} defined "stacking" to be "the lumping or adding together of payments or the aggregation of coverage."\textsuperscript{158} \textit{Hedrick} also noted that "a common thread running through those cases determining whether an insured was entitled to stack uninsured motorist coverage was the fact that the insured was seeking payment under more than one policy of insurance."\textsuperscript{159}

In \textit{Hedrick}, the insured was indeed trying to stack coverage. The insured had first collected uninsured motorist benefits under the motorcycle insurance policy, then he attempted to collect the same benefits under the automobile insurance policy.\textsuperscript{160} However, had there been only one policy at issue which contained an "owned-but-not-insured" exclusion, a different result may likely have arisen. In the scenario where only the policy exists, the insured would not be attempting to collect and stack coverage under two insurance policies. For the second policy, the insured paid an additional premium to receive uninsured motorist coverage to protect him against negligent uninsured motorist. Because the majority in \textit{Hedrick} based its decision to uphold the "owned-but-not-insured" exclusion on the fact that the insured could not stack uninsured motorist coverages,\textsuperscript{161} the scenario of a single insurance policy set forth above cannot be properly decided under the \textit{Hedrick} holding.

\begin{footnotes}
\item[151] Id.
\item[152] Id.
\item[153] Id. at 842.
\item[154] Id. at 843. R.C. 3937.18(G) expressly permits insurance companies to include provisions in their policies to prohibit the stacking of insurance coverage. \textsc{Ohio Rev. Code Ann.} § 3937.18(6) (Baldwin 1992).
\item[155] \textit{Hedrick}, 488 N.E.2d at 843.
\item[156] 462 N.E.2d 403 (Ohio 1984).
\item[157] \textit{Hedrick}, 488 N.E.2d at 843.
\item[158] \textit{Karabin}, 462 N.E.2d at 406.
\item[160] \textit{See supra} text accompanying notes 102-109.
\item[161] \textit{See supra} text accompanying notes 154-160.
\end{footnotes}
In addition to this factual distinction between the scenarios set forth above, *State Farm v. Alexander* should not permit *Hedrick* to be relied upon if it acts to enforce a policy restriction that varies from the R.C. § 3937.18's requirements. The "owned-but-not-insured" exclusion attempts to deny coverage based upon the status of a vehicle. As such, it effectively ignores the insured's negligence claim against the tortfeasor and violates the rule of *Alexander*. Where the exclusion seeks to contractually eliminate uninsured motorist coverage to a category of plaintiffs having a valid tort claim under Ohio law, *Alexander* renders these exclusions in conflict with R.C. 3937.18 and therefore void.162

It has been pointed out at great length thus far that under the plain meaning of the law set forth in *Alexander*, an insurer cannot eliminate uninsured motorist coverage to the insured who is injured in a motor vehicle accident due to the negligence of an uninsured motorist. As evidence that *Alexander* went further than the mere invalidation of the "household exclusion," the syllabi of both *Alexander* and *Hedrick* must be dissected. The *Alexander* syllabus states in no uncertain terms that an insurer "may not eliminate or reduce uninsured or underinsured [motorist] coverage . . . ."163 The syllabus in *Hedrick* instead focuses on a certain type of exclusion, namely the "owned-but-not-insured" exclusion, and does not attempt to set forth general, broad policy as does *Alexander*.164

Since *Alexander* is a post-*Hedrick* decision, and its language is very specific in forbidding any contractual elimination of underinsured motorists coverage,165 there can be little doubt that the *Hedrick* decision has been inferentially overruled by the Ohio Supreme Court in *Alexander*. Under *Alexander*, the type of exclusion has no effect if the insured has a recognized cause of action against the tortfeasor under Ohio tort law.166 As further support that *Alexander* exhibits more than a mere invalidation of the "household exclusion," it is helpful to examine Justice Douglas's position in both *Alexander* and *Hedrick*. Justice Douglas, writing for the narrow majority in *Hedrick*, appears to have re-examined his position and sided with Justices Sweeney and Brown, who dissented very sharply in *Hedrick*.167 This is evidenced by his concurrence in the majority opinion by Justice Brown in *Alexander*.168 Surely, Justice Douglas was aware of his decision in *Hedrick* when he concurred in *Alexander's* broad

163 Id. at 309.
165 Id.
166 *Alexander*, 583 N.E.2d at 309.
167 *Hedrick*, 488 N.E.2d at 843 (Celebrezze, C.J., Sweeney, J. and Brown, J. dissenting).
168 *Alexander*, 583 N.E.2d at 313.
repudiation of any attempt by insurers to eliminate or reduce uninsured motorist coverage to persons injured due to negligent uninsured motorist. 169

As additional support that Hedrick has succumb to the rule in Alexander is the interpretation of Alexander found in Gaddis v. State Farm Mut. Auto. Ins. Co. 170 In Gaddis, the Sixth District Court of Appeals for Ohio declared an exclusion with virtually identical language to the one being examined void based upon Alexander. 171 The Gaddis Court stated that "although the Court's opinion in Alexander...is not directly on point, the syllabus of that opinion is quite broad. 172 It indicates that these [owned-but-not-insured] exclusions must too fail." 173

It is true that Gaddis does not undertake to examine Alexander with a fine-tooth comb; however, arguments that the language of Gaddis is simply too cursory are not persuasive. It is interesting nevertheless to ponder why the Sixth District Court of Appeals made no mention of the Hedrick decision which explicitly spoke to the validity of "owned-but-not-insured" exclusions. It may be validly asked if perhaps the Gaddis Court overlooked the Hedrick decision. Upon examining the case law cited in Gaddis, it would seem that there is no possible way that the Gaddis Court could not have considered Hedrick. Alexander was decided approximately six weeks before Gaddis. 174 Since Alexander was new law and explicitly overruled Dairyland Ins. Co. v. Finch, it is more than reasonable to assume that the Gaddis Court examined the Dairyland opinion. The Dairyland opinion cites Hedrick twice and relies upon direct language from Hedrick. 175 Thus, it may be reasoned that Hedrick was actually considered by the Gaddis Court, but the Gaddis Court reasonably determined that the broad language of Alexander superseded that of Hedrick. Additionally, Gaddis cited Watson v. Grange Mut. Cas. Co. 176, which also cited Hedrick. 177

In addition to the Ohio case law set forth above, it is noteworthy to address the fact that numerous jurisdictions have invalidated "owned-but-not-insured" exclusions. Admittedly, there has been a split of authority on the issue at hand. However, "a significant majority of Courts [have] accepted the argument that

169 Id. at 309 (syllabus).
170 See supra text accompanying notes 76-83.
172 Id.
173 Id.
176 532 N.E.2d 758 (Ohio 1988).
177 Gaddis, 1992 Ohio App. LEXIS 797 at *10.
uninsured motorist vehicle coverage is personal and cannot [be] restrict[ed] without violating public policy."^{178}

*Higgins v. Fireman's Ins. Co.*^{179} stated that uninsured motorist coverage was first-party insurance.

Basic economic benefits and other first party coverages such as uninsured and underinsured [motorist] coverages protect and follow the person, not the vehicle. The risk being insured by each policy issued to an insured party is principally the risk of injury to himself or covered members of his household. Ordinarily, an insured person looks to his own policies or those covering him as an insured for basic economic loss benefits and the benefits of other first party coverages whether or not the policies are associated with the particular vehicle involved in the accident.^{180}

For support of this proposition, *Higgins* relied on a line of cases from Minnesota which state the same effect.^{181}

As alluded to earlier, uninsured motorist coverage is not premised upon risk, whereas motor vehicle liability coverage is. Uninsured motorist coverage is assessed at a flat premium rate and coverage is available to everyone at the same rate; therefore, coverage is not risk-related.^{182} In fact, the Ohio Supreme Court in *Watson v. Grange Mut. Cas Co.*^{183} acknowledged that uninsured motorist coverage was not founded on risk when it stated "although the [insurance] policies allude to accidents arising from the ownership, maintenance or use of the [owned but] uninsured automobile, the endorsement clearly is directed toward the uninsured motorist."^{184} Thus, the focus is not on the vehicle, but the person. In fact, the person upon whom the focus should be placed is the tortfeasor, not

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^{180} Id. at 327.

^{181} See Hilden v. Iowa Nat'l Mut. Ins. Co., 365 N.W.2d 765, 768 (Minn. 1985); American Motorist Ins. Co. v. Sarvela, 327 N.W.2d 77, 79 (Minn. 1982) ("first party coverages for which an insured pays a premium follow the person, not the vehicle."); Sobania v. Integrity Mut. Ins. Co., 349 N.W.2d 345, 347 (Minn. Ct. App. 1984) (uninsured motorists coverage is a first-party insurance scheme and covers the person, not the vehicle), aff'd, 371 N.W.2d 197 (Minn. 1985).


^{183} 532 N.E.2d 758 (Ohio 1988).

^{184} Id. at 760.
the victim. "R.C. 3937.18 requires an analysis of the tortfeasor's insured status rather than the vehicle's status." This observation is clearly stated in Watson:

[A]lthough the policies allude to accidents arising from the ownership, maintenance or use of the uninsured automobile, the endorsement clearly is directed toward the uninsured motorist. The coverage's clear focus is on the operator, not the vehicle. It is axiomatic that drivers cause accidents, not inanimate vehicles. The purpose of the uninsured motorist statute is not to provide coverage for an uninsured vehicle but rather to afford the insured additional protection in the event of an accident. .

Looking at case law from a *minority* of other jurisdictions, it is apparent that many of these Courts have expressed great concern over the fact that a single uninsured motorist premium would protect all other vehicles that the insured owns. As Bradley indicated, insured's acquire their insured status when coverage is purchased for any household vehicle. Therefore, they are insured no matter where they are injured. Bradley remarked that one notable insurance law commentator has addressed this "free ride" issue which the appellee asserted. He observed:

| 186 | Watson, 532 N.E.2d at 760. |
| 189 | Id. Bradley stated: |
| 190 | Id. (footnotes omitted). |

| 190 | Id. at 151-52 n.34 (citing ALANI.WIDISS, A GUIDE TO UNINSURED MOTORIST COVERAGE §2.9, at 29 (1969). |
Even so, many continue to strongly argue that invalidating the "owned-but-not-insured" exclusions would benefit only those who want to get something for nothing. Contrary to these assertions, the insured who is injured while operating an owned vehicle not expressly stated in the declarations has nonetheless paid a premium for uninsured motorist coverage.

Again, it is important to look to the thrust of uninsured motorist coverage, which is to protect the person with a cause of action, not the vehicle. Therefore, based upon the discussion above, it is reasonable to conclude that the single policy insured is entitled to the uninsured motorist coverage that the Ohio Legislature has ordered the insurer to provide and for which the insured has paid an additional premium. Nevertheless, claims are sure to arise which will state that had the legislature's intention been to allow for one premium to cover all other vehicles, the legislature would have drafted the uninsured motorist statute accordingly. However, cannot the opposite be said as well? If the legislature had intended to exclude or limit uninsured motorist coverage, they would have so provided in the statute. If the law should be that one uninsured motorist coverage premium should be paid for each vehicle the insured owns, then this edict should emanate from the Ohio Legislature, not a Court of law.

V. CONCLUSION

While the Ohio Supreme Court has to date offered little guidance as to the extent to which the holding in State Farm v. Alexander will be carried, Ohio appellate courts have read Alexander to be broad enough to invalidate a variety of exclusions which attempt to contractually deny uninsured motorist coverage required by R.C. § 3937.18. The legislative purpose of R.C. § 3937.18, as interpreted under Ohio case law, is to provide uninsured and underinsured motorist coverage for injured persons who have a legal cause of action against a tortfeasor, but who are uncompensated because the tortfeasor is either not covered by liability insurance or covered in an amount that is less than the insured's uninsured motorist coverage. In other words, the objective of uninsured motorist coverage is to place the insured in the same position he would have been in had the tortfeasor had insurance coverage. Therefore, any restrictions in the policy that deviate from the statute's requirements will be unenforceable.

191 Harvey v. Travelers Indem. Co., 449 A.2d 157, 160 (Conn. 1982) (stating that coverage is portable and the policyholder is insured no matter where he/she is injured, even if he/she is in an owned vehicle not named in the policy) (citing Bradley v. Mid-Century, 294 N.W.2d 41 (Mich. 1980) and Motorists Mutual Ins. Co. v. Bittler, 235 N.E.2d 745 (Cuyahoga County, Ohio C.P. 1968).
193 See cases cited supra note 9.
State Farm v. Alexander sets forth the clearest interpretation of the legislative intent of R.C. § 3937.18 to date by defining the two requirements that must be present to determine if the insured is entitled to recover uninsured or underinsured motorist benefits under his own automobile liability policy. First, the injured insured must have a legal cause of action against the tortfeasor. Second, the insured must be "uncompensated because the tortfeasor is either (1) not covered by liability insurance or (2) covered in an amount that is less than the insured's uninsured motorist coverage." Thus, Alexander expresses, in no uncertain terms, that the uninsured motorist statute is based upon the underlying premise of the tortfeasor's legal liability to the insured.

As evidence of the broad effect of Alexander's syllabus extending beyond invalidating only "household exclusions", an analysis of Alexander's impact on typical "owned-but-not-insured exclusions" reveals a similar invalidating effect. The reason for this stems from the underlying objective of the Uninsured Motorist Statute to put the victim in the same position of recovery had the tortfeasor been adequately insured. Thus, an important distinction is made between liability insurance purchased for the benefit of other motorists and uninsured motorist coverage which is purchased for the insured's own protection: Liability insurance follows the vehicle, whereas uninsured motorist insurance coverage follows the insured personally, regardless of the vehicle occupied. It is only under these criteria that full effect will be given to the legislative purpose of the Ohio Uninsured Motorist Statute and the resulting coverage it requires.

SHAWN GORDON LISLE

196 Id.
197 Id.