



### **ARE THE BOILERPLATE EXCLUSIONS IN YOUR POLICY ENFORCEABLE UNDER ARIZONA LAW?**

Arizona courts do not look favorably upon boilerplate exclusions hidden within the text of a standardized insurance contract. This is the case even when these terms are not determined to be ambiguous to the court. Arizona appellate courts have determined that many boilerplate exclusions typically cannot be understood by the reasonably intelligent consumer who might actually read the policy. In fact, in most situations, the court will not enforce boilerplate exclusions because the insured likely has not received full and adequate notice of the exclusion, and the exclusion is either unusual or unexpected, or is one that emasculates apparent coverage. Boilerplate exclusions are also unenforceable if they are contrary to the ordinary consumer's reasonable expectations.

Approximately 17 years ago, the Arizona Supreme Court was asked to determine the validity of a driving under the influence (DUI) exclusion in a supplemental liability policy obtained as part of a car rental transaction. In *Philadelphia Indemnity Insurance Company v. Barerra*, 200 Ariz. 9, 21 P.3d 395 (2001), the Arizona Supreme Court held that the DUI exclusion was unenforceable because a reasonably intelligent consumer would not be able to successfully read and understand the terms of the rental agreement which contained the DUI exclusion. The boilerplate language was located in different parts of several documents, and the renter was not provided with sufficient notice that the additional insurance coverage did not cover all types of negligent driving, including DUI.

While the Court in *Philadelphia Indemnity Insurance Company* did not enforce the DUI exclusion, it gave some guidance to insurance companies for avoiding a similar result. In particular, if an insurance company intends to enforce exclusions which lessen the amount of available liability insurance coverage, the exclusion "must be called to the customer's attention, conspicuously placed, and written in plainly-stated and readily-identifiable language so they can be easily noticed and comprehended" by the average consumer. For example, exclusions should be highlighted by the use of all capital letters and set apart by being placed in separate portions of the policy which are initialed by the insured. It should also be specifically stated in the policy that the exclusion voids coverage provided by the policy. Many insurers utilize language in the application to call the boilerplate terms to the prospective insured's attention.

The enforceability of all exclusions must be evaluated on a case by case basis. Some exclusions are unenforceable as a matter of public policy, and other exclusions will be held unenforceable as they violate the consumer's reasonable expectation of coverage. Careful consideration must be given to these issues before denying coverage based upon exclusions which may, at first glance, be considered unambiguous. Please feel free to call Thomas Rubin & Kelley PC if you have any questions regarding your policy exclusions, or would like assistance in reviewing your policy documentation.