

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

April 18, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 95-1009

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

MARY ALICE FARNEN,

Plaintiff,

v.

JOHN P. FARNEN,

Defendant-Appellant,

WESTERN WISCONSIN MUTUAL INS. CO.,

Intervenor-Defendant-Respondent.

APPEAL from an order of the circuit court for La Crosse County:
JOHN J. PERLICH, Judge. *Affirmed.*

Before Eich, C.J., Dykman and Vergeront, JJ.

PER CURIAM. John Farnen appeals from an order declaring that his personal liability insurer, Western Wisconsin Mutual Insurance Company, need not defend him or provide coverage in this personal injury action. The

plaintiff in the action is Farnen's ex-wife and co-insured, Mary Farnen. The issue is whether, on public policy grounds, the family exclusion in the Farnens' policy should be declared unenforceable. That clause provides that the policy will not afford personal liability coverage for "bodily injury to you," which in this case meant both insureds, John and Mary. The supreme court has held such exclusions enforceable, and we therefore affirm.

The rationale for family exclusion clauses is to protect insurers from situations where an insured might not cooperate with or assist the insurer. *Shannon v. Shannon*, 150 Wis.2d 434, 455-56, 442 N.W.2d 25, 35 (1989). John contends that the exclusion should therefore be unenforceable where, as here, the insured is highly motivated to cooperate and assist. However, the supreme court has recently held in a case where the possibility of collusion was deemed quite low, if not nil, that "we hold that such clauses are not contrary to public policy, even though there may be no collusion in this particular case." *Whirlpool Corp. v. Ziebert*, 197 Wis.2d 144, 151-52, 539 N.W.2d 883, 886 (1995). We are bound by supreme court precedent. *Livesey v. Copps Corp.*, 90 Wis.2d 577, 581, 280 N.W.2d 339, 341 (Ct. App. 1979). As a matter of public policy, Western Wisconsin's family exclusion clause is therefore enforceable.

By the Court. – Order affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.