No. 23-1702

In the
United States Court of Appeals
for the Eighth Circuit

MENARD, INC.,
Plaintiff-Appellee,

vs.

FARM BUREAU PROPERTY &
CASUALTY INSURANCE COMPANY,
Defendant-Appellant.

Appeal from the United States District Court
For the Southern District of Iowa
Honorable Helen C. Adams, Chief U.S. Magistrate Judge
CASE NO. 4:21-cv-404-HCA

BRIEF OF DEFENDANT-APPELLANT
FARM BUREAU PROPERTY & CASUALTY INSURANCE COMPANY

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SUMMARY OF THE CASE and REQUEST FOR ORAL ARGUMENT

Farm Bureau issued a motor vehicle liability policy to Cynthia Bowen. On April 13, 2019, while the Policy was in effect, Cynthia Bowen was injured visiting a Menards' lumberyard after an employee dropped a piece of lumber on her. Menards sought liability insurance coverage from Farm Bureau for the injuries Bowen sustained as a result of the accident. Farm Bureau denied Menards' claim for liability coverage, citing Cynthia Bowen's status as a named insured under the Policy and an "Intrafamily Immunity" exclusion contained in the Policy which expressly provides "There is no coverage for any 'bodily injury' to any 'insured' or any member of an 'insured's' family residing in the 'insured's' household."

Menards filed this lawsuit seeking a declaratory judgment that it is entitled to liability coverage under the Farm Bureau Policy. After cross-motions for summary judgment, the district court granted Menards' motion, holding the "Intrafamily Immunity" exclusion did not apply because Bowen was not related to the Menards employee who caused her injuries.

Controlling Iowa precedent supports Farm Bureau's coverage denial that the Policy issued by Farm Bureau plainly precludes liability coverage for bodily injury to any insured under the Policy, including Cynthia Bowen. The district court's judgment should be reversed, and summary judgment in favor of Farm Bureau granted. Oral argument of fifteen minutes for each side would be appropriate.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 26.1, Farm Bureau Property & Casualty Insurance Company provide the following information to the court:

(a) The following are the names of all associations, firms, partnerships, corporations, and other artificial entities that either are related to the Defendant as a parent, subsidiary, or otherwise, or have a direct or indirect pecuniary interest in the Defendant's outcome of the case:

Farm Bureau Multi-State Services, Inc. (Parent Company of Farm Bureau Property & Casualty Insurance Company "FBPCIC" – 100% interest)

Farm Bureau Mutual Holding Company (Holding Company of Farm Bureau Multi-States Services, Inc. – 100% interest)

Western Agricultural Insurance Company (Subsidiary of FBPCIC)

FBL Insurance Brokerage, LLC (Subsidiary of FBPCIC)

FBL Financial Group, Inc. (Minority ownership interest held by FBPCIC)

Farm Bureau Wealth Management, LLC (Subsidiary of FBL Financial Group)

FBL Marketing Services, LLC (Subsidiary of FBL Financial Group)

FBL Financial Group Capital Trust (Subsidiary of FBL Financial Group)

FBL Leasing Services, Inc. (Subsidiary of FBL Financial Group)

FBL Assigned Benefit Company (Subsidiary of FBL Financial Group)

Farm Bureau Life Insurance Company (Subsidiary of FBL Financial Group)

Greenfields Life Insurance Company (Subsidiary of Farm Bureau Life Insurance Company)**.**

(b) With respect to each entity named in response to (a), the following describes its connection to or interest in the litigation, or both:

Farm Bureau Property & Casualty Insurance Company issued the insurance policy that gives rise to this lawsuit. The interests of any affiliated entities are identified in the parenthesis above.

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JURISDICTIONAL STATEMENT

Subject-matter jurisdiction in the district court was proper pursuant to 28 U.S.C. § 1332. Following the district court's March 20, 2023, entry of summary judgment effectuating a final disposition of the present case in the federal district court, jurisdiction in the United States Court of Appeals for the Eighth Circuit is proper pursuant to 28 U.S.C. § 1291. Defendant's Notice of Appeal was timely filed on April 3, 2023.

STATEMENT OF THE ISSUES

I. The Policy issued by Farm Bureau plainly precludes insurance coverage under an "Intrafamily Immunity" exclusion for bodily injury suffered by a named insured arising out of the use of a covered automobile.

Most Apposite Cases:

Jones v. State Farm Mut. Auto Ins. Co., 760 N.W.2d 186 (Iowa 2008)

Rickerd v. Iowa Mut. Ins. Co., 2003 WL 21076798 (Iowa Ct. App. May 14, 2003)

Shelter Gen'l Ins. Co. v. Lincoln, 590 N.W.2d 726 (Iowa 1999)

Walker v. American Family Mut. Ins. Co., 340 N.W.2d 599 (Iowa 1983)

STATEMENT OF THE CASE

I. Factual Background

Appellant Farm Bureau Property & Casualty Insurance Company ("Farm Bureau") provides personal auto liability insurance coverage to customers throughout Iowa. (App. 3, R. Doc. 1 at 3). Cynthia Bowen ("Bowen") obtained and is a named insured on a Member's Choice Policy issued by Farm Bureau, Policy No. 8155916, with effective dates of coverage from February 1, 2019 to February 1, 2020 (the "Policy"). (App. 11, R. Doc. 1-2 at 1). One of the coverages afforded under the Policy is personal motor vehicle liability coverage. (App. 12, R. Doc. 1-2 at 2).

The Policy includes both a General Section providing definitions and general terms applicable to the entire Policy (App. 16–24, R. Doc. 1-2 at 6–14), as well as a Vehicle Section which provides additional definitions and terms for only vehicle-related coverages included in the Policy. (App. 26–29, R. Doc. 1-2 at 16–19). The Policy lists a 2008 Toyota Tacoma pick-up truck (the "Tacoma") as one of the vehicles covered under the Vehicle Liability Module of the Policy. (App. 12, R. Doc. 1-2 at 2). Included within the Vehicle Section of the Policy is a Vehicle Liability Module which, when read together with the provisions of the General Section and definitions and policy terms of the Vehicle Section, defines the motor vehicle liability coverage afforded by the Policy. (App. 30–34, R. Doc. 1-2 at 20–24).

Menard, Inc. ("Menards") is a Wisconsin corporation in the business of selling home improvement and construction materials in both retail and commercial settings. (App. 7, R. Doc. 1-1 at 3). As part of its operations, Menards owns and controls large "box" retail shopping stores in Iowa, including a store located at 614 West Agency Road, West Burlington, Iowa 52655 (the "Store"). (App. 7, R. Doc. 1-1 at 3). Included in the Store's facilities is a "drive-in" lumberyard where treated wood and other building materials are sold to retail and commercial customers, often involving transfer of the materials to the customers personal vehicles. (App. 7, R. Doc. 1-1 at 3).

On April 13, 2019, Bowen drove the Tacoma to the Store to purchase two pieces of 2x10x10 green treated lumber. (App. 7, R. Doc. 1-1 at 3). Bowen initially parked the Tacoma in the front of the store, walked inside, and purchased "lumber tickets" which could then be exchanged for the two green treated lumber pieces she selected from the Store's lumberyard. (App. 331, R. Doc. 25-4 at 145). Bowen then walked back to the Tacoma, drove the Tacoma to the security gate placed at the entrance to the drive-in lumberyard, and asked the security attendant where the 2x10x10 green treated lumber was stored. (App. 332, R. Doc. 25-4 at 146). Bowen also requested the attendant radio a store associate to meet Bowen at the treated lumber to assist her. (App. 332, R. Doc. 25-4 at 146).

Once passed through the security gate, Bowen drove to where the green treated lumber was stored, parked the Tacoma in the middle of the aisle, and exited the vehicle. (App. 332, R. Doc. 25-4 at 146). Bowen was eventually met by David Beeler ("Beeler"), a Menards employee, who showed her that the green treated lumber was kept in a "loft" or elevated platform above the floor of the lumberyard which was accessible via narrow staircases placed at various points along the parallel elevated platforms. (App. 332, R. Doc. 25-4 at 146). Someone attempting to retrieve green treated lumber from the loft had to climb a staircase, walk along a plank walkway which was resting on top of ground-level platforms, and reach up and pull the piece of lumber from a loosely-organized stack of similarly type and treated lumber. (App. 333, R. Doc. 25-4 at 147).

After locating the right lumber, Beeler offered to get two pieces of green treated lumber down from the loft to allow Bowen to inspect their condition. (App. 333, R. Doc. 25-4 at 147). Beeler went up into the loft and, after rejecting one board because it was broken, began lowering a 2x10x10 piece of lumber over the railing of the loft down to Bowen who was standing directly below him. (App. 333, R. Doc. 25-4 at 147). As Bowen reached up to grab the lumber and guide it to the floor, the wood slipped or fell out of Beeler's grasp and struck Bowen. (App. 333, R. Doc. 25-4 at 147). Bowen suffered injuries to her head, neck, back, and shoulder. (App. 8–9, R. Doc. 1-1 at 4–5). Bowen immediately contacted Menards

store management to report the incident and subsequently drove away in the Tacoma. (App. 335, R. Doc. 25-4 at 149). Bowen did not report the incident to Farm Bureau, her auto insurer, nor did Menards immediately tender a notice of claim or incident to Farm Bureau.

On February 16, 2021, Bowen sued Menards in the Iowa District Court for Des Moines County alleging she suffered damages as a result of Menards' and its employee Beeler's negligence in dropping the treated lumber on her. (App. 5–10, R. Doc. 1-1 at 1–6). On August 8, 2021, more than two years after the incident and almost six months after the Bowen's lawsuit was filed, Menards drafted a formal tender of defense and demand for indemnification to Farm Bureau seeking coverage under Bowen's Policy, claiming Menards and its employee Beeler were unnamed insured's pursuant to the Vehicle Liability Module. Farm Bureau received the formal tender on September 13, 2021. (App. 310–11, R. Doc. 25-4 at 124–25) After reviewing Menards' tender, the known facts, and the procedural posture of Bowen's lawsuit, Farm Bureau formally denied Menards' tender and demand for indemnification on September 28, 2021. (App. 312–17, R. Doc. 25-4 at 126–31).

Farm Bureau based its denial, in part, on an express "Intrafamily Immunity" exclusion contained in the Vehicle Liability Module of the Policy, which provides:

Intrafamily Immunity

> There is no coverage for any "bodily injury" to any "insured" or any member of an "insured's" family residing in the "insured's" household.

(App. 33, R. Doc. 1-2 at 23). The Vehicle Section of the Policy generally defines "bodily injury" as "Bodily harm, sickness or disease sustained by a "person" including death that results from the injury." (App. 27, R. Doc. 1-2 at 17). Within the Vehicle Liability Module of the Policy, an "insured" is defined, in part, as "you" (App. 30, R. Doc. 1-2 at 20), and the General Section of the Policy defines "you" as "any 'person', 'persons' or organizations indicated in the Declarations as "named insured"." (App. 16, R. Doc. 1-2 at 6).

Menards sought reconsideration of the denial decision in a letter dated that same day, September 28, 2021. (App. 318–19, R. Doc. 25-4 at 132–33). Farm Bureau reiterated its denial in a letter dated October 15, 2021. (App. 328, R. Doc. 25-4 at 142). Bowen's lawsuit progressed through the Iowa courts, resolving through a confidential settlement between the parties to which Farm Bureau was not a party.

II. Procedural History

On December 28, 2021, Menards filed this declaratory judgment action against Farm Bureau in the United States District Court for the Southern District of Iowa. (App. 1–4, R. Doc. 1 at 1–4). Farm Bureau filed its Answer and Affirmative Defenses on January 13, 2022. (App. 134–39, R. Doc. 6 at 1–6). Menards filed its First Amended Complaint on February 1, 2022 (App. 147–50, R. Doc. 14 at 1–4),

and Farm Bureau responded with its Answer on February 9, 2022. (App. 151–57, R. Doc. 20 at 1–7). Menards proceeded to file a Motion for Summary Judgment on May 19, 2022. (App. 158–59, R. Doc. 25 at 1–2). Menards' made four arguments: first, that the plain language of the insurance policy and Iowa's law on "loading" entitled Menards to liability coverage under the Policy (App. 165–69, R. Doc. 25-1 at 6–10); second, that an "Intrafamily Immunity" exclusion did not apply to the facts of the coverage dispute where the Menards employee was the unnamed insured entitled to liability coverage (App. 169–71, R. Doc. 25-1 at 10–12); third, Iowa's public policy barred application of the "Intrafamily Immunity" exclusion in this context (App. 171–73, R. Doc. 25-1 at 12–14); and fourth, Farm Bureau was estopped from asserting coverage exclusions. (App. 173–78, R. Doc. 25-1 at 14–19).

Farm Bureau filed a combined Cross-Motion for Summary Judgment and Resistance to Menards' Motion on June 7, 2022. (App. 343–46, R. Doc. 26 at 1–4). Farm Bureau argued: first, Menards was not an insured under the Policy because the Menards employee was not loading the lumber into the insured vehicle at the time Cynthia Bowen was injured (App. 355–61, R. Doc. 29 at 9–15); second, even if the employee was in the process of loading the vehicle, the "Handling of Property" exclusion applied to bar coverage for Menards liability because Cynthia Bowen had not accepted the lumber yet (App. 361–70, R. Doc. 29 15–24); and

third, the "Intrafamily Immunity" exclusion clearly applied because the Policy expressly barred liability coverage for bodily injury suffered by a named insured—Cynthia Bowen. (App. 361–70, R. Doc. 29 15–24).

Menards filed its Resistance to Farm Bureau's Cross-Motion for Summary Judgment on June 28, 2022. (App. 423–32, R. Doc. 39 at 1–10).

On March 20, 2023, the district court ruled that Menards and its employee were unnamed insureds and entitled to coverage under the Policy if no coverage exclusion applied (App. 444–61, R. Doc. 47 at 11–15), and that Cynthia Bowen had accepted the lumber prior to her injury such that the "Handling of Property" exclusion did not apply to bar coverage under the Policy. (App. 444–61, R. Doc. 47 at 16–17). The district court also ruled that the "Intrafamily Immunity" exclusion did not bar coverage because the Menards employee was not related to Cynthia Bowen and "is therefore outside the family" making the exclusion inapplicable. (App. 444–61, R. Doc. 47 at 17–18). The district court's analysis of the "Intrafamily Immunity" exclusion relied solely on the title of the exclusion, and not the plain terms of the exclusion. (App. 444–61, R. Doc. 47 at 17–18) In dicta, the district court also noted that if Farm Bureau's argument regarding the "Intrafamily Immunity" exclusion were to be accepted, Iowa's statutory omnibus coverage requirement would be "significantly undermined." (App. 461, R. Doc. 47 at 18). The district court ultimately held that Menards and its employee were

entitled to liability coverage under the Policy and granted Summary Judgment in favor of Menards. (App. 461, R. Doc. 47 at 18).

III. Ruling for Review

On appeal, Farm Bureau seeks review of the district court's March 20, 2023 Order. Specifically, Farm Bureau only challenges the district courts interpretation and construction of the "Intrafamily Immunity" exclusion pursuant to controlling Iowa precedent. Because the plain meaning of the "Intrafamily Immunity" exclusion bars liability coverage for bodily injury to a named insured—Cynthia Bowen—the district court erred in determining liability coverage was afforded to Menards and its employee, and the district court ultimately erred in granting summary judgment in favor of Menard and denying Farm Bureau's Motion for Summary Judgment.

SUMMARY OF THE ARGUMENT

Farm Bureau does not challenge the district court's conclusion that Menards and its employee were insureds under the provisions of the Policy. Limiting this appeal to the "Intrafamily Immunity" exclusion, there are three reasons why the district court erred when it concluded the Policy's "Intrafamily Immunity" exclusion does not preclude motor vehicle liability coverage for injuries Cynthia Bowen, a named insured, suffered as a result of the negligence of Menards' employee.

First, the plain terms of the "Intrafamily Immunity" exclusion precludes liability coverage to Menards for injuries sustained by a named insured. The district court correctly concluded that intrafamily immunity exclusions are valid and enforceable in Iowa, but erred in applying Iowa law by holding that because the Menards employee who caused Cynthia Bowen's injuries was not related to her, the exclusion does not apply. The clear language of the exclusion expressly provides "there is no coverage for any 'bodily injury' to any 'insured'." Importantly, these terms focus on ***who*** sustained the bodily injury, not the cause or source of the injury. It is undisputed that Cynthia Bowen is a named insured under the Policy, and that the liability coverage sought by Menards and its employee is for 'bodily injury' Cynthia Bowen suffered. (App. 180–83, R. Doc. 25-2 at 1–4). Applying the plain language of the "Intrafamily Immunity" exclusion categorically bars the liability coverage Menards seeks.

Second, Iowa courts have historically and consistently recognized the application of nearly identical "family member" exclusions for factually similar claims of liability coverage. The district court's reliance on the title of the exclusion to otherwise limit the scope of the exclusion contravenes Iowa law in direct conflict with this binding Iowa precedent. A review of the cases cited by the district court applying almost identical family member exclusions shows the relationship between the injured party and the tortfeasor does not control whether a

family member exclusion applies. Rather, it is the clear and express terms of the policy language which determines whether coverage is afforded under the policy. As it pertains to the Policy issued by Farm Bureau, the clear and express terms broadly preclude liability coverage for any bodily injury suffered by an insured.

And third, the Iowa courts have categorically rejected voiding or refusing to enforce nearly identical "family member" exclusions on statutory and contractual public policy grounds. The district court's comment in footnote 8 of its Order stating that acceptance of Farm Bureau's position would "significantly undermine[ ]" omnibus motor vehicle coverage in Iowa, ignores Iowa court's continued application and enforcement of family member exclusions while maintaining Iowa's omnibus coverage requirements. Further, the district court's logic would in effect convert motor vehicle liability coverage into underinsured or uninsured coverage for named insureds; an unnecessary duplication of coverage which is already required by Iowa law to be included in every motor vehicle liability insurance policy.

The district court erred in interpreting and applying the "Intrafamily Immunity" exclusion pursuant to controlling Iowa precedent, and for these reasons, the district court's judgment in favor of Menards on the declaratory judgment claim must be reversed and summary judgment should be granted to Farm Bureau..

STANDARD OF REVIEW

The Court of Appeals reviews a grant of summary judgment and its interpretation of Iowa insurance law *de novo*. *See Foster v. Integrity Mut. Ins. Co.*, 999 F.3d 1103, 1105 (8th Cir. 2021). Because jurisdiction of this case is based in diversity and Iowa law applies, the Court is bound by the decisions of the Iowa Supreme Court. *Doe v. Baxter Healthcare Corp.*, 380 F.3d 399, 407 (8th Cir. 2004).

DEFENDANT-APPELLANT'S ARGUMENT

I. The Policy issued by Farm Bureau plainly excludes insurance coverage for bodily injury suffered by a named insured arising out of the use of a covered automobile.

A. The District Court's reliance on the label affixed to the Policy exclusion violates Iowa's rules of construction and impermissibly narrows the application of the exclusion beyond what the clear text of the exclusion permits.

On appeal, Farm Bureau raises the sole assertion that the district court erred in its construction and application of the "Intrafamily Immunity" exclusion. The plain language of the "Intrafamily Immunity" exclusion clearly excludes liability coverage for bodily injury suffered by a named insured. Because Cynthia Bowen is an insured and Menards is seeking liability coverage for bodily injury it inflicted on Cynthia Bowen, coverage is barred pursuant to the Policy and the district court erred in denying Farm Bureau summary judgment.

The interpretation of the Policy is controlled by Iowa law and the analysis of the Policy language is governed by general principles of contract interpretation.

Vance v. Pekin Ins., 457 N.W.2d 589, 592 (Iowa 1990). Iowa's rules governing the construction and interpretation of insurance policies are guided by the cardinal principle that the controlling framework in analyzing policy language is the intent of the parties at the time the policy was sold. *Amish Connection, Inc. v. State Farm Fire and Cas. Co.*, 861 N.W.2d 230, 236 (Iowa 2015). "Except in cases of ambiguity, . . . the intent of the parties [is determined] by looking at what the policy itself says." *Id.* (quotation omitted). Iowa courts do "not strain words or phrases of the policy in order to find liability that the policy did not intend and the insured did not purchase." *Id.* (citation omitted). "Words in an insurance policy are to be applied to subjects that seem most properly related by context and applicability." *Talen v. Employers Mut. Cas. Co.*, 703 N.W.2d 395, 407 (Iowa 2005) (citations omitted).

In furtherance of these principles, unambiguous policy exclusions are enforced as written. *Bituminous Cas. Corp. v. Sand Livestock Systems, Inc.*, 728 N.W.2d 216, 222 (Iowa 2007). Relatedly, "[i]f an insurance policy and its exclusions are clear, the court will not write a new contract of insurance for the parties." *Boelman v. Grinnell Mut. Reins. Co.*, 826 N.W.2d 494, 502 (Iowa 2013). "If exclusionary language is not defined in the policy, [Iowa courts] give the words their ordinary meaning." *Farm and City Ins. Co. v. Gilmore*, 539 N.W.2d 154, 157 (Iowa 1995). "The fact that an exclusion could be more specifically tailored to a

particular set of facts does not mean the insurer cannot rely on a generally worded exclusion that encompasses various factual scenarios." *Nationwide Agri-Business Ins. Co. v. Goodwin*, 782 N.W.2d 465, 472 (Iowa 2010). "Therefore, insurers may and frequently do limit coverage to only specific claims." *Jones v. State Farm Mut. Auto Ins. Co.*, 760 N.W.2d 186, 188 (Iowa 2008).

Applying these bedrock principles to the Policy language and facts of this case, the only reasonable conclusion is that the Intrafamily Immunity exclusion applies to bar coverage to Menards under the Policy for liability arising from Cynthia Bowen's injuries. The Policy's Vehicle Liability Module includes an "Intrafamily Immunity" coverage exclusion which states:

> **Additional Exclusions**
>
> Under the Vehicle Liability Module, the Exclusions in the General Section apply and are expanded as follows:
>
> **Intrafamily Immunity**
>
> There is no coverage for any "bodily injury" to any "insured" or any member of an "insured's" family residing in the "insured's" household.

(App. 33, R. Doc. 1-2 at 23). The clear and unambiguous words of the Intrafamily Immunity exclusion in the Vehicle Liability Module provides that "there is no coverage for *any* 'bodily injury' to *any* 'insured' . . . ." (App. 33, R. Doc. 1-2 at 23) (emphasis added).

Farm Bureau's use of the terms "any bodily injury" and "any insured" in the Intrafamily Immunity exclusion unambiguously conveys an intent to exclude

coverage when recovery is sought for any bodily injury inflicted on or suffered by any insured. *See Webb v. American Family Mut. Ins. Co.*, 493 N.W.2d 808, 812 (Iowa 1992) (recognizing the use of the word "any" unambiguously conveys the intention that a coverage exclusion applies to all insureds of a policy); *American Family Mut. Ins. Co. v. Corrigan*, 697 N.W.2d 108, 116 (Iowa 2005) (same); *Thomas v. Progressive Cas. Ins. Co.*, 749 N.W.2d 678, 683 (Iowa 2008) ("We have previously held that the use of the word 'any' in a statute 'means all or every'" and reiterating that "Cases interpreting language in statutes are persuasive authority in interpreting contractual language.").

The plain language of this exclusion encompasses the injury suffered by Cynthia Bowen here. Cynthia Bowen is a named "insured" under the Policy, and she suffered "bodily injury". Further, as pertaining to automotive liability coverage Iowa courts have recognized "the risk or hazard insured against is loss and injury to others resulting from the use of the covered vehicle," not the insured. *Farmers Butter and Dairy Co-op. v. Farm Bureau Mut. Ins. Co.*, 196 N.W.2d 533, 536 (Iowa 1972). Applying Iowa law then, the plain language of the exclusion unambiguously excludes liability coverage to Menards for Cynthia Bowen's claimed injuries. *See* 7A Couch on Insurance. § 110:25 ("In the absence of statutory provisions forbidding their inclusion, a policy provision excluding liability to the named insured for his or her injury or death is valid and effective

means to protect the insurer from liability even though the automobile liability policy was, itself, required by statute.").

The district court ignored the plain language of the exclusion in determining it did not apply to the facts of this case. (App. 461, R. Doc. 47 at 18). Instead, the district court looked only to the word "intrafamily" contained in the title of the coverage exclusion in holding the exclusion did not apply because the cause or source of Cynthia Bowen's injuries was not brought about by a family member. (App. 461, R. Doc. 47 at 18).

But the plain words of the "Intrafamily Immunity" exclusion—unlike other coverage exclusions contained in the Policy—do not condition application of the exclusion on the *source* of the claimed bodily injury. *See Corrigan*, 697 N.W.2d at 114–15 (discussing the cause of harm giving rise to potential liability). The exclusion makes no mention of "cause" or "source," and does not include any term which could reasonably be understood to limit the application of the exclusion to only those instances where a family member caused bodily injury to an insured. *See id.* (reiterating that the language of the exclusion, as interpreted according to contract principles, determines the scope and limits of a coverage exclusion).

The Iowa Supreme Court's decision in *Jones* provides additional clarity in analyzing the applicability of a family member exclusion like the "Intrafamily Immunity" exclusion relied on by Farm Bureau. In *Jones*, a mother was driving her

minor daughter along a rural highway when she crossed the center line and collided with an oncoming vehicle. *Jones*, 760 N.W.2d at 187. The mother was killed in the collision and the daughter suffered severe injuries. *Id.* The mother was ultimately determined to be at fault for negligently operating her vehicle, and her negligence was the cause of the deadly collision and her daughter's injuries. *Id.* The daughter's liability claims against the mother were precluded from coverage under a family member exclusion because the daughter was "using" the vehicle while riding as a passenger, making the mother an "uninsured motorist" under Iowa law triggering the application of the mother's uninsured motorist coverage for the daughter's claims. *Id.*

The daughter's father—who divorced the child's mother prior to the accident and who no longer lived in the same household as the mother—filed a petition against the mother's estate claiming loss of consortium arising from the daughter's injuries. *Id.* The mother's liability insurer denied liability coverage for the father's claim citing the family member exclusion in the mother's policy. *Id.* Litigation ensued and the Iowa Supreme Court was asked to determine whether the father's loss of consortium claim was excluded from the mother's liability coverage because of a policy exclusion which provided "THERE IS NO COVERAGE: . . . 2. FOR ANY ***BODILY INJURY*** TO: . . . c. ANY ***INSURED***

OR ANY MEMBER OF AN ***INSURED'S*** FAMILY RESIDING IN THE ***INSURED'S*** HOUSEHOLD." *Id.*at 188–89.

After reiterating that a loss-of-consortium claim under Iowa law is for an injury to the parent, the court recognized that whether a family member or "household exclusion applies to [the daughter's] claim does not automatically mean that it also applies to the [father's] claim." *Id.* at 189. The Iowa Supreme Court concluded that under the plain language of the policy, the exclusion did not apply to the father's claim because it was "undisputed that [the father] is not an insured under [the mother's] policy, nor did he reside in her household." *Id.* The insurer was therefore required to provide liability coverage under the mother's policy for the father's independent loss-of-consortium claim. *Id.*

Jones is instructive in that in analyzing the father's loss of consortium claim, the Iowa Supreme Court looked only to the terms of the exclusion and applied those terms using their plain meaning. *See id.* The court did not analyze the title of the exclusion, or examine whether the title of the exclusion—"household exclusion"—materially changed or limited the plain terms contained in the exclusion itself. *See id.* at 189. The court only concerned itself with whether the tortuously-injured father was in fact an insured under the policy, or a member of the insured's household. *See id.*at 188–89. Because the claimant-father was not an insured, or member of the decedent-mother's household, the mother's liability

coverage applied to afford coverage for the father's claims. The *Jones* case rebuts the district court's ultimate conclusion and clearly illustrates that Farm Bureau is entitled to reversal and summary judgment in its favor when the Iowa Supreme Court's analysis is applied to the facts of this case.

Cynthia Bowen is a named insured under the Policy issued by Farm Bureau. Like the daughter in *Jones*, Cynthia Bowen is an insured who suffered bodily injury and is pursuing a claim for damages she suffered as a result of another—Menards'—tortious conduct. Menards seeks liability coverage from Bowen's insurer—Farm Bureau—for Bowen's claim. The Iowa Supreme Court's analysis in *Jones* clearly recognizes that Menards cannot obtain liability coverage for bodily injury inflicted on an insured. Bowen's status as a named insured under the Policy, analyzed through the holding in *Jones*, therefore requires reversal of the district court's ruling and a finding that Farm Bureau is entitled to summary judgment because the "Intrafamily Immunity" exclusion bars coverage for the bodily injury claim levied by Bowen.

Finally, the Intrafamily Immunity exclusion does not contain ambiguous language or constitute a "hidden exclusion". *See Boelman*, 826 N.W.2d at 506. No insured, including an unnamed insured like Menards, could read the Policy in its entirety and reasonably expect coverage for any liability arising from bodily injury inflicted upon an insured. Absent textual support in the terms and language

actually contained in the "Intrafamily Immunity" exclusion or the Policy generally, and pursuant to the interpretative and constructive principles utilized by the Iowa Supreme Court which are binding in this diversity action, the district court's award of summary judgment in favor of Menards must be reversed and summary judgment must be entered in favor of Farm Bureau denying coverage for any liability Menards owes Cynthia Bowen for her injuries.

B. Iowa courts have historically and consistently affirmed the application and enforceability of family member exclusions in motor vehicle liability policies.

The Iowa Supreme Court has time and again reaffirmed that family member exclusions included within liability insurance policies and containing identical or nearly identical language as the "Intrafamily Immunity" exclusion in the Farm Bureau Policy are valid and enforceable. *Rodman v. State Farm Mut. Auto. Ins. Co.*, 208 N.W.2d 903, 908 (Iowa 1973); *Walker v. American Family Mut. Ins. Co.*, 340 N.W.2d 599, 603 (Iowa 1983); *United Fire & Cas. Co. v. Victoria*, 576 N.W.2d 118, 121 (Iowa 1998); *Krause v. Krause*, 589 N.W.2d 721, 724 (Iowa 1999) ("We point out that [the insured] does not challenge the validity of the family member exclusion in the policy. Indeed, such a challenge would fail because we have upheld the validity of family member exclusions in the past." (citations omitted)); *Shelter Gen'l Ins. Co. v. Lincoln*, 590 N.W.2d 726, 728 (Iowa 1999) (reiterating the "long line of prior decisions" enforcing family member

exclusions and noting "the futility of challenging a family member exclusion clause"); *In re Estate of Boyd*, 634 N.W.2d 630, 641 (Iowa 2001) (recognizing the Iowa Supreme Court "had repeatedly upheld the validity of the family member exclusion"); *Ringelberg v. EMC Ins. Group, Inc.*, 660 N.W.2d 27, 27–28 (Iowa 2003) (acknowledging the enforceability of a "family member" exclusion identical to the one contained in Cynthia Bowen's Policy); *Jones*, 760 N.W.2d at 189 (excluding a decedent's bodily injury claim pursuant to a nearly identical family member exclusion); *see Principal Cas. Ins. Co. v. Blair*, 500 N.W.2d 67, 68–69 (Iowa 1993) (affirming the validity and enforceability of a family member exclusion clause in a homeowners liability policy); *Rickerd v. Iowa Mut. Ins. Co.*, 2003 WL 21076798 at *2 (Iowa Ct. App. May 14, 2003) (enforcing a family member exclusion in a wrongful death case); *Safeco Ins. Co. v. Hicks*, 2018 WL 1832971 at *5–*10 (N.D. Iowa Apr. 17, 2018) (analyzing and enforcing a family member exclusion in the context of a domestic partnership).

The district court based its departure from this long line of controlling precedent on the sole basis that the "plain meaning of 'intrafamily' is inside of the family. Beeler is not related to Ms. Bowen and is therefore outside of the family. The exclusion does not apply." (App. 461, R. Doc. 47 at 18). In doing so, the district court arbitrarily limited the scope of the exclusion based on an atextual reading of what the exclusion actually says.

As previously discussed, the "Intrafamily Immunity" exclusion expressly provides that "There is no coverage for any 'bodily injury' to any 'insured' or any member of an 'insured's' family residing in the 'insured's' household." (App. 33, R. Doc. 1-2 at 23). The exclusion does not require that the cause of the excluded "bodily injury" must arise from a family member. Instead, the exclusion categorically excludes *any* bodily injury, suffered by *any* insured or member of an insured's family residing in the insured's household. Controlling Iowa precedent supports the conclusion that there is no implicit requirement that the "bodily injury" be caused by a family member.

In *Walker*, the named insured, Jordan Moorman, was a victim in an automobile accident. 340 N.W.2d at 600. "Moorman was a passenger in an automobile he owned which was being driven with his *consent* by nominal plaintiff James Walker." *Id.* (emphasis added). American Family had issued a motor vehicle liability policy to Moorman affording coverage for the vehicle being driven by Walker at the time of the accident. *Id.* The insurer American Family defended Walker against an underlying wrongful death action brought the estate of its insured Moorman, but refused to pay any settlement or judgment proceeds on behalf of Walker to Moorman's estate, relying instead on a policy exclusion which provided: "This policy does not apply: . . . Under liability coverage, c. To bodily injury to . . . (2) *the insured* or any member of the family of the insured residing in

the same household as the insured." *Id.* (emphasis in original). Moorman's estate eventually negotiated a settlement with Walker and his insurer, after which Walker's insurer brought a subrogation action against Moorman's insurer—American Family—contended the exclusionary clause in the policy was invalid. *Id.* The Iowa Supreme Court ultimately rejected legislative and contractual public policy challenges to enforcement of the policy exclusion after determining that Iowa statute did not require invalidation of the exclusion, and public policy did not warrant overriding an individual's freedom to contract for whatever liability coverage they desired. *Id.* at 601–03.

The exclusionary clause in *Walker* is nearly identical to the exclusionary clause in the Farm Bureau Policy issued to Cynthia Bowen. Further, *Walker* makes no mention of Moorman's—the named insured's—relationship with Walker, the tortfeasor. Instead, Justice Wolle and the Iowa Supreme Court were only concerned with whether Walker was in fact an "insured" who had suffered "bodily injury". *See id.* The tortfeasor's familial relationship to Walker did not play any part in the analysis because the exclusion by its plain terms did not condition coverage on the tortfeasor's familial relationship to the insured, only whether an insured had suffered bodily injury. *See id.*; *Krause*, 589 N.W.2d at 723 ("The policy includes language known as a 'family member exclusion.' It states that there is no liability coverage for any insured for bodily injury sustained by another

insured or family member. In other words, a named insured would have no liability coverage for his or her actions which cause injuries to *another named insured* or family member." (emphasis added)); *Rickerd v. Iowa Mut. Ins. Co.*, 2003 WL 21076798 at *2 (Iowa Ct. App. May 14, 2003) ("If an automobile insurance policy includes a family member exclusion, there is no coverage for the insured's liability to the family member.").

More recently in an unpublished decision, the Iowa Court of Appeals analyzed a family member exclusion in the context of a husband and wife involved in a fatal car accident. *Rickerd v. Iowa Mut. Ins. Co.*, 2003 WL 21076798 at *2 (Iowa Ct. App. May 14, 2003). In *Rickerd*, the husband was driving when he collided with another vehicle and was ultimately determined to be at fault for causing the accident. *Id.* The wife was killed in the accident and the executor of her estate sought underinsured benefits rather than uninsured benefits under the premise that the husband's liability carrier had paid third-party liability under his policy to the driver of the other vehicle. *Id.* at *1. The Iowa Court of Appeals, applying the analysis and holding of the Iowa Supreme Court, recognized that when a "policy includes *language* known as a "family member exclusion." . . . there is no liability coverage for any insured for bodily injury sustained by another insured or family member." *Id.* at *2 (emphasis added) (quoting *In re Estate of Boyd*, 634 N.W.2d at 641).

On this appeal, Farm Bureau does not challenge the district court's conclusion that Menards and its employee were insureds under the provisions of the Policy. (App 457–58, R. Doc. 47 at 14–15). Applying the analysis in *Walker*, *Rickerd*, and *Estate of Boyd*, Menards' status as an insured under the Policy means it cannot obtain liability coverage for bodily injury Menards or its employees inflict upon another insured. *See Walker*, 340 N.W.2d at 601–03; *In re Estate of Boyd*, 634 N.W.2d at 641 (recognizing the applicability and enforceability of an identical Farm Bureau "Intrafamily Immunity" exclusion the Iowa Supreme Court described as a "family member exclusion"); *Rickerd*, 2003 WL 21076798 at *2.

It is an undisputed fact that Cynthia Bowen is a named insured under the Policy. (App. 180, R. Doc. 25-2 at 1; App. 11, R. Doc. 1-2 at 1). Binding Iowa precedent and the plain meaning of the "Intrafamily Immunity" exclusion mandate that Menards cannot obtain liability coverage under the Policy for bodily injury Menards or its employees inflicted on Cynthia Bowen while both the Menards employee and Cynthia Bowen were insureds under the Policy. The district court erred in concluding otherwise, and Farm Bureau is entitled to a reversal of the judgment in favor of Menards in this coverage dispute, and summary judgment must be granted in favor of Farm Bureau.

C. Enforcement of the Intrafamily Immunity exclusion does not otherwise abridge Iowa's omnibus motor vehicle coverage.

Iowa's motor vehicle liability statute does not require consumers obtain automobile liability insurance which would cover interfamily or inter-insured tort claims. *See Shelter Gen'l Ins. Co.*, 590 N.W.2d at 730 (citing *Rodman*, 208 N.W.2d at 910). Instead, Iowa relies on uninsured motorist coverage to ensure that motor vehicle accident victims can obtain a minimum level of recovery for injuries caused by insolvent tortfeasors. *See id*. Because Iowa's omnibus motor vehicle statute does not mandate motor vehicle liability policies afford liability coverage for bodily injury to named insureds, the enforcement of a family member exclusion like the "Intrafamily Immunity" exclusion contained in the Policy does not run afoul of the omnibus statute, and the district court erred in refusing to enforce the exclusion and grant summary judgment in favor of Farm Bureau.

The term "public policy" is "not susceptible of an exact definition, but a court ought to not enforce a contract which tends to be injurious to the public or contrary to the public good." *Thomas*, 749 N.W.2d at 687 (quotations omitted). "Whenever a court considers invalidating a contract on public policy grounds it must also weigh in the balance the parties' freedom to contract." *Shelter Gen'l Ins. Co.*, 590 N.W.2d at 730 (citing *Walker*, 340 N.W.2d at 601). Iowa courts refuse to eviscerate contractual provisions "unless the preservation of the general public welfare imperatively demands it." *Id.* "That which is not prohibited by statute, condemned by judicial decision, nor contrary to the public morals contravenes no

principle of public policy." *Claude v. Guaranty Nat'l Ins. Co.*, 679 N.W.2d 659, 663 (Iowa 2004) (quotations omitted).

In 1999, the Iowa legislature amended Iowa's statutory framework and began requiring all persons driving vehicles registered in the state to provide proof of financial responsibility liability. *See Lee v. Grinnell Mut. Reins. Co.*, 646 N.W.2d 403, 409 (Iowa 2002) (recognizing Iowa Code chapter 321 requires liability coverage provided by insurers must, at a minimum, conform to the statutory definition of "financial liability coverage" provided at Iowa Code section 321.1(20)).

Iowa Code section 321.20B provides in pertinent part:

> Notwithstanding chapter 321A, which requires certain persons to maintain proof of financial responsibility, a person shall not drive a motor vehicle on the highways of this state unless financial liability coverage, as defined in section 321.1, subsection 24B, is in effect for the motor vehicle and unless the driver has in the motor vehicle the proof of financial liability coverage card issued for the motor vehicle, or if the vehicle is registered in another state, other evidence that financial liability coverage is in effect for the motor vehicle.

Iowa Code section 321.1(24B) defines "financial liability coverage" as:

> An owner's policy of liability insurance which is issued by an insurance carrier authorized to do business in Iowa to or for the benefit of the person named in the policy as insured, and insuring the person named as insured and any person using an insured motor vehicle with the express or implied permission of the named insured against loss from liability imposed by law for damages arising out of the ownership, maintenance, or use of an insured motor vehicle within the United States . . . but subject to minimum limits, exclusive of

> interest and costs, in the amounts specified in section 321A.21 or specified in another provision of the Code, whichever is greater.

Importantly, the express terms of Iowa Code section 321.1(24B) only require: (1) the issued policy must insure any person using an insured motor vehicle with the express or implied permission of the named insured to the same extent as the named insured; and (2) the insurance afforded must be in the amounts specified in section 321A.21 or specified in another provision of the Code, whichever is greater. *See id.*; *Lee*, 646 N.W.2d at 408–09.

Iowa Code section 321A.21(4) expressly provides that:

> Such motor vehicle liability policy [as required by 321.1(24B)] shall state the name and address of the named insured, ***the coverage afforded by the policy***, the premium charged therefor, the policy period, and the limits of liability, and shall contain an agreement or be endorsed that insurance is provided thereunder in accordance with the coverage defined in this chapter as respects bodily injury and death or property damage, or both, and is subject to all the provisions of this chapter.

(emphasis added).

Iowa courts have had numerous opportunities to construe these "Motor Vehicle Financial Responsibility" statutory provisions, and consistently construe them narrowly. *See Walker*, 340 N.W.2d at 601–02; *Krause*, 589 N.W.2d at 724 ("In doing so, we rejected the argument by plaintiff-insureds that the family member exclusion was void as contrary to public policy." (citing *Blair*, 500 N.W.2d at 68–69; *Walker*, 340 N.W.2d at 602–03)); *but, see Rodman*, 208 N.W.2d

at 909 (acknowledging the offering of UM coverage to every insured under a motor vehicle liability policy was a requirement of the Iowa legislature to "assure protection to an insured against motorists whose liability to the insured is not covered").

As Iowa Code section 321A.21(4) states, the "coverage afforded by the policy" is left undefined and to be determined by the contracting parties to agree upon, so long as none of the express statutory requirements are contradicted by the language of the policy. *See Lee*, 646 N.W.2d at 409–10. Therefore, Iowa's "omnibus liability coverage" does not explicitly require that motor vehicle liability policies issued in Iowa afford coverage for any and all liability which may arise out of the maintenance, ownership, or use of an insured motor vehicle. This is especially true of long-standing exclusions to coverage like family member exclusions containing identical language as the "Intrafamily Immunity" exclusion in the Policy issued to Bowen by Farm Bureau. *See Walker*, 340 N.W.2d at 601–02; *Shelter Gen'l Ins. Co.*, 590 N.W.2d at 728 (reiterating the "long line of prior decisions" enforcing family member exclusions and noting "the futility of challenging a family member exclusion clause").

Even post-1999 and the amendments to the Iowa Code, Iowa courts have continued to recognize that certain conditions and limitations can be imposed on the scope of motor vehicle liability coverage, so long as those limitations do not

contradict an explicit requirement of the statutory scheme. *See Shelter Gen'l Ins. Co.*, 590 N.W.2d at 730 ("The extent of insurance coverage is often conditioned on one's residence or familial status."); *Jones*, 760 N.W.2d at 187 (assuming that a passenger in an insured car could recover as an "uninsured motorist" where a policy exclusion barred recovery under the basic liability coverage); *American Family Mut. Ins. Co. v. Petersen*, 679 N.W.2d 571, 579 (Iowa 2004) (recognizing motor vehicle liability coverage is limited to claims involving unintentional acts); *Ringelberg*, 660 N.W.2d at 27–28 (limiting liability coverage under a family member exclusion with identical language as the exclusion in Cynthia Bowen's Policy); *Goodwin*, 782 N.W.2d at 473 (enforcing an exclusion precluding liability coverage for the unauthorized loaning of a vehicle to a third-party); *Progressive Classic Ins. Co. v. Riley*, 2015 WL 7019006 (Iowa Ct. App. Nov. 12, 2015) (affirming denial of motor vehicle liability coverage after application of an expected or intended injury exclusion); *Wolfe ex rel. Wolfe v. Weeks*, 2008 WL 4570327 (Iowa Ct. App. Oct. 15, 2008) (summarily affirming the denial of liability coverage pursuant to a named driver exclusion); *Rickerd*, 2003 WL 21076798 (Iowa Ct. App. May 14, 2003) (enforcing family member exclusion as coverage limitation on motor vehicle liability policy).

Despite this litany of binding precedent, the district court in its opinion denying summary judgment stated that applying the "Intrafamily Immunity"

exclusion as argued by Farm Bureau would "significantly" undermine Iowa's omnibus liability coverage. (App. 461, R. Doc. 47 at 18 fn 8). The Iowa courts' holdings in *Shelter Gen'l Ins. Co.*, *Jones*, *Ringelberg*, and *Rickerd*—all decided after the 1999 statutory amendments were adopted—clearly demonstrate that Farm Bureau's application of the "Intrafamily Immunity" exclusion is the correct construction and application of Iowa law. Therefore, Iowa's omnibus motor vehicle liability coverage anticipates that the parties to the insuring agreement can continue to contract for the scope of liability coverage the insured feels most appropriately applies to their needs. *See Walker*, 340 N.W.2d at 602; *Shelter Gen'l Ins. Co.*, 590 N.W.2d at 730.

Iowa courts have refused—despite numerous opportunities—to invalidate on public policy grounds family member exclusions in motor vehicle liability policies with language that is identical to that provided for in the "Intrafamily Immunity" exclusion contained in Cynthia Bowen's Policy. *See Shelter Gen'l Ins. Co.*, 590 N.W.2d at 730 ("This is not a case in which it is imperative that a contractual provision be eviscerated in order to further a public policy."). The district court in refusing to enforce the plain language of the "Intrafamily Immunity" exclusion has applied Iowa law in a manner that the Iowa courts have explicitly refused to apply. For this reason, and all of the aforementioned arguments, the district court's grant of summary judgment to Menards must be reversed, and this Court must enforce

the law in accordance with controlling Iowa precedent, the express terms of the Policy, and Iowa's stated public policy, and grant summary judgment in favor of Farm Bureau.

CONCLUSION

For the reasons stated herein, Defendant-Appellant Farm Bureau respectfully requests that this Court REVERSE the district court's award of summary judgment to Menard, and GRANT summary judgment in favor of Defendant-Appellant Farm Bureau.

Respectfully Submitted,

By: /s/ Benjamin J. Kenkel

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CERTIFICATE OF COMPLIANCE

1. This Brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B)(ii) because it contains 7,372 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f).

2. This brief complies with the typeface requirement of Federal Rule of Appellate Procedure 32(a)(5) and the style requirement of Federal Rule of Appellate Procedure 32(a)(6) because this brief has been prepared in a proportionally spaced typeface in 14-point, Times New Roman font.

3. This Brief complies with the requirements of Eighth Circuit Rule 28A(h) because it has been scanned for viruses and is virus free.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on May 23, 2023, I electronically filed the foregoing with the Clerk of Court for the United States Court of Appeals for the Eighth Circuit by using the CM/ECF system. All participants in this case are registered CM/ECF users and will be served by the CM/ECF system.

I further certify that on _____, I mailed by First-Class Mail, postage prepaid, ten (10) copies of the foregoing to the Eighth Circuit Clerk of Court, and 1 copy thereof to the respective counsel for co-Appellees and Appellant:

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