IN THE SUPREME COURT OF IOWA
Supreme Court No. 22–1419
Polk County No. LACL 145293

KATHERINE AVENARIUS and PAUL AVENARIUS,

Plaintiffs–Appellees,

vs.

STATE OF IOWA,

Defendant–Appellant.

Appeal from the Iowa District Court for Polk County
The Honorable Samantha J. Gronewald, District Judge

APPLICATION FOR FURTHER REVIEW

(Iowa Court of Appeals Decision: February 7, 2023)

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QUESTION PRESENTED FOR FURTHER REVIEW

Katherine Avenarius executed a contract with the State that stated she agreed to hold the State harmless for "any and all claims, demands, rights, causes of action and judgments of whatsoever, kind and nature, arising for and by reason of any and all known and unknown, foreseen and unforeseen physical or mental injuries[.]" On the first day of firearms training, Avenarius shot herself in the leg. Now she contends that the waiver allows her negligence claim against the State to proceed.

Does a contract's "any and all claims" exculpatory language constitute a clear and unequivocal waiver of negligence claims, or is the presence of a specific "magic word"—"negligence"—necessary for such waivers under Iowa law?

TABLE OF AUTHORITIES

Cases

Other Authorities

STATEMENT SUPPORTING FURTHER REVIEW

This Court should grant further review to ensure consistency and clarity in the interpretation of liability waivers and exculpatory clauses under Iowa law. The Court of Appeals ruling fails to properly consider the language and context of the waiver Avenarius signed, leading to its incorrect conclusion about the waiver's applicability to Avenarius's negligence claims. On further review, this Court can clarify liability waivers' requirements, particularly as to inherent risks and negligent acts.

Iowa law does not mandate including specific "magic words" like "negligence" for a waiver to be legally binding. *See Sweeney v. City of Bettendorf*, 762 N.W.2d 873, 879–80 (Iowa 2008); *Korsmo v. Waverly Ski Club*, 435 N.W.2d 746, 748 (Iowa Ct. App. 1988) ("The words 'any and all rights, claims, demands and actions of any and every nature whatsoever . . . for any and all loss, damage or injury' is clearly intended to cover negligent acts.") The crucial factor is whether the waiver's language clearly and unequivocally indicates the parties' intent to waive negligence claims. *Lukken v. Fleischer*, 962 N.W.2d 71, 79 (Iowa 2021).

Here, the waiver encompasses "any and all claims." That, coupled with the broad scope of potential injuries to participants at firearms training, gives sufficient clarity to the party signing the

waiver to encompass negligence claims. That is particularly true given the inherent risks involved in firearms training. *See Korsmo,* 435 N.W.2d at 748.

Indeed, the Court of Appeals decision sets a concerning precedent that could broadly undermine the effectiveness of liability waivers in Iowa. If waivers that use language like "any and all claims" can never waive negligence claims, it will create uncertainty for businesses, organizations, and individuals that have long relied on such waivers to manage risk. Clarity and predictability in waiver interpretation are essential for promoting voluntary agreements and protecting parties' rights.

There are two primary reasons this Court should grant further review. First, the decision conflicts with both the Court of Appeals' own precedent and the precedent of this Court. Iowa R. App. P. 6.1103(1)(b)(1). Second, the decision will change how exculpatory clauses are interpreted in Iowa. Iowa R. App. P. 6.1103(1)(b)(3).

Thus, this Court should grant further review to clarify the standards for evaluating liability waivers and ensure consistency in their application across cases. That will affirm that the challenged waiver here clearly and unequivocally waives negligence claims without needing additional specific "magic words."

STATEMENT OF THE CASE

Nature of the Case

After the district court denied the State's Motion for Partial Summary Judgment, the State filed an Application for Interlocutory Appeal. Dkt. 0060. A three-justice panel granted the Application for Interlocutory Appeal. The case was transferred to the Court of Appeals for further consideration. The Court of Appeals affirmed the district court's summary judgment denial.

Statement of Facts

In 2015, Avenarius participated in the Iowa Law Enforcement Academy ("ILEA") Firearms Instructor School. That school trains experienced firearms handlers on how to be firearms instructors. On the first day of Firearms Instructor School, Avenarius shot herself in the leg. That injury is the basis of her negligence claims against the State.

But before attending Firearms Instructor School, Avenarius executed a waiver with the State. Waiver, Exh. A. That two-page waiver contained multiple terms that preclude Avenarius's suit. First, the waiver's all-capital, large-font heading read:

WAIVER
RELEASE FROM LIABILITY AND
ASSUMPTION OF RISK AGREEMENT
FOR NON-STATE EMPLOYED LAW ENFORCEMENT
OFFICERS

Exh. A-1. The waiver explained that it related to the ILEA Firearms Instructor School that would take place from August 3 through August 14, 2015. *Id*. The waiver also stated:

> Intending this agreement to be legally binding on me, my heirs, administrators, executors, and assigns, **I hereby waive, release, and hold harmless the State of Iowa, the Iowa Law Enforcement Academy**, the Iowa Law Enforcement Academy Council **and all of their** agents, **employees**, council members, representatives, heirs, executors, administrators, successors, and assigns of and **from any and all claims,** demands, rights, **causes of action and judgments of whatsoever, kind and nature, arising for and by reason of any and all known and unknown, foreseen and unforeseen physical or mental injuries** and consequences thereof which may be suffered by me **during the above referenced Iowa Law Enforcement Academy training program** including physical fitness testing.

Id. (emphasis added).

Avenarius signed the waiver acknowledging that the agreement "constitutes a legal, valid and binding obligation upon itself in accordance with its terms." Exh. A-2.

ARGUMENT

I. THE CONTRACT'S EXCULPATORY LANGUAGE CLEARLY AND UNEQUIVOCALLY WAIVED FUTURE NEGLIGENCE CLAIMS.

Avenarius's negligence claims against the State fail as a matter of law because before starting the ILEA Firearms Instructor School training, Avenarius entered into an agreement waiving and releasing her claims against the State for any injury she might suffer during the training. Exh. A. The district court and the Court of Appeals both erred in finding the waiver did not apply.

This Court recognizes waivers are contracts that are governed by the principles of contract law. *Huber v. Hovey*, 501 N.W.2d 53, 55 (Iowa 1993). The legal effect of a contract is established by determining the parties' intent when the agreement is formed. *Pillsbury Co. v. Wells Dairy, Inc.*, 752 N.W.2d 430, 436 (Iowa 2008).

"An enforceable waiver must contain clear and unequivocal language notifying a casual reader that by signing, she agrees to waive all claims for future acts or omissions of negligence." *Lukken*, 962 N.W.2d at 79 (cleaned up). Exculpatory clauses in waivers, sometimes called "hold harmless" clauses, "relieve parties from responsibility for the consequences of their actions." *Id.* This Court has "repeatedly held that contracts exempting a party from its own negligence are enforceable and are not contrary to public policy."

See, *e.g.*, *Huber,* 501 N.W.2d at 55; *Bashford v. Slater*, 96 N.W.2d 904, 909 (Iowa 1959).

A contract does not need to "expressly specify that it will operate for negligent acts if the clear intent of the language is to provide for such release." *Korsmo*, 435 N.W.2d at 748; *see also Sweeney*, 762 N.W.2d at 879–80 (disclaiming needing "magic words"). The Court of Appeals decision that "[t]here is no clear expression of Avenarius's intent to release the State from liability for claims related to the negligent acts of ILEA or its instructors, either in the express language of the release or the context provided" is wrong. *Avenarius v. State*, No. 22-1419, 2024 WL 466241 (Iowa Ct. App. Feb. 7, 2024), at *12. The waiver for potential harms arising from a firearms training must include the potential harms of a self-inflicted firearm wound.

The waiver Avenarius signed clearly and unequivocally alerted her, or any casual reader, that she waived and released any and all claims against the State for an injury she might incur during her training, including claims resulting from negligence. The Waiver's heading read:

WAIVER
RELEASE FROM LIABILITY AND
ASSUMPTION OF RISK AGREEMENT
FOR NON-STATE EMPLOYED LAW
ENFORCEMENT OFFICERS

Exh. A-1. The waiver is a "RELEASE FROM LIABILITY." *Id.* That explains to the signatory that someone who is injured may not then later pursue a judicial remedy. The header was conspicuous, presented in all-capital letters and font larger than the rest of the document. *Id.* The waiver identifies who else the terms of the waiver applies to: the State of Iowa, ILEA, and all its employees. *Id.* It also identifies a particular event and activity, limited in time frame: the ILEA Firearms Instructor School between August 3 and August 14, 2015. *Id.*

The waiver's substantive terms are similarly unequivocal. It explains that the signer agrees to "waive, release, and hold harmless" the State

> [. . .] of any and all claims, demands, rights, causes of action and judgments of whatsoever, kind and nature, arising from and by reason of any and all known and unknown, foreseen and unforeseen physical or mental injuries and consequences thereof which may be suffered by me during the above referenced Iowa Law Enforcement Academy training program[.]

Id. That same exculpatory language appears again on the second page of the waiver. Exh. A-2.

This concise and readable two-page waiver thus ensures that the important release language appears on both of its pages. The

waiver does not use convoluted or lengthy language unintelligible to a casual reader. By signing the waiver, Avenarius agreed to abide by its terms. She waived claims arising from physical or mental harm. Such a waiver for a firearms training must include the potential for the signer shooting herself.

A. The Court of Appeals decision creates an unnecessary "magic word" requirement.

The Court of Appeals opinion departs from this Court's longstanding precedents that a waiver does not require specific language or a "magic word" to release a party from negligence claims, so long as the intent to do so is clearly and unequivocally expressed.

In *Sweeney v. City of Bettendorf*, this Court emphasized that there is no "magic word" requirement needed to validate an exculpatory clause. *See* 762 N.W.2d at 879–880. That conclusion followed from comparing cases from jurisdictions that have a bright-line rule requiring including the specific word "negligence" to States that do not. *Id.* at 879. This Court reasoned that the intention to exclude liability for acts and omissions can be expressed clearly without specific terminology. *Id.* While the Court acknowledged that using the term "negligence" in a waiver or release is preferable, it underscored that such explicit language is

not mandatory if the intent to waive liability for negligent acts is evident. *Id.* at 879 n.2.

In *Sweeney*, the mother of a child participating in a city sponsored field trip signed a document simply titled "Permission Slip." *Id.* at 875. The slip's exculpatory language was one sentence: "I realize that [the defendant] is not responsible or liable for any accidents or injuries that may occur while on this special occasion." *Id.* That exculpatory language was not clear and unequivocal because it referred only to "accidents" generally, and there was nothing else notifying a parent they were waiving potential claims for a city's negligence. *Id.* at 878

Sweeney assessed whether this Court would apply a waiver that lacked any clear or unequivocal notice of the types of harms that would be waived to an injury rising from negligence and found that it would not. *Id.* at 878–79. But that exculpatory clause's flaw was not missing the word "negligence." *Id.* at 879. Instead, the exculpatory clause in *Sweeney* lacked the needed notice of the types of claims the signer was waiving.[1]

[1] Today, the Court would not uphold even a clear and unequivocal exculpatory clause in the *Sweeney* case in light of its holding in *Galloway v. State*, 790 N.W.2d 252, 258 (Iowa 2010), where it found that it is against public policy to allow a parent to release liability against another party on behalf of their child.

Sweeney did not establish a new legal standard for interpreting exculpatory clauses in contracts. It reaffirmed long-standing principles found in cases like *Huber*.

Beyond *Sweeney*, the Court of Appeals decision contradicts its own published decision in *Korsmo* on what qualifies as unambiguous waiver language. In *Korsmo*, the plaintiff water-skiier signed an entry form releasing the defendant water-ski-tournament hosts from liability for injuries resulting from a water-skiing tournament. 435 N.W.2d at 747. Despite the release failing to expressly invoke "negligence," *Korsmo* upheld the exculpatory language, finding there was "no question that the [defendants] intended to be released from liability in exchange for allowing" the plaintiff to participate in the tournament. *Id*. at 748.

Directly relevant here, the court explained "[u]nder Iowa law, a contract need not expressly specify that it will operate for negligent acts if the clear intent of the language is to provide for such a release." *Id.* And when a contract uses the words "any and all rights, claims, demands and actions of any and every nature whatsoever . . . for any and all loss, damage or injury," such language "is clearly intended to cover negligent acts." *Id.*

Avenarius's signed waiver contained exculpatory language nearly identical to the language deemed to cover negligence in *Korsmo*. Thus, just as in *Korsmo*, the exculpatory clause here

should have led the district court and Court of Appeals to find for the State.

In declining to follow *Korsmo*, the Court of Appeals claims *Korsmo* has "lost its vigor" in the 35 years since it was decided. *Avenarius*, 2024 WL 466241, at *6. That is news to the State. At no point in that 35 years has that or this Court disapproved of *Korsmo*'s central holding finding its exculpatory clause to be enough.

To the contrary, this Court has looked favorably on the *Korsmo* decision when interpreting whether other exculpatory clauses are ambiguous. In *Huber*, this Court upheld an exculpatory clause that specifically mentioned negligence. Yet the crux of that analysis did not hinge on the presence of any "magic word." Rather, it concluded that the terms were unambiguous and closely resembled the release in *Korsmo*— which did not explicitly mention "negligence." *Huber*, 501 N.W.2d at 56.

In stating that "the cases in which the supreme court has found a release applies to the negligent acts of the releasee have involved exculpatory clauses that specifically reference the releasee's negligence," the panel imposes the "magic word" requirement *Sweeney* disclaimed. *Avenarius*, 2024 WL 466241, at *7. Indeed, the cases the Court of Appeals cites include exculpatory language similar to the exculpatory clause here but for their

express invocation of negligence. *See Lukken*, 962 N.W.2d at 75; *Grabill v. Adams Co. Fair and Racing Ass'n*, 666 N.W.2d 592, 594-95 (Iowa 2003); *Huber*, 501 N.W.2d at 54-55.

The Court of Appeals decision also conflicts with several more recent, although unpublished, opinions from that court. Relying on this Court's precedent and *Korsmo*, those decisions have upheld waiver language substantially equivalent to the one here, all without the use of any "magic words" like "negligence." *Transgrud v. Leer*, No. 19-0692, 2020 WL 5650734 (Iowa Ct. App. Sept. 23, 2020), at *6 (holding that by signing release the plaintiff acknowledged the defendant would not pay for any injuries she might incur, including ones arising from negligent conduct); *Cupps v. S & J Tube, Inc.*, No. 17-1922, 2019 WL 156583 (Iowa Ct. App. Jan 9, 2019), at *5 (holding that the phrase "any claim for damage" is not ambiguous and includes negligence); *see also Hargrave v. Grain Processing Corp.*, No. 14-1197, 2015 WL 1331706, at *2–3 (Iowa Ct. App. Mar. 25, 2015) (upholding a similar waiver based on the language "any claim for damage").

Over and over, courts in Iowa have reaffirmed the principle that it evaluates the parties' clear intent when signing a waiver, rather than relying on the inclusion of specific words or phrases. That is true both in waivers that do and do not include the word "negligence." This Court should make clear that a waiver need not

include the word "negligence" to avoid finding liability when negligent behavior is otherwise covered by the release.

B. The Court of Appeals decision demands pinpoint prediction of an injury or cause of action.

In interpreting the exculpatory language, the Court of Appeals found that the waiver

> uses the broadest language possible, waiving damage claims "arising from and by reason of any and all known and unknown, foreseen and unforeseen physical or mental injuries and consequences." It applies to injuries that "may be suffered by [Avenarius] during the . . . [ILEA] training program" without specifying the nature of those injuries.

Avenarius, 2024 WL 466241, at *12. (quoting the waiver at Exh. A-1).

But a valid waiver need not specify a category of injury, how the injury occurs, or the legal theory a party might use against the other in a suit. In *Grabill*, this Court stated that "a releasing party does not need to have contemplated the precise occurrence that caused injury as long as the occurrence was within the broad range of events that might transpire with respect to the matter being undertaken." 666 N.W.2d at 596; *see also Korsmo*, 435 N.W.2d at 749 ("The parties need not have contemplated the precise occurrence which occurred as long as it is reasonable to conclude the parties contemplated a similarly broad range of accidents.")

The exculpatory language here was limited to the setting of a firearms training for people seeking to learn how to instruct others on the proper use of firearms. Any student attending such a training would understand how such a waiver applied to the inherent risks associated with the use of firearms, including self-inflicted gunshot injury. The exculpatory language here was broad and comprehensive, covering a wide range of potential claims and injuries. This language necessarily encompassed negligence claims against the State, especially considering the context—Avenarius' participation in a firearms training program where inherent risks include injury from firearms—even inadvertent and self-inflicted wounds.

C. The Court of Appeals decision undermines settled waiver principles, jeopardizing the reliance interests of countless parties who have structured their conduct in alignment with the established legal standards.

The Court of Appeals decision threatens to disrupt the efficacy and enforceability of waivers in Iowa. By departing from established precedents, the opinion introduces novel uncertainty for entities relying on such waivers to manage risk effectively. Previous rulings, exemplified in cases like *Korsmo*, have upheld waivers even without specific terms like "negligence," recognizing the importance of clear and unequivocal language in expressing the

parties' intent to waive liability. Even more recently, Iowa courts have continued to follow this understanding, which is now at odds with the Court of Appeals decision. *See Transgrud*, 2020 WL 5650734, at *6; *Cupps*, 2019 WL 156583, at *5; *Hargrave*, 2015 WL 1331706, at *2–3.

"Courts adhere to the holdings of past rulings to imbue the law with continuity and predictability and help maintain the stability essential to society." *State v. Miller*, 841 N.W.2d 583, 586 (Iowa 2014). The opinion imposes a new and unreasonably stringent standard, imposing a new "magic word" requirement for valid waivers. That departure from established jurisprudence not only undermines the predictability and consistency necessary for contractual agreements but also jeopardizes the fundamental purpose of waivers in mitigating liability risks. Businesses, organizations, and individuals across Iowa rely on waivers to facilitate activities involving inherent risks, such as recreational sports, outdoor adventures, and educational programs.

The panel's decision, with its heightened requirement for specificity, threatens to disrupt those essential risk-management mechanisms, potentially deterring entities, including the State, from offering valuable services and activities. Thus, this Court should grant further review to safeguard the longstanding principles governing waiver enforceability, uphold predictability in

contractual relations, and preserve the vitality of risk management practices in Iowa.

CONCLUSION

The State respectfully requests that this Court grant further review, vacate the Court of Appeals decision, and grant the partial motion for summary judgment for the State.

Respectfully submitted,

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REQUEST FOR ORAL ARGUMENT

Appellant respectfully requests to be heard in oral arguments on this appeal.

CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa R. App. P. 6.1103(4) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Century Schoolbook font and contains **3,432** words, excluding the parts of the brief exempted by Iowa R. App. P. 6.1103(4)(a).

/s/ Job Mukkada
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