IN THE IOWA SUPREME COURT
NO. 23-1308
(Polk County No. CVCV064749)

JOHN DOSTART and DEENA DOSTART,

Plaintiffs-Appellees,

v.

COLUMBIA INSURANCE GROUP,

Defendant-Appellant.

INTERLOCUTORY APPEAL FROM IOWA DISTRICT COURT FOR POLK COUNTY JUDGE COLEMAN MCALLISTER'S RULING DATED JULY 20, 2023 ON COLUMBIA INSURANCE GROUP'S MOTION FOR SUMMARY JUDGMENT

APPELLANT COLUMBIA INSURANCE GROUP'S BRIEF

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Scope and Standard of Review

Subissue 1: Is Mr. Harmeyer's and Tyler Custom Homes, Ltd.'s Consumer Fraud An "Occurrence"?

ROUTING STATEMENT

This case involves application of existing legal principles. The case also is subject to summary disposition. For these reasons, the Supreme Court should transfer this case to the Court of Appeals. Iowa R. App. P. 6.1101(3).

STATEMENT OF THE CASE

This case involves a dispute over insurance coverage of a judgment the Dostarts obtained in a construction defect and fraud case against James Harmeyer and Tyler Custom Homes, Ltd. On April 7, 2022, in the matter of *John Dostart and Deena Dostart v. James Harmeyer and Tyler Custom Homes, Ltd*. (Polk Co. LACL145712), a jury returned a civil verdict in favor of the Dostarts against both Mr. Harmeyer and Tyler Custom Homes, Ltd. (Verdict, App. 35-41). The district

court entered judgment on the verdict on June 22, 2022. (Judgment, App. 42-49). The Dostarts claim that despite execution on the judgment, the judgment remains unsatisfied. (Petition, ¶ 10, Docket No. 1; Execution, App. 50-53).

The Dostarts filed suit against Columbia Insurance Group on December 11, 2022, alleging that a Columbia Insurance Group policy provides coverage for the judgment that the Dostarts obtained against Mr. Harmeyer and Tyler Custom Homes, Ltd. in Polk Co. LACL145712. (Petition, Docket No. 1). Columbia Insurance Group filed a Motion for Summary Judgment, claiming its policy does not provide coverage for any damages awarded in Polk Co. LACL145712, as a matter of law. (MSJ Filings, App. 5-211). The Dostarts did not resist summary judgment as to coverage of exemplary damages awarded to them in Polk Co. LACL145712. (Order, P. 6, App. 307). Therefore, the district court entered partial summary judgment in favor of Columbia Insurance Group regarding coverage for exemplary damages. (Order, P. 6, App. 307).

The Dostarts resisted summary judgment as to coverage of compensatory damages awarded to them in Polk Co. LACL145712. (Order, App. 302). Consequently, Judge Coleman McAllister held a hearing on Columbia Insurance Group's Motion for Summary Judgment on June 16, 2023. (Transcript, App. 285-301). On July 20, 2023, Judge McAllister filed an Order denying Columbia Insurance Group's Motion for Summary Judgment, to the extent the Dostarts

resisted it. (Order, P. 6, App. 307). Judge McAllister held that there are issues of disputed material fact requiring determination by a factfinder. (Order, PP. 5-6, App. 306-07).

Columbia Insurance Group filed an Application for Interlocutory Appeal on August 16, 2023. (*See docket*, IA Supreme Court No. 23-1308). The Dostarts did not resist the Application. By order dated September 27, 2023, the Iowa Supreme Court granted the Application. (*See docket*, IA Supreme Court No. 23-1308).

STATEMENT OF THE FACTS

On September 17, 2019, John and Deena Dostart filed suit against Tyler Custom Homes, Ltd., and its Owner and President, James Harmeyer. (Petition, App. 20-27; Answer ¶ 2, App. 28). The Dostarts alleged Mr. Harmeyer and Tyler Custom Homes, Ltd. contracted with them to construct a home. (Petition ¶ 8, App. 21). In connection with home construction, Mr. Harmeyer and Tyler Custom Homes, Ltd. allegedly breached a contract; breached an express warranty; breached implied warranties; and engaged in consumer fraud, in violation of Iowa Code section 714H. (Petition, App. 22-25).

On April 7, 2022, a jury returned a verdict in favor of the Dostarts against Mr. Harmeyer and Tyler Custom Homes, Ltd. (Verdict, App. 35-41). The jury found the Dostarts only proved consumer fraud, pursuant to Iowa Code Chapter

714H, against both Mr. Harmeyer and Tyler Custom Homes, Ltd. (Verdict, App. 37-38). The marshaling instruction on consumer fraud liability was as follows:

> *To prove their claim of consumer fraud, the Dostarts must prove all of the following propositions:*
>
> 1. *In their dealings with the Dostarts, Defendants Jim Harmeyer and/or Tyler Custom Homes, Ltd., engaged in a practice or act that a reasonable person knew or reasonably should have known was a deception, fraud, false pretense, a false promise, a misrepresentation, or a concealment, suppression or omission of facts.*
>
> 2. *That Defendant acted with the intent that the Dostarts rely on the practice or act, in connection with the advertisement or sale of the construction of a personal residence.*
>
> 3. *The practice or act caused Actual Damages to the Dostarts.*
>
> *If Plaintiffs failed to prove any of these propositions, Plaintiffs are not entitled to damages for this claim. If Plaintiffs have proved all of these propositions, Plaintiffs are entitled to "Actual Damages" in some amount for this claim.*
>
> (Jury Instruction No. 24, App. 212).

Although the jury applied the above instruction to find Mr. Harmeyer and Tyler Custom Homes, Ltd. liable for consumer fraud, the jury specifically found that Mr. Harmeyer and Tyler Custom Homes, Ltd. were <u>not</u> liable for any other alleged wrongful conduct. More specifically, the jury found Mr. Harmeyer and Tyler Custom Homes, Ltd. were not liable for breach of contract, breach of express warranty, or breach of implied warranty. (Verdict, App. 35-36).

The jury's $63,600 compensatory damages award against Mr. Harmeyer included temporary living expenses, moving expenses and costs of loan extension. (Judgment, P. 2, App. 43; Verdict, App. 37). The jury's compensatory damages award against Tyler Custom Homes, Ltd., on the other hand, was for $118,808.30, the reasonable cost of home completion. (Judgment, PP. 2-3, App. 43-44; Verdict, App. 38). The jury awarded exemplary (punitive) damages against both Mr. Harmeyer and Tyler Custom Homes, Ltd. (Verdict, App. 38-39).

On June 14, 2022, the Court entered judgment against Mr. Harmeyer and Tyler Custom Homes, Ltd. (Judgment, App. 42-48). The Dostarts have attempted to collect from both Mr. Harmeyer and Tyler Custom Homes, Ltd. (Execution re: Tyler Homes, App. 50; Execution re: Harmeyer, App. 52). The Dostarts claim that the judgment remains unsatisfied. (Petition ¶ 10, Docket No. 1). The failure of Tyler Custom Homes, Ltd. and Mr. Harmeyer to satisfy the judgment prompted the Dostarts' present suit against Columbia Insurance Group. In this case, the Dostarts allege Columbia Insurance Group is obligated to pay the judgment.

The insurance policy at the heart of this case involves named insured Tyler Custom Homes' Columbia Insurance Policy No. CMPIA0000002593 with effective dates of November 1, 2018 through November 1, 2019 (the "Policy"). (Policy, App. 54-208). The Policy includes commercial general liability ("CGL")

coverage, subject to terms, conditions, exclusions and limitations. (Policy, App. 54-208). The CGL coverage form provides:

> ***SECTION I – COVERAGES***
> ***COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY***
>
> ***1. Insuring Agreement***
>
> *a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies . . . .*
>
> *b. This insurance applies to "bodily injury" and "property damage" only if:*
>
> *(1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";*
> *(2) The "bodily injury" or "property damage" occurs during the policy period . . . .*

(Policy, Form CG 00 01 04 13, p. 1 of 16, App. 99).

The Policy defines certain terms within the above-referenced Insuring Agreement. The Policy defines "bodily injury" as "bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time." (Policy, Form CG 01 03 13, p. 13 of 16, App. 111).

The Policy defines "property damage" as, in relevant part: "Physical injury to tangible property, including all resulting loss of use of that property . . . ." (Policy, Form CG 00 01 04 13, p. 16 of 16, App. 114).

The Policy defines "occurrence" as "an accident, including continuous or repeated exposure to substantially the same general harmful conditions." (Policy, Form CG 00 01 04 13, p. 15 of 16, App. 113).

The Policy includes the following exclusion:

> ***INTENTIONAL ACTS EXCLUSION***
>
> *We do not pay for loss which results from an act committed by or at the direction of an insured with the intent to cause a loss.*

(Policy, Form IL-303 (10-12), App. 66).

Based on the above Policy language, the Policy's Insuring Agreement does not cover the judgment in Polk Co. Case No. LACL145712. Alternatively, coverage is excluded by the Policy's intentional acts exclusion. Accordingly, after trial of the Dostarts' claims against Mr. Harmeyer and Tyler Custom Homes, Ltd., Columbia Insurance Group notified Mr. Harmeyer and Tyler Custom Homes, Ltd. that there is no insurance coverage under the Policy for the judgment in favor of the Dostarts. (Correspondence, App. 209-210).

ARGUMENT

I. Preservation of Error

Error has been preserved. On May 1, 2023, Columbia Insurance Group filed a Motion for Summary Judgment alleging lack of coverage for the judgment in Case No. LACL145712. (App. 5-211). The district court denied the Motion on July 20, 2023. (App. 302). Defendant filed a timely Application for Interlocutory

Review on August 16, 2023. (*See docket*, IA Supreme Court No. 23-1308). The Supreme Court of Iowa granted the Application, resulting in the present appeal. (*See docket*, IA Supreme Court No. 23-1308).

II. Scope and Standard of Review

The appellate standard for reviewing rulings on summary judgment is well-established. The Court reviews such rulings for correction of errors at law. *Otterberg v. Farm Bureau Mut. Ins. Co*., 696 N.W.2d 24, 27 (Iowa 2005).

Summary judgment is appropriate when there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. Iowa R. Civ. P. 1.981(3); *Schoff v. Combined Ins. Co.*, 604 N.W.2d 43, 45 (Iowa 1999). A genuine issue of material fact exists when the dispute is over a fact that might affect the outcome of the suit, given the applicable governing law. *Baratta v. Polk Cnty. Health Servs.*, 588 N.W.2d 107, 109 (Iowa 1999). The Court determines whether a genuine issue of material fact exists by examining the pleadings, depositions, answers to interrogatories, admissions, and affidavits incorporated in the summary judgment motion and any resistance. Iowa R. Civ. P. 1.981(3); *Clinton Nat'l Bank v. Saucier*, 580 N.W.2d 717, 719 (Iowa 1998). A fact issue exists only if reasonable minds can differ on how the issue can be resolved. *Schlueter v. Grinnell Mut. Reinsurance*, 553 N.W.2d 614, 616 (Iowa Ct. App. 1996). When the facts are undisputed, and the only issue is what legal

consequences flow from the facts, summary judgment should be granted. *Kennedy v. Zimmerman*, 601 N.W.2d 61, 63 (Iowa 1999).

III. Columbia Insurance Group Has No Obligation to Pay the Judgment that the Dostarts Obtained Against James Harmeyer and Tyler Custom Homes, Ltd.

In denying Columbia Insurance Group's Motion for Summary Judgment, the district court held that there are genuine issues of material fact requiring resolution by a factfinder. (Order, P. 6, App. 307). The pertinent facts, however, have been resolved by jury in *Dostart v. Harmeyer & Tyler Custom Homes, Ltd*., Polk Co. Case No. LACL145712. There is no need to relitigate what the jury in Case No. LACL 145712 has already decided; indeed, to do so would be a miscarriage of justice.

The law, along with the undisputed facts (in particular, those facts established by the jury in Case No. LACL145712), support summary judgment in favor of Columbia Insurance Group. Columbia Insurance Group has no obligation to cover the judgment against Mr. Harmeyer and Tyler Custom Homes, Ltd. in Polk Co. Case No. LACL145712, as a matter of law. Consequently, Columbia Insurance Group is not obligated to pay the judgment to the Dostarts.

A. The Fraud of Mr. Harmeyer and Tyler Custom Homes, Ltd. Is Not an "Occurrence."

Yegge v. Integrity Mut. Ins. Co. is an insurance coverage case which is extraordinarily similar to the case at bar. 534 N.W.2d 100 (Iowa 1995). In that

dispute, the Yegges had hired New Way Construction Co. ("New Way") to build a home. *Id*. at 101. The home was not completed to the Yegges' satisfaction, resulting in a lawsuit alleging breach of contract, breach of express warranty, breach of implied warranty negligence and fraud against New Way. *Id*. at 102. After the Yegges obtained a jury verdict against New Way ($18,000 in compensatory damages and $40,000 in punitive damages), the Yegges sued the general business liability insurer of New Way Construction, Co. to obtain payment of the judgment. *Id*. at 101-02.

The Iowa Supreme Court held the insurer was not liable for payment of the judgment. *Id*. at 102-03. The Court stated that the conduct of which the Yegges complained (including fraud) did not constitute an "occurrence." *Id*. New Way's policy defined "occurrence" exactly the same as the policy in the present case: "an accident including continuous or repeated exposure to substantially the same general harmful conditions." *Id*. at fn. 3; (Policy, Form CG 00 01 04 13, p. 15 of 16, App. 113).

Applying *Yegge* to this case, the fraud of Mr. Harmeyer and Tyler Custom Homes, Ltd. is not an "occurrence," as that term is defined in Columbia Insurance Group's policy. Therefore, Columbia Insurance Group has no obligation to indemnify Mr. Harmeyer and/or Tyler Custom Homes, Ltd. as to the consumer fraud judgment against them.

In denying Columbia Insurance Group's Motion for Summary Judgment, the district court said that it could not conclude the actions of Mr. Harmeyer and Tyler Custom Homes, Ltd. fit the definition of "occurrence," and "the trier of fact will be in a better position to resolve the parties' dispute based on a fully formed factual record, including weighing the credibility of witnesses." (Order, P. 5, App. 306). In fact, the trier of fact has already spoken.

The judgment that was actually rendered (not a hypothetical judgment that could be rendered) determines whether coverage exists. *North Iowa State Bank v. Allied Mut. Ins. Co*., 471 N.W.2d 824, 827-28 (Iowa 1991). Here, the judgment was that Mr. Harmeyer and Tyler Custom Homes, Ltd. are liable for consumer fraud in violation of Iowa Code § 714H.3. (Verdict, App. 37-38). This consumer fraud constituted a "willful and wanton disregard" for the rights of the Dostarts. (Verdict, App. 38-39). Given the jury's award of exemplary damages for "willful and wanton" fraudulent conduct, there is no question that the jury found Mr. Harmeyer's and Tyler Custom Ltd.'s conduct to be non-accidental. (Verdict, App. 38-39). If the jury had considered the conduct to be merely accidental, then the jury would not have awarded exemplary damages.

The Dostarts have taken the position, throughout this litigation, that it would theoretically be possible for the jury to have found Mr. Harmeyer and Tyler Custom Homes, Ltd. liable for consumer fraud, even under circumstances where

Mr. Harmeyer and Tyler Custom Homes, Ltd. were negligent. The Court will not need to determine whether or not the Dostarts are right about theoretical possibilities, because the case at hand obviously involves willful, wanton conduct.

Other jurisdictions have held that misconduct associated with consumer transactions is not a covered "occurrence." For instance, *in Thorn v. Am. States Ins. Co*., 266 F. Supp. 2d. 1346, 1352 (M.D. Ala.) (2022), an Alabama Court stated that extending CGL coverage to fraud claims (even if negligent conduct was involved) would be improper because CGL policies are designed for protection from accidental injury and damage. Allowing coverage in these types of situations would "'have the effect of transforming [the insurer] into a 'sort of silent business partner' to the consumer transactions . . . . This would cause an 'enormous' expansion of the scope of the insurer's liability without corresponding compensation.'" *Id*. (quoting *Auto-Owners v. Toole*, 947 F. Supp. 1557, 1564 (M.D. Ala. 1996)); *see also GE Aquarium, Inc. v. Harleysville Mut. Ins. Co.*, 2004 WL 3051074 (Phil. Ct. of Common Pleas, Dec. 27, 2004) (finding deceptive conduct in violation of a consumer protection statute was not an "occurrence"); *West Am. Ins. Co. v. Midwest Open MRI, Inc*., 2013 WL 1641408 (Il Ct. App., April 16, 2013) (finding violations of a consumer fraud statute did not involve an "occurrence").

B. The Jury Damages Award Against Mr. Harmeyer and Tyler Custom Homes, Ltd. Is Not for "Bodily Injury" or "Property Damage."

Columbia Insurance Group's policy provides coverage for "bodily injury" and "property damage" caused by an "occurrence." (Policy, App. 99). Just as there was no "occurrence," there was no "bodily injury" or "property damage."

Obviously, the underlying dispute did not involve bodily injury, as defined by the Columbia Insurance Group policy: "'Bodily Injury' means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time." (Policy, Form CG 01 03 13, p. 13 of 16, App. 111).

Regarding whether or not there was "property damage," *Yegge* is dispositive. In *Yegge*, the jury awarded the Yage's compensatory damages associated with the cost of finishing their uncompleted home, disruption of their lives, impairment of business, increased expenses and diminishment in value. *Yegge*, 534 N.W.2d at 101. The Court held that nothing the Yegges sought constituted "property damage" as defined within the policy. *Id*. at 102. The policy defined "property damage" the same as the policy in this case: "physical injury to tangible property . . ." *Id*. at fn. 2; (Policy, Form CG 00 01 04 13, p. 16 of 16, App. 114). The Yegges damages were "intangible economic losses," not "physical injury to tangible property." *Id*. at 102.

Just as in *Yegge*, the jury awarded the Dostarts compensatory damages against Tyler Homes, Ltd. consisting of the cost of completing their unfinished home. (Verdict, Q. No. 17, App. 38; Judgment, P. 2-3, App. 43-44). Compensatory damages that Mr. Harmeyer was ordered to pay encompass costs associated with temporary living expenses, moving expenses and loan extension. (Verdict, Q. No. 11, App. 37; Judgment, P. 2-3, App. 43-44). As was the case in *Yegge*, these are intangible economic losses. These are not "property damages" that are covered by the policy. *See also Strotman Bldg. Ctr., Inc. v. West Bend Mut. Ins. Co*., 1999 Iowa App. LEXIS 291, at *2-6 (Iowa Ct. App., Oct. 27, 1999) (finding various expenses associated with improper home construction were not "property damage").

In denying Columbia Insurance Group's Motion for Summary Judgment, the Court erroneously stated, "Columbia has presented the verdict form, however, the categories of damages in such verdict form are not defined, and the Court has nothing before it as to what evidence was offered to support such damages." (Order, P. 6, App. 307). The verdict form does, in fact, specifically list categories of damages, which bear self-explanatory definitions. (Verdict, App. 37-38). Here are pertinent parts of the verdict form:

Question No. 17: What is the amount of Actual Damages, if any, caused by Tyler Custom Homes' consumer fraud? If you find the Dostarts failed to prove an item of damage, enter 0 for that item.

The reasonable cost of completing the home	$118,808.30
Costs associated with temporary living, moving expenses, and loan extension.	0.00
Total	$118,808.30

Question No. 11: What is the amount of Actual Damages, if any, caused by Harmeyer's consumer fraud? If you find the Dostarts failed to prove an item of damage, enter 0 for that item.

The reasonable cost of completing the home	$0.00
Costs associated with temporary living, moving expenses, and loan extension.	$63,600
Total	$63,600

(Verdict, App. 37-38).

Not only does the verdict form spell out what damages were awarded to the Dostarts, but so does the Judgment and Order Denying Motion for New Trial or JNOV in Case No. LACL145712, which Columbia submitted as an exhibit to its Motion for Summary Judgment. The Judgment/Order expressly states, "The Jury awarded one category of damages – costs associated with temporary living, moving expenses, and loan extension – against James Harmeyer in response to Question No. 11." (Order, PP. 2-3, App. 43-44; Verdict, App. 37). The Judgment/Order continues, "The Jury awarded a separate category of damages – the reasonable cost of completing the home – against Tyler Custom Homes in response to Question No. 17." (Order, P. 3, App. 44; Verdict, App. 38). The

Judgment/Order could not be any more clear about what categories of damages the jury awarded to the Dostarts. Moreover, the district court had no need to review "what evidence was offered to support such damages"; the jury reviewed the evidence and, at this point, the jury damages awards are binding. Again, the purpose of the present coverage action is not to relitigate issues that the jury already determined.

In denying Columbia Insurance Group's Motion for Summary Judgment, the district court also stated, "[T]he Dostarts have provided an expert witness report that, when taken in the light most favorable to the Plaintiffs, supports a conclusion that property damage did result from the actions of Columbia's insured." (Order, P. 6, App. 307). Regardless of the content of the expert report in question, the jury did not find Mr. Harmeyer liable for any damages other than for intangible economic loss (temporary living expenses, moving expenses, and costs of loan extension). It is not possible for an expert report, even if the jury believed it, to somehow transform very specific categories of intangible economic loss into "property damage," which is specifically defined by the Policy to mean "[p]hysical injury to tangible property." (Policy, Form CG 00 01 04 13, p. 16 of 16, App. 114). Temporary living expenses, moving expenses and costs of loan extension that Mr. Harmeyer is obligated to pay are not "[p]hysical injury to tangible property," as a matter of law; these are not damages that can be seen or touched.

(Policy, Form CG 00 01 04 13, p. 16 of 16, App. 114); *see Yegge*, 534 N.W.2d at 101 (finding expenses and costs are not "property damage").

As to Tyler Custom Homes, Ltd., again, the expert report is irrelevant. The district court ignored *Yegge*, which holds that costs of home completion are not "property damage," i.e. "[p]hysical injury to tangible property." *See id*. The cost of home completion is an intangible economic loss, not a physical injury to a tangible thing (i.e. the home itself).

As no "bodily injury" or "property damage" occurred, as a matter of law, Columbia Insurance Group has no obligation to indemnify Mr. Harmeyer and/or Tyler Custom Homes, Ltd. as to the damages awarded against them. Columbia Insurance Group has no obligation to pay the Dostarts the amount of the judgment the Dostarts obtained against Mr. Harmeyer and Tyler Custom Homes, Ltd.

C. Mr. Harmeyer's and Tyler Custom Homes, Ltd.'s Fraud Is an "Intentional Act" Excluded From Coverage.

Columbia Insurance Group's policy excludes from coverage loss "which results from an act committed by or at the direction of an insured with the intent to cause loss." (Policy, Form CG 00 01 04 13, p. 15 of 16, App. 66). Consumer fraud, the only count as which Mr. Harmeyer and Tyler Homes, Ltd. are liable (Verdict, App. 37-38), was intentional, under the circumstances of this case. As such, the intentional acts exclusion applies. (Policy, Form IL-303 (10-12), App. 66) ("We do not pay for loss which results from act committed by or at the

direction of an insured with the intent to cause a loss."). Therefore, Columbia Insurance Group has no coverage and consequently no obligation to indemnify Tyler Custom Homes, Ltd. or James Harmeyer from the fraud judgment against them.

To establish fraud, the Dostarts had to prove that Mr. Harmeyer and/or Tyler Custom Homes, Ltd. engaged in a practice that they knew or reasonably should have known was a "deception, fraud, false pretense, a false promise, a misrepresentation, or a concealment, suppression or omission of facts." (Jury Inst. No. 24, App. 212); Iowa Code § 714H.3. They also had to prove that Mr. Harmeyer and Tyler Custom Homes, Ltd. "acted with the intent that the Dostarts rely on the practice or act." (Jury Inst. No. 24, App. 212); Iowa Code § 714H.3. Consequently, the jury verdict in favor of the Dostarts shows that Mr. Harmeyer and Tyler Custom Homes, Ltd. acted with the requisite intent to cause a loss to the Dostarts.

Moreover, as previously stated, the jury awarded exemplary damages to the Dostarts for fraud. (Verdict, App. 38-39). This leaves no doubt that the jury considered the conduct of Mr. Harmeyer and Tyler Custom Homes, Ltd. to be intentional, i.e. in willful and wanton disregard of the Dostarts' rights.

Iowa courts routinely apply intentional acts exclusions. The Iowa Supreme Court has held, for example, that an "assault" involves intentional conduct that is

excluded from homeowners' insurance coverage. *Dolan v. State Farm Fire & Cas. Co.*, 573 N.W.2d 251 (Iowa 1998). The Court has also held that pouring gasoline in a house, which results in a house fire, is an intentional act that excludes coverage. *Postell v. Am. Family Mus. Ins. Co.*, 823 N.W.2d 35 (Iowa 2012). To enforce an intentional acts exclusion here would be consistent with precedent.

CONCLUSION

Columbia Insurance Group has no obligation to provide coverage for the judgment obtained by the Dostarts in Case No. LACL145712. As such, Columbia Insurance Group has no obligation to indemnify Tyler Custom Homes, Ltd. or James Harmeyer with regard to the consumer fraud judgment against them. Put another way, Columbia Insurance Group has no obligation to tender payment to the Dostarts for the conduct of Tyler Custom Homes, Ltd. or James Harmeyer. Columbia Insurance Group requests that the Court find the district court erred and enter summary judgment in favor of Columbia Insurance Group.

REQUEST FOR NONORAL SUBMISSION

Columbia Insurance Group does not consider oral argument necessary.

Respectfully Submitted,

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CERTIFICATE OF COST

Pursuant to Iowa Rule of Appellate Procedure 1.903(2)(j), I certify that the costs actually paid for printing briefs in final form is currently $0.

By /s/ *Allison J. Frederick*

CERTIFICATE OF FILING AND SERVICE

The undersigned certifies that on February 29, 2024, the foregoing Brief was filed via the appellate e-filing system and additionally served on counsel for the Dostarts, as identified below, via the e-filing system.

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By /s/ *Allison J. Frederick*

CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENTS AND TYPE-VOLUME LIMITATION

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) or (2) because:

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By /s/ *Allison J. Frederick*