NO. 129895
IN THE
SUPREME COURT OF ILLINOIS

MARK KUHN and KAREN KUHN, Plaintiffs-Appellants, v. OWNERS INSURANCE COMPANY, Defendant-Appellee, B. MCLEAN ARNOLD, Special Representative of RYAN HUTE, deceased; JASON FARRELL, Individually; JASON FARRELL, d/b/a JASON FARRELL TRUCKING; 3 GUYS AND A BUS, INC., KATHLEEN CRABTREE, Executor of the Estate of Charles C. Crabtree, deceased; STEVEN B. PRICE, JESS O'BRIAN; MONTINIQUE HOWARD; HALEY WILLAN; GRACE STORM, ABBY HOEFT, OLIVIA REED; KIRSTEN LELLELID, and DORIANA BISCHOFF, Defendants-Appellants.	Appeal from the Appellate Court, Fourth District Case No. 4-22-0827 There On Appeal from the Circuit Court for McLean, Illinois, Eleventh Judicial, Circuit, Case No. 2019 MR 000643, The Honorable Scott Kording, Presiding

APPELLANTS' BRIEF AND APPENDIX

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E-FILED
10/31/2023 4:55 PM
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NATURE OF THE CASE

This is a declaratory judgment action where Plaintiffs-Appellants sought a judicial declaration that a commercial vehicle policy issued by Defendant-Appellee Owners (hereinafter "Owners") to a trucking company was ambiguous and allowed for the "stacking" or "aggregation" of liability limits. The declaration pages of the policy listed seven insured vehicles each with separately listed $1 million liability limits with separate premiums paid for each such coverage. The Illinois Supreme Court has repeatedly stated that "it would not be difficult to find an ambiguity arising from a declarations page that lists the liability limits separately for each covered vehicle." *Hess v. Estate of Klamm*, 2020 IL 12649, ¶22 (*citing Hobbs v. Hartford Ins. Co. of the Midwest*, 214 Ill. 2d 11, 21 (2005), and *Bruder v. Country Mutual Insurance Co*., 156 Ill. 2d 179, 192 (1993). In the often-quoted *Bruder dicta***,** this Court has explained:

> There would be little to suggest in such a listing that the parties intended the coverage was to be limited to that provided for only one of the two [vehicles]. It would be more reasonable to assume that the parties intended that, in return for the two premiums, two $100,000 coverage amounts were afforded.

Bruder, 256 Ill. 2d at 192. This conclusion is true despite the existence of an otherwise clear and unambiguous "anti-stacking" clause. *Id*. at 194. In numerous appellate court decisions, the Third and Fifth District Appellate Courts have applied the *Bruder dicta* to allow for stacking where liability limits are listed multiple times for each insured vehicle. On cross-motions for summary judgment, the trial court followed this clear precedent, finding that the multiple listing of liability limits seven times for each of the autos insured allowed for the reasonable interpretation that the policy provided seven separate $1 million

liability limits that could be aggregated. In so ruling, the trial court reviewed in detail the policy's anti-stacking provisions, finding numerous ambiguities contained therein. Because the policy was susceptible to the reasonable interpretation as set forth in the *Bruder dicta*, the trial court followed the long-standing rule that the policy must be construed against the insurer and in favor of broader coverage. On appeal, the Fourth District Appellate Court reversed, ignoring the *Bruder dicta*'s application to this case and ignoring the Third and Fifth District decisions applying it to similar policy language. Without so stating, the Fourth District simply appeared to disagree with the *Bruder dicta* and its application by numerous appellate court decisions. This Court has allowed the Appellants' Petition for Leave to Appeal the Fourth District's decision.

ISSUE PRESENTED FOR REVIEW

Whether the Owners policy of insurance which lists $1 million in liability limits seven different times covering seven different vehicles is susceptible to the reasonable interpretation that the total available liability limits for a single motor vehicle collision is $7 million, as per the *Bruder dicta*.

STATEMENT OF JURISDICTION

On August 15, 2022, McLean County Circuit Court judge, the Honorable Scott Kording, granted Appellants Kuhns' Motion for Summary Judgment, denied Appellee Owners Insurance Company's Motion for Summary Judgment and entered declaratory judgment in Appellants Kuhns', Crabtree's and Price's favor. (C1574; A096). Defendant filed its Notice of Appeal on September 14, 2022, but only named Kuhns as Appellees in its Notice of Appeal, omitting all other parties in whose favor summary judgment was entered. (Notice of Appeal, C1577-1579, A099-A101). On November 17, 2022,

Appellants Kuhns moved to dismiss the appeal for failure to add all necessary parties to the appeal. (A168-A196). On November 29th, the Appellate Court summarily denied the motion but ordered, *sua sponte*, Appellee Owners to file an amended docketing statement adding all other parties, (A197), which it did. An amended Notice of Appeal has not been filed.

The Appellate Court's opinion was entered on June 28, 2023. This Court, having granted leave to appeal on September 27, 2023, has jurisdiction to review the appellate court decision pursuant to Supreme Court Rule 315. Ill.S.Ct.R. 315.

STATEMENT OF FACTS

The Semi-Tractor vs. School Bus Head-on Collision

On December 5, 2018, Appellant Mark Kuhn was driving a school bus westbound on Interstate I-74 in McLean County, Illinois. (First Am. Compl., Ex.A, ¶18, C.297). In addition to Kuhn, occupying the school bus were Coach Steven Price, adult volunteer Charlie Crabtree and nine members of the Normal West High School junior varsity girls basketball team. (Kuhns' Memorandum in Support of MSJ, Ex. C at 13,16-17, 23 referring to Deposition Exhibit 1, pp 2-3, 23;C.672-C.675, C.681-C.684). At the same time, Ryan Hute was operating a semi-tractor trailer eastbound on Interstate I-74. (First Am. Compl., Ex. A, ¶15, C.297). Hute was acting within the course of his employment with Farrell Trucking. (*Id.* Ex.A ¶¶13-14. C.297). Hute's semi-tractor trailer crossed the center median of the highway and entered the westbound lanes and struck the school bus head-on. (First Am. Compl., Ex.A, ¶¶17,20, C.297). Hute and Crabtree died in the collision and the remaining occupants of the school bus claim serious and permanent injuries. (*Id*. at ¶¶9, 4,11, C.297; C.681-C.684; Price Cross Claim, ¶28, C.463).

The Insurance Policy

The semi-tractor being operated by Hute was a 2010 Kenworth T600 Construct owned by Farrell. (First Am. Compl. ¶8, C.290). The 2010 Kenworth was insured under a commercial auto policy issued by Owners to "Jason Farrell, Jason Farrell Trucking," policy number 51-829-065-00 ("Owners Policy"). (C.1026-1082; A102-A158). The parties stipulated that the Owners Policy is a true and accurate copy of the automobile insurance policy at issue in this case. (Joint Stipulation, C.1022-1082). The parties further stipulated that there existed no genuine issues of material fact and that the policy in question should be interpreted pursuant to Illinois law. (Plaintiffs' Memorandum of Law in Support of Motion for Summary Judgment, C.1252-1278; Owners Memorandum of Law in Support of its Motion for Summary Judgment, C.1083-1244).

The relevant portions of the Owners Policy for this appeal are the eight pages of "Declarations" pages of the policy (C.1029-1036; A105-A112) and the "Limit of Insurance" provision in the coverage portion of the policy, (C.1046-1047; A122-A123). There are actually two separate declaration sections, "ITEM TWO – SCHEDULE OF COVERED AUTOS AND COVERAGES" (C.1029-C.1030: A105-A106), and "ITEM THREE – SCHEDULE OF COVERED AUTOS, ADDITIONAL COVERAGES AND ENDORSEMENTS." (C.1031-C.1036; A107-A112). "Item Two" is as follows:

Item Two of the Declarations Pages

ITEM TWO - SCHEDULE OF COVERED AUTOS AND COVERAGES

This policy provides only those coverages where a charge is shown in the premium column below. Each of these coverages will apply only to those **autos** shown as covered **autos**. **Autos** are shown as covered **autos** for a particular coverage by the entry of one or more of the symbols from the COVERED AUTOS section of the Commercial Auto Policy next to the name of the coverage.

COVERAGES		COVERED AUTOS SYMBOLS	LIMIT OF INSURANCE FOR ANY ONE ACCIDENT OR LOSS	PREMIUM
Combined Liability		7, 8, 9, 19	$1Million each accident	$6,311.69
Uninsured/Underinsured Motorist Coverage		7	Uninsured Motorist - $100,000 each person/ $100,000 each accident	$27.72
		7	Underinsured Motorist - $100,000 each person/ $100,000 each accident	$53.31
Medical Payments		7	$5,000 each person	$39.27
Physical Damage	Comprehensive	7	$250 deductible applies for each covered auto unless a deductible appears in ITEM THREE.	$2,120.34
	Collision	7	$500 deductible applies for each covered auto unless a deductible appears in ITEM THREE.	$5,579.75
	Road Trouble Service			No Coverage
	Additional Expense			No Coverage
			Premium for Endorsements and Terrorism Coverage	$201.50
			ESTIMATED TOTAL PREMIUM*	$14,333.58

* This policy may be subject to final audit.

(C.1029; A105). As indicated in this section, there are four headings in the section, (COVERAGES, COVERAGE AUTO SYMBOLS, LIMIT OF LIABILITY FOR ANY ONE ACCIDENT OR LOSS and PREMIUM). Importantly, section headings do constitute substantive parts of the Owners Policy; the very first section specifically states: "The descriptions in the headings of the policy and all applicable endorsements are solely for convenience and are not part of the terms and conditions of coverage. (C.1041; A117).

COMMERCIAL AUTO POLICY

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered. Throughout this policy, words and phrases that appear in **bold face type** have special meaning. Refer to SECTION VI - DEFINITIONS. The descriptions in the headings of this policy and all applicable endorsements are solely for convenience and are not part of the terms and conditions of coverage.

Under "ITEM TWO"'s the first heading "COVERAGES", it lists the type of coverages including "COMBINED LIABILTY", "UNINSURED/UNDERINSURED MOTORIST COVERAGE, MEDICAL PAYMENTS COVERAGE AND four types of PHYSICAL DAMAGE COVERAGE. (C.1029; A105). Under the second heading

"COVERED AUTOS SYMBOLS", it lists numbers that represent types of vehicles to which each type of coverage applies. For "COMBINED LIABILITY" coverage it lists four types of vehicles with the designation: "7, 8, 9, 19". For the rest of the coverages, including "UNINSURED/UNDERINSURED MOTORIST COVERAGE", "MEDICAL PAYMENTS" AND "PHYSICAL DAMAGE" coverage, it only list one type of vehicle with the designation "7". The next page of ITEM TWO defines what the symbols mean:

QUICK REFERENCE FOR COVERED AUTO DESIGNATION SYMBOLS

Refer to the Commercial Auto Policy 58001 Section I for a complete description of COVERED AUTOS and policy provisions that may apply.

1 = Any Auto

2 = Owned Autos Only

3 = Owned Private Passenger Autos Only

4 = Owned Autos Other Than Private Passenger Autos Only

5 = Owned Autos Subject to No-fault

6 = Owned Autos Subject To A Compulsory Uninsured Motorists Law

7 = Scheduled Autos Only

8 = Hired Autos Only

9 = Non-owned Autos Only

19 = Mobile Equipment Subject To Compulsory Or Financial Responsibility Or Other Motor Vehicle Insurance Law Only

(C1030; A106). The third heading in ITEM TWO is the "LIMIT OF INSURANCE FOR ANY ONE ACCIDENT OR LOSS." (C.1029; A105). For "COMBINE LIABILITY" coverage, it lists limits of "$1 million each accident." (Id.). For "UNINSURED/UNDERINSURED MOTORIST COVERAGE", it lists limits of "$100,000 each person/$100,000 each accident." (Id.). For "MEDICAL PAYMENTS" coverage it lists limits of "$5,000 each person." (Id.). The fourth heading in ITEM TWO is the "PREMIUM", which lists specific premiums for each type of coverage. (Id.).

As indicated above, auto symbol "7" is listed for all types of coverages (except Road Trouble Service and Additional Expense). Auto symbol "7" stands for "SCHEDULED AUTOS ONLY." (C.1030; A106).

Accordingly, in summary, ITEM TWO of the Declarations pages indicates that for "Scheduled Autos", there is $1,000,000 in "Combined liability" coverage, $100,000 per person and $ 300,000 per accident in "Uninsured/Underinsured Motorist Coverage" and $5,000 per person in "Medical Payments" coverage. These coverages are listed as the same for each "scheduled auto."

Item Three of the Declarations Pages

The Owners Policy's Declarations do not stop there, however. There is an additional Declarations section entitled: "ITEM THREE – SCHEDULE OF COVERED AUTOS, ADDITIONAL COVERAGES AND ENDORSEMENTS." (C.1031; A107).

After listing coverages for "Hired Autos" and "Non-Owner Autos Liability" (not at issue here), ITEM THREE goes on to list seven "Scheduled Autos" with liability limits and premiums listed separately for each of these seven vehicles. They appear as follows:

OWNERS INS. CO. Issued 12-06-2018

AGENCY PRINS INSURANCE INC
07-0677-00 MKT TERR 038

Company Bill
POLICY NUMBER 51-829-065-00
Company Use 39-04-IA-1806

NAMED INSURED JASON FARRELL

Term 06-22-2018 to 06-22-2019

		TERRITORY	CLASS
1. 2000 KW W900 VIN: 1XKWDB9X9YR861487		048 Clinton County, IA	
COVERAGES	**LIMITS**	**PREMIUM**	**CHANGE**
Combined Liability	$1Million each accident	$1,805.81	
Uninsured Motorist	$ 100,000 each person/$ 100,000 each accident	9.24	
Underinsured Motorist	$ 100,000 each person/$ 100,000 each accident	17.77	
Medical Payments	$ 5,000 each person	13.09	
Comprehensive	ACV - $2,500 deductible	440.60	
Collision	ACV - $2,500 deductible	1,644.17	
Terrorism Coverage		19.65	
	TOTAL	$3,950.33	
			No Charge

Interested Parties:
Lienholder: MAQUOKETA STATE BANK, 203 N MAIN ST, MAQUOKETA, IA 52060-2204

Additional Endorsements For This Item: 58329 (10-16) 58330 (10-16) 58402 (05-16)

ITEM DETAILS: Extra heavy truck-tractor operated within a 300 mile radius.
USE CLASS (00753): Truckers - Miscellaneous.
Commercial Auto Plus Coverage Package applies.
Vehicle Count Factor Applies.
A 5% seat belt credit has been applied to BI and/or Med Pay premium.
Diminished Value Coverage applies.

2. 1999 PTRB 379 VIN: 1XP5D69X0XN466052			048 Clinton County, IA	
COVERAGES	**LIMITS**		**PREMIUM**	**CHANGE**
Combined Liability	$1Million each accident		$1,805.81	
Uninsured Motorist	$ 100,000 each person/$ 100,000 each accident		9.24	
Underinsured Motorist	$ 100,000 each person/$ 100,000 each accident		17.77	
Medical Payments	$ 5,000 each person		13.09	
Terrorism Coverage			9.23	
		TOTAL	$1,855.14	
				No Charge

Interested Parties: None

Additional Endorsements For This Item: 58329 (10-16) 58330 (10-16) 58402 (05-16)

ITEM DETAILS: Extra heavy truck-tractor operated within a 300 mile radius.
USE CLASS (00753): Truckers - Miscellaneous.
Vehicle Count Factor Applies.
A 5% seat belt credit has been applied to BI and/or Med Pay premium.

160 0104995 A 1184

			TERRITORY	**CLASS**
3. 2003 LIVESTOCK (WILSON) VIN: 1W1UCS2K53D526789			048 Clinton County, IA	
COVERAGES	**LIMITS**		**PREMIUM**	**CHANGE**
Combined Liability	$1Million each accident		$62.28	
Comprehensive	ACV - $2,500 deductible		71.23	
Collision	ACV - $2,500 deductible		106.83	
Terrorism Coverage			1.20	
		TOTAL	$241.54	
				No Charge

Interested Parties:
Lienholder: MAQUOKETA STATE BANK, 203 N MAIN ST, MAQUOKETA, IA 52060-2204

ITEM DETAILS: Livestock trailer operated within a 300 mile radius.
USE CLASS (00753): Truckers - Miscellaneous.
Vehicle Count Factor Applies.
Diminished Value Coverage applies.

160 0030000 1184

4. 2009 STEP DECK (WILSON) VIN: 4WWFGAOB49N613637			048 Clinton County, IA	
COVERAGES	**LIMITS**		**PREMIUM**	**CHANGE**
Combined Liability	$1Million each accident		$75.53	
Comprehensive	ACV - $2,500 deductible		100.80	
Collision	ACV - $2,500 deductible		118.19	
Terrorism Coverage			1.47	
		TOTAL	$295.99	
				No Charge

Interested Parties:
Lienholder: MAQUOKETA STATE BANK, 203 N MAIN ST, MAQUOKETA, IA 52060-2204

ITEM DETAILS: Flatbed trailer operated within a 300 mile radius.
USE CLASS (00753): Truckers - Miscellaneous.
Vehicle Count Factor Applies.
Diminished Value Coverage applies.

160 0026000 1184

		TERRITORY	CLASS
5. 2010 KW T660 VIN: 1XKAD49X1AJ270127		048 Clinton County, IA	
COVERAGES	**LIMITS**	**PREMIUM**	**CHANGE**
Combined Liability	$1Million each accident	$2,265.28	
Uninsured Motorist	$ 100,000 each person/$ 100,000 each accident	9.24	
Underinsured Motorist	$ 100,000 each person/$ 100,000 each accident	17.77	
Medical Payments	$ 5,000 each person	13.09	
Comprehensive	ACV - $2,500 deductible	1,117.83	
Collision	ACV - $2,500 deductible	2,848.38	
Terrorism Coverage		31.36	
	TOTAL	$6,302.95	
			No Charge

Interested Parties:
Lienholder: MAQUOKETA STATE BANK, 203 N MAIN ST, MAQUOKETA, IA 52060-2204

Additional Endorsements For This Item: 58329 (10-16) 58330 (10-16) 58402 (05-16)

ITEM DETAILS: Extra heavy truck-tractor operated within a 300 mile radius.
USE CLASS (00753): Truckers - Miscellaneous.
Commercial Auto Plus Coverage Package applies.
Vehicle Count Factor Applies.
A 5% seat belt credit has been applied to BI and/or Med Pay premium.
Diminished Value Coverage applies.

160 0143665 A 1184

6. 2000 NON OWNED TRAILER VIN: NON OWNED Secured Interested Party Changed		048 Clinton County, IA	
COVERAGES	**LIMITS**	**PREMIUM**	**CHANGE**
Combined Liability	$1Million each accident	$78.66	
Comprehensive	ACV - $2,500 deductible	133.85	
Collision	ACV - $2,500 deductible	327.49	
Terrorism Coverage		2.70	
	TOTAL	$542.70	
			No Charge

Interested Parties:
Lienholder: XTRA LEASE LLC, 850 66TH AVE SW, CEDAR RAPIDS, IA 52404-4709

ITEM DETAILS: Livestock trailer operated within a 300 mile radius.
USE CLASS (00753): Truckers - Miscellaneous.
Vehicle Count Factor Applies.
Diminished Value Coverage applies.

		TERRITORY	CLASS
7. 2019 PRESTIGE STEP DECK VIN: 2LDSD5322KG066819		048 Clinton County, IA	
COVERAGES	**LIMITS**	**PREMIUM**	**CHANGE**
Combined Liability	$1Million each accident	$89.08	
Comprehensive	ACV - $2,500 deductible	256.03	
Collision	ACV - $2,500 deductible	534.69	
Terrorism Coverage		4.40	
	TOTAL	$884.20	
			No Charge

Interested Parties:
Lienholder: MAQUOKETA STATE BANK, 203 N MAIN ST, MAQUOKETA, IA 52060-2204

ITEM DETAILS: Semi trailer operated within a 300 mile radius.
USE CLASS (00753): Truckers - Miscellaneous.
Vehicle Count Factor Applies.
Diminished Value Coverage applies.
This vehicle is rated for truckmen use.

(C.1032-1035; A108-A111).

As is evident, in exchange for a separate premium, ITEM THREE of the Declarations indicates that the insured had purchased separate $1,000,000 combined liability limits on each of the seven vehicles listed. (Id.). These coverages are different than and conflict with the coverages listed in ITEM TWO. Coverage for some *but not all* of the vehicles listed in ITEM THREE also have $100,000 per person/$300,000 per accident in Uninsured/ Underinsured Motorist Coverage and $5,000 per person in Medical Payments coverages. Specifically, vehicles number 1, 2, 3 and 5 have this additional coverage and vehicles 4, 6, and 7 do not. This conflicts with the coverage listed in ITEM TWO, where all "Scheduled Autos" are listed as having Uninsured/Underinsured Motorist Coverage and Medical Payments coverage. (C.1029; A105).

"Anti-Stacking" Clause in the Owners Policy

The other relevant provision in the Owners Policy is its so-called "anti-stacking" provision, (which, ironically, is not called that at all). This provision appears in the "Covered Autos Liability Coverage" Section, (SECTION II of the Owners Policy, starting at C.1043; A119) and is identified as Section II(C) with the heading "LIMIT OF INSURANCE." (C.1046-1047; A122-A123). That section comes in 5 subparts and states:

> **C. LIMIT OF INSURANCE**
> **We** will pay damages for **bodily injury**, **property damage** and **covered pollution cost or expense** up to the Limit of Insurance shown in the Declarations for this coverage. Such damages shall be paid as follows:
> **1.** When combined liability limits are shown in the Declarations, the limit shown for each **accident** is the total amount of coverage and the most **we** will pay for damages because of or arising out of **bodily injury**, **property damage** and **covered pollution cost or expense** in any one **accident**.
> **2.** When separate **bodily injury** and **property damage** limits are shown in the Declarations:
> **a.** For **bodily injury**:
> **(1)** The limit shown for "each person" is the amount of coverage and the most **we**

will pay for all damages because of or arising out of **bodily injury** to one person in any one **accident**.

(2) The limit shown for "each accident" is the total amount of coverage and the most **we** will pay, subject to **2.a.(1)** above, for all damages because of or arising out of **bodily injury** to two or more persons in any one **accident**.

b. For **property damage**, the limit shown is the amount of coverage and the most **we** will pay for all **property damage** in any one **accident**.

3. The Limit of Insurance applicable to a **trailer**, non-motorized farm machinery or farm wagon which is connected to an **auto** covered by this policy shall be the limit of insurance applicable to such **auto**. The **auto** and connected **trailer**, non-motorized farm machinery or farm wagon are considered one **auto** and do not increase the Limit of Insurance.

4. The Limit of Insurance applicable to a **trailer** covered by this policy but not scheduled in the Declarations:

a. Which is not connected to an **auto**; or

b. Which is connected to an **auto** not covered for Covered Autos Liability Coverage by this policy

shall be the Limit of Insurance applicable to any covered **auto**.

5. The Limit of Insurance for this coverage may not be added to the limits for the same or similar coverage applying to other **autos** insured by this policy to determine the amount of coverage available for any one **accident** or **covered pollution cost or expense**, regardless of the number of:

a. Covered **autos**;

b. **Insureds**;

c. Premiums paid;

d. Claims made or **suits** brought;

e. Persons injured; or

f. Vehicles involved in the **accident**.

All **bodily injury**, **property damage** and **covered pollution cost or expense** resulting from continuous or repeated exposure to substantially the same conditions will be considered as resulting from one **accident**.

(C.1046-1047; A122-A123). Section II(C)(1) discusses the limits for "combined liability limits" in the plural. The Owners Policy does not define this term. ITEM THREE of the Declarations lists the "combined liability limit" (no plural) for each of the seven vehicles. The Owners Policy does not define this term. Nevertheless, Section II(C)(1) reflects that there are multiple "combined liability limits" covering multiple vehicles under the policy. As stated, while the policy does define some terms in Section VI – Definitions, it does not define the terms "Limit of Liability," "limit," "limits," "Limit of Insurance," "Combined Liability," or "Combined Liability Limits". (C.608-610; A130-A132).

The Declaratory Judgment Action

The Appellants Kuhns filed this declaration judgment action seeking to stack the $1 million liability limits covering all seven vehicles under the Owners Policy. (C.293). The parties brought cross-motions for summary judgment. (C.812, C.1245, C.1391, C.1393). In a 73-page written decision, the trial court found that the multiple listing of liability limits created a reasonable expectation of multiple coverages that could be stacked

under the *Bruder dicta* and that the anti-stacking clause, itself ambiguous, did not cure the ambiguity. (C.1504-1576; A026-A098). The Fourth District reversed, finding the policy unambiguously only provided a single $1,000,000 liability limit based on the anti-stacking clause. (2023 IL App (4th) 220827; A001 to A025). In so doing, the Fourth District did not discuss why the *Bruder dicta* should not apply to this case and did not discuss, let alone distinguish the plethora of Third District and Fifth District appellate court cases that have applied the *Bruder dicta* under similar circumstances.

STANDARD OF REVIEW

Both the review of a grant of summary judgment as well as the determination of whether a policy allows the aggregation of liability limits present questions of law which are reviewed *de novo*. *Hobbs v. Harford Insurance,* 214 Ill.2d 11, 17 (2005).

ARGUMENT

I. OVERVIEW

The Fourth District ignored the *Bruder dicta* and all the reported decisions that applied the *Bruder dicta* to the situation here, where the declaration page separately lists liability limits for each of the multiple vehicles insured. While it cited *Bruder* and its *dicta*, the appellate court never engaged in an analysis of why the *Bruder dicta* did not apply to this case. It only cited one of the numerous appellate court decisions from the Third and Fifth Districts that followed the *Bruder dicta*, but only in one brief sentence as an illustration of a case where stacking was allowed. It never addressed the facts of these numerous decisions to explain why stacking was allowed in those cases but not this case. Rather, the appellate court here relied on a federal district court case that misapprehended

the import of the Supreme Court decisions on this issue. Its failure in this regard resulted in a decision that is in conflict with the decisions of other divisions of the appellate courts – decisions which the Supreme Court has cited approvingly as the proper application of *Bruder*'s *dicta*. The appellate court decision should be reversed and the trial court's opinion and judgment reinstated.

II. THE CONSTRUCTION AND INTERPRETATION OF INSURANCE POLICIES

As stated above, the interpretation of an automobile insurance policy is a question of law. *Hobbs v. Hartford Ins. Co. of the Midwest*, 214 Ill. 2d 11, 17 (2005). When interpreting an insurance policy, the court must start with the actual terms of the policy. *Bruder v. Country Mutual Insurance Co*., 156 Ill. 2d 179, 185 (1993). If the language is clear and unambiguous, the court will apply it as written, unless it conflicts with clear public policy. *Gillen v. State Farm Mut. Auto. Ins. Co.*, 215 Ill. 2d 381, 396 (2005).

Conversely, if the language of a policy is unclear, vague, confusing or subject to more than one reasonable interpretation, it will be deemed ambiguous. *Bruder*, 156 Ill. 2d at 185; *American States Ins. Co. v. Koloms*, 177 Ill.2d 473, 479 (1997). If a policy is ambiguous, the court must adopt the interpretation that most favors the insured and disfavors the insured. *Id*. Construing an ambiguous policy against the insured is based upon public policy. *Bruder*, 156 Ill. 2d at 185. Specifically, Illinois law recognizes that fault for a poorly written insurance clause falls upon the drafter. *Cherry v. Elephant Insurance Co*., 2018 IL App (5th) 170072 at ¶12. Indeed, the "insurer has the capacity to draft intelligible contracts." *Gillen*, 215 Ill. 2d at 396. As such, if there are conflicting interpretations of a policy, the courts must apply the one that gives the advantage to the

insured. *American States Insurance Co. v. Koloms*, 177 Ill. 2d 473 (1997).

Finally, when an insurer attempts to limit its liability under a policy, "such limitations must be construed liberally in favor of the insured, and most strongly against the insurer." *Squire v. Economy Fire & Casualty Co*., 69 Ill. 2d 167, 179 (1997). This includes situations where limiting language is found in an anti-stacking clause. *Hobbs,* 214 Ill. 2d at 17; *Caster v. Motors Insurance Co*., 28 Ill. App. 2d 363, 366 (4th Dist. 1961). Accordingly, anti-stacking clauses must be construed "strongly" against the insurer, and if there is a reasonable interpretation of the policy in favor of broader coverage, the court must adopt it.

III. STACKING OF POLICY LIMITS UNDER THE SUPREME COURT'S DECISION IN *BRUDER* AND ITS PROGENY

At issue in this case is whether or not the Owners Policy can reasonably be interpreted to provide seven separate $1 million liability limits covering seven different vehicles which can be aggregated or "stacked" so as to provide a total of $7 million in liability coverage to the subject semi-tractor v. school bus collision. Generally, courts recognize that separate limits of liability listed under a policy for separately insured vehicles may be "stacked" depending on the terms and language of each policy. *Progressive Premier Insurance Co. of Illinois v. Kocher ex rel. Fleming*, 402 Ill. App. 3d 756 (5th Dist. 2010). For instance, where a policy had two separate declarations pages each listing limits of liability and premiums paid for two different vehicles, it was held that such could reasonably be interpreted as allowing two separate limits for a single loss which could be aggregated. *See, Squire v. Economy Fire & Casualty Co.,* 69 Ill. 2d 167 (1977).

A. ***Bruder* and its d*icta***

The seminal case on the stacking of liability limits is *Bruder v. Country Mutual Insurance Co*., 156 Ill. 2d 179 (1993). There, this Court was confronted with both inter-policy stacking and intra-policy stacking of uninsured motorist coverage under two policies. The first policy was a "personal policy" insuring the accident vehicle with a single $100,000 per person limit. The second policy was a "business policy" that insured two other and different vehicles not involved in the accident. The business policy declarations page listed only a single limit of liability of $100,000 even though two vehicles were listed. The Plaintiff asserted she was entitled to three $100,000 limits, stacking the one $100,000 limit under the personal policy with two $100,000 limits under the business policy.

Relevant to the issue here is the *Bruder* decision's treatment of the insured's attempt at intra-policy stacking under the business policy. As stated, the declarations page of that policy only listed the policy limits one time for both vehicles. The policy contained the following "anti-stacking" clause: "The most we will pay for all damages resulting from bodily injury to any one person caused by any one accident is the limit of Bodily Injury shown in the declarations for 'Each Person' (*Id*. at 189) [and] . . . "regardless of the number of autos insured." (*Id*. at 194).

The declarations page of the insurer's business policy listed separate premiums for each vehicle. However, the declarations page only listed the limit of liability one time and not separately for each vehicle. The Supreme Court framed the issue as follows:

> The declarations of Country Mutual's business auto policy include reference to both of the pickup trucks for which the policy was issued and for which separate premiums were paid. ***The question is whether the meaning of the provision limiting liability is ambiguous in light of that fact.***

Id. 156 Ill. 2d at 191 (emphasis supplied). The bolded language is absolutely crucial to this Court's analysis: the Court will look to the declaration page to determine if the anti-stacking clause is rendered ambiguous.

The Court reviewed the declarations page in detail, placing great emphasis on the fact that the declarations only listed the liability limit one time and not separately for each vehicle. *Bruder*, 156 Ill. 2d at 192-195. Because of this, the Court held the declarations did not create an expectation of more than one limit of liability even though there were two vehicles. *Id.* Accordingly, the anti-stacking clause was not rendered ambiguous. *Id.* In explaining its ruling, however, this Court went on to set forth what is now famously known as the *Bruder dicta*:

> Understanding the arrangement of entries in the columns is important in determining the effect of what is not there included. Specifically, the limits of liability are not set out within the column arrangement in the same manner as the page lists the premium amounts and totals. That is, there is no column for which the limit of liability for bodily injury is to be listed like a premium amount so that the $100,000 limit for each person would appear in both sentence-like lines for the pickup trucks.
>
> ***It would not be difficult to find an ambiguity created by such a listing of the bodily injury liability limit for each person insured.*** It could easily be interpreted that an insured should enjoy a total limit of $200,000 in coverage because a figure of $100,000 would be shown for each pickup truck. There would be little to suggest in such a listing that the parties intended that coverage was to be limited to that provided for only one of the two pickup trucks. It would be more reasonable to assume that the parties intended that, in return for the two premiums, two $100,000 coverage amounts were afforded.

Bruder, 256 Ill. 2d at 192 (emphasis added).

This aspect of the *Bruder* decision cannot be emphasized enough. The anti-stacking clause simply and clearly stated that the limit of liability listed in the declarations was the

most it would pay in any one accident regardless of the number of autos insured under the policy, (like the Owners' Policy here). The declarations listed two vehicles but only listed the liability limits once. This single listing of liability limits did not render the anti-stacking clause ambiguous. This Court stated, however, that if the declarations page listed the liability limits separately for each vehicle insured, the anti-stacking clause would be rendered ambiguous. That is the key to the *Bruder dicta*.

The appellate court got this completely backward in its decision here. The appellate court asserted that anti-stacking clause "clears up any possible confusion" created by the multiple listing of limits in the declaration page. (2023 IL App (4th) 220827, ¶65; A021). Pursuant to *Bruder,* it is just the opposite: A declarations page can render an otherwise clear anti-stacking clause ambiguous. And, again in ignoring *Bruder's dicta*, the appellate court did not even acknowledge that the multiple listing of liability limits in the declaration of Owners Policy here is the exact scenario in the *Bruder dicta* that renders the otherwise clear anti-stacking clause ambiguous. Given the similarities between anti-stacking clauses,[1] *Bruder*'s *dicta* controls: the multiple listing of liability limits for each vehicle

[1] The anti-stacking clause in *Bruder* is similar (although not identical) to language to Owner's anti-stacking clause in Section II(C)(1), which provides "When combined liability limit is shown in the Declarations, the limit shown for each accident is . . . the most we will pay for damages because of or arising out of bodily injury . . . in any one accident . . . regardless of the number of covered auto . . ." While the term "combined liability limit" causes ambiguity problems for Owners that did not exist for the insurer in *Bruder*, the *Bruder's dicta* is extremely important here: in the face of an anti-stacking clause similar to Owner's in II(C)(1), this Court stated it "would not be difficult to find" an ambiguity if the policy listed separate liability limits for each auto in the declarations page. While the appellate court cited to what it considered the "more explicit" anti-stacking clause in section II(C)(5)(2023 IL App (4th) 220827, ¶66; A022), subsequent appellate case law demonstrates that such language still does "cure" the ambiguity. *See Cherry, infra*, at 28.

insured renders the otherwise clear anti-stacking clause in Owner's policy ambiguous. Subsequent reported decisions confirm this analysis.

B. Subsequent Cases Apply the *Bruder dicta*

Following the *Bruder* decision in 1993, a long line of cases has applied the *Bruder dicta,* with both appellate courts and the Illinois Supreme court upholding its core principle: a declarations page which lists limits of liability separately for each of multiple vehicles insured gives rise to the reasonable interpretation that the policy provides separate limits for each vehicle that may be aggregated and for which the anti-stacking clause cannot overcome.

The first case to address the *Bruder dicta* was the federal Seventh Circuit decision, *Allen v. TransAmerican Ins. Co,* 128 F.2d 462 (7th Cir. 1997). There, the auto policy's declaration page separately listed, in columns, two $100,000/300,000 limits of coverage for each of two vehicles insured under the policy. The policy also contained the following "anti-stacking" clause:

> The limit of liability shown in the Schedule or in the Declarations for each person for Underinsured Motorists Coverage is our maximum limit of liability for all damages, including damages for care, loss of services or death, arising out of "bodily injury" sustained by any one person in any one accident. Subject to this limit for each person, the limit of liability shown in the Schedule or in the Declarations for each accident for Underinsured Motorists Coverage is our maximum limit of liability for all damages for "bodily injury" resulting from any one accident. This is the most we will pay regardless of the number of:
> 1. "Insureds;"
> 2. Claims made;
> 3. Vehicles or premiums shown in the Declarations; or
> 4. Vehicles involved in the accident.

Allen, 128 F.3d at 464. The court noted that in isolation, the "anti-stacking" clause was unambiguous and Illinois courts had found similar "anti-stacking" clauses unambiguous as

well, 128 F.3d at 465. However, the court noted that, like Owners' policy here, the "anti-stacking" provision referred the reader to the declarations pages, hence requiring an inquiry into what limits were listed in the declarations. Given the declaration's multiple listing, in column-form, of separate liability limits for each of the two cars insured, the court concluded that the case fell factually directly within the scenario set forth in the *Bruder dicta*, which compelled at finding of ambiguity and stacking:

> The *Bruder dicta*, . . . addresses the precise factual scenario before us, in which we must consider the schedule in conjunction with the declarations page.
>
> As a court sitting in diversity, we have a duty to attempt to predict the actions of the Illinois Supreme Court. Accordingly, we must pay close attention to the *Bruder dicta*, as it persuasively indicates how the Illinois Supreme Court would rule in this case and as it is dispositive of this issue. The *Bruder dicta* predicts that the Illinois Supreme Court would find the anti-stacking clause ambiguous when viewed in conjunction with the columnar arrangement of the declarations page and would therefore rule in favor of coverage.

Allen, 128 F.3d at 467. This succinct analysis compels a similar result in this case. Yet, the appellate court did not address it.[2]

The *Bruder dicta* is next addressed in *Pekin Ins. Co. v. Est. of Goben*, 303 Ill. App. 3d 639, 647 (5th Dist. 1999). There, the policy's declaration's page listed two vehicles and

[2] The appellate court failed to acknowledge the decision in *Allen* yet cited to the discredited decision of *Grinnell Select Ins. Co v. Baker*, 362 F.3d 1005 (7th Cir. 2004). There, in a cursory 3-page opinion, Judge Easterbook completely ignore not only the *Bruder* decision but also its very own 7th Circuit precedent in *Allen* which applied the *Bruder dicta*, by asserting that anti-stacking clauses "cure" ambiguities created by the declarations pages. (2023 IL App (4th) 220827, ¶67; A022-23). Even *Kovach v. Nationwide Gen. Ins. Co,* 475 F.Supp.3d 890 (C.D.IL 2020), the federal district court case upon which the appellate court principally relied, recognized that *Grinnell* is wrong. *See* 475 F. Supp. 3d at 896-897 ("since *Grinnell*, the Illinois Supreme Court has found that an identical wording of a limited liability clause is not enough, on its own, to dispel all ambiguity form a policy with certain constructions of a declaration page", *citing Hess, supra*).

listed the $500,000 limits of insurance and premium paid separately for each vehicle. The policy's "anti-stacking" clause, similar to Owners' clause in Section II(C)(5), provided:

> D. LIMIT OF INSURANCE
> 1. Regardless of the number of covered `autos,' `insureds,' premiums paid, claims made or vehicles involved in the `accident,' the most we will pay for all damages resulting from any one `accident' is the Limit of Insurance . . . shown in this endorsement.

Goben, 303 Ill.App.3d at 646. The *Goben* court noted that the relevant terms of the policy fell directly within the scenario contemplated in the *Bruder dicta*, and therefore adopted its reasoning as reasonable, appropriate and controlling. *Id.* at 648-649. In response to the argument that *Bruder* was mere *obiter dictum*, the court stated:

> An expression of opinion upon a point in a case argued by counsel and deliberately passed upon by the court, though not essential to the disposition of the cause if *dictum*, is a judicial *dictum*. Judicial *dictum* is entitled to much weight and should be followed unless found to be erroneous. See *Law v. Grommes*, 158 Ill. 492, 494 (1895); *Rhoads v. Chicago & Alton R.R. Co.*, 227 Ill. 328, 337 (1907) (expression of opinion considered to be judicial *dictum* held to have force of judicial determination). "Even *obiter dictum* of a court of last resort can be tantamount to a decision and therefore binding in the absence of a contrary decision of that court." *Cates v. Cates*, 156 Ill. 2d 76, 80 (1993).

Goben, 303 Ill.App.3d at 649

A year later, the same issue was raised in *Yates v. Farmers Auto. Ins. Ass'n*, 311 Ill. App. 3d 797 (5th Dist. 2000), with similar results. In *Yates*, the policy listed two vehicles in the declarations page with separate liability limits of $100,000 and premiums listed for each vehicle. The policy at issue contained the following anti-stacking language in its UIM endorsement, again, similar to the anti-stacking clause in the Owners Policy:

> LIMIT OF LIABILITY
> a. The limit of liability *shown in the Declarations* for this coverage is our maximum limit of liability for all damages resulting from any one accident. This is the most we will pay regardless of the number of:

1. 'Insureds,'
2. Claims made;
3. Vehicles or premiums shown in the Declarations; or
4. Vehicles involved in the accident." (Emphasis added.)

Yates, 311 Ill.App.3d at 799-800. Citing *Bruder*, the court concluded that the declarations pages and "anti-stacking" provisions were contradictory, rendering the policy ambiguous. Importantly, far from rendering the declarations unambiguous, the anti-stacking clause's inconsistency with the declaration's clause is what rendered the policy ambiguous and therefore required the interpretation that allowed stacking.[3] *Yates*, 311 Ill.App.3d at 800.

In a case completely ignored by the appellate court here, the *Bruder dicta* was made specifically applicable to liability coverage under an automobile policy in *Skidmore v. Throgmorton*, 323 Ill. App. 3d 417, 425 (5th Dist. 2001). In *Skidmore*, the at-fault driver was driving someone else's vehicle when causing an accident. The policy covering the accident vehicle insured two autos each with $100,000 liability limits. The at-fault driver also had her own auto policy that covered her own vehicles (not involved in the accident) also each with $100,000 in liability limits. So, in that case, there were two liability policies covering two vehicles each (or a total of four vehicles) where only one vehicle was involved in the crash. *Id.,* 323 Ill. App. 3d at 419, 423. The injured party (like Appellants here) sought to "stack" all four of the $100,000 per person liability coverage limits which covered the at-fault driver. Both policies had identical "anti-stacking" clauses:

[3] Note again how this is the opposite of the appellate court's assertion that the anti-stacking clause "clears up" any ambiguity caused by the declarations page. Like *Bruder* itself, the cases that adopt its *dicta* all start and end with the proposition that it is the declarations listing of more than one limit for each vehicle that is inconsistent with the anti-stacking provision, thereby creating the ambiguity.

> The limit of liability shown in the Declarations for each person for Bodily Injury Liability is our maximum limit of liability for all damages, including damages for care and loss of services (including loss of consortium and wrongful death), arising out of *bodily injury* sustained by any one person in any one auto accident.
>
> Subject to this limit for each person, the limit of liability shown in the Declarations for each accident for Bodily Injury Liability is our maximum limit of liability for all damages for *bodily injury* resulting from any one auto accident.
>
> ***
> This is the most we will pay regardless of the number of:
> 1. *Insureds*;
> 2. Claims made;
> 3. Vehicles or premiums shown in the Declarations; or
> 4. Vehicles involved in the auto accident." (Emphasis in original.)

Skidmore, 323 Ill. App. 3d 423.

The court found the *Bruder dicta* controlling as adopted by the decisions in *Allen, Goben* and *Yates,* concluding that the policy was ambiguous as between the declarations and anti-stacking and therefore allowed stacking of liability limits. Just like Owners has belatedly done here (*See infra*, Section VI.A at p. 39-41), the insurer argued that stacking should not be allowed in liability policies (as opposed to UM/UIM coverages like in *Bruder*). The court disagreed, stating: "the reasoning of the Illinois Supreme Court in *Bruder* cannot be limited to uninsured- or underinsured-motorist coverage, and it must be applied in situations involving the identical policy language, [i.e., anti-stacking clauses] located elsewhere in the policy." *Id*. at 425.

Despite being directly on point to the issue in this case, both in terms of involving the stacking of liability coverage and the multiple listing of policy limits covering each vehicle insured, the appellate court never even cited *Skidmore* let alone discussed the

factual identity of the issues involved. The reason, obviously, is because the *Skidmore* cannot be meaningfully distinguished from this case.

C. The *Hobbs* Decision Re-Affirms Vitality of *Bruder dicta*

The Illinois Supreme Court once again addressed intra-policy stacking in its decision of *Hobbs v. Harford Ins. Co of the Midwest*, 214 Ill. 2d 11 (2005). In *Hobbs*, two separate cases were consolidated before the Supreme Court, where both involved the attempt to stack UM/UIM limits covering multiple vehicles in the same policy. Both policies at issue contained similar declarations pages and similar "anti-stacking" provisions. Essential to our discussion here is the fact that while in both policies' declarations a premium was listed separately for each vehicle insured under the policy, the declarations listing of the dollar limits of liability ***only appeared once***, (i.e., this was not a *Bruder dicta* scenario).

This Court in *Hobbs* easily concluded that because the declarations only listed the limits of liability one time for the multiple vehicles insured, *Bruder*'s main holding controlled and that the declarations section did not give rise to a reasonable expectation that there were multiple limits available to be stacked and, therefore, there was no ambiguity. The *Hobbs* court, however, made a point of reciting its *dicta* in *Bruder* as to when an ambiguity ***would*** exist:

> We noted [in *Bruder*], however, that had the limit of liability for bodily injury been listed twice on the declarations page, "it would not be difficult to find an ambiguity." In such a case, the policy could easily be interpreted as providing a total limit of $200,000 because a figure of $100,000 would be shown for each vehicle.

> As noted . . . in *Bruder*, where the anti-stacking clause limits liability to the limit shown on the declarations page, and the declarations page lists the limit of liability twice, it would not be difficult to find an ambiguity.

Id. at 25.

The import of *Hobbs* goes beyond its reiteration of its *dicta* in *Bruder*. In reaching its ruling, it addressed what appeared to be inconsistent appellate court rulings on the issue of *Bruder* and its *dicta*: the Fifth District cases of *Yates*, *supra*, and *Hall v. General Casualty Co. of Illinois*, 328 Ill. App. 3d 655 (5th Dist. 2002) and the First District case of *Domin v. Shelby Insurance Co.*, 326 Ill. App. 3d 688 (1st Dist. 2001). *Domin* disallowed stacking where the declarations page listed the premiums separately for each auto but only listed the limits one time. *Hall* allowed stacking in the same scenario as *Domin*: the declarations page listed the premiums separately for each auto but only listed the limits one time. *Yates*, as discussed, allowed stacking where the declarations listed the limits and premiums more than once for each vehicle insured. The Supreme Court in *Hobbs* affirmed *Domin* as the correct ruling under *Bruder (Id.* at 21-22*)* overruled *Hall* as incorrect under *Bruder (Id.* at 27), but distinguished *Yates* on the basis that it fell within the factual scenario of the *Bruder dicta. Id*. at 24-25. In other words, *Hobbs* recognized that cases like *Yates* properly allow stacking when the policy falls within the *Bruder dicta* – the multiple listing of policy limits for each auto insured.

The appellate court here ignored this aspect of the *Hobbs* decision. It never acknowledged the *Yates* decision let alone addressed how *Yates*' application of the *Bruder dicta* was directly applicable to this case. Likewise, the appellate court failed to

acknowledge that the Supreme Court in *Hobbs* approvingly cited *Yates*, a case like ours here, that applied the *Bruder dicta* to our exact factual scenario.

D. Post-*Hobbs* Cases Continue to Follow *Bruder dicta*

Following *Hobbs*, numerous appellate court cases have applied the *Bruder dicta*, reaffirmed in *Hobbs*, to the scenario where the policy's declarations page lists the limits of liability more than once and separately for each of the insured vehicles under the policy. *See*, *Johnson v. Davis*, 377 Ill. App. 3d 602, 609 (5th Dist. 2007)(policy ambiguous in prohibiting stacking because "the limits . . . are listed four separate times, once for each vehicle," together with "[four] separate premiums"); *Progressive Premier Ins. Co. of Illinois v. Kocher ex rel. Fleming,* 402 Ill. App. 3d 756, 761 (5th Dist. 2010)(allowed aggregating limits of liability coverage, stating that under Illinois law, "where the declarations page lists the policy limits . . . more than once, this creates an ambiguity regarding whether the coverage may be stacked and that ambiguity must be resolved in favor of the insured. Where, however, the limit is shown only once, these cases have held that there is no ambiguity and the coverages do not stack"); *Bowers v. Gen. Cas. Ins. Co*., 2014 IL App (3d) 130655, ¶11 ("the distinction between listing the UIM limit of liability once and listing it more than once was crucial to our supreme court's determination in" *Hess* and *Bruder*); *Cherry v. Elephant Ins. Co., Inc*., 2018 IL App (5th) 170072 ¶¶14-16, 21 ("a declarations page that prints the policy limit more than once could reasonably be interpreted as providing a policy limit that is the sum of the printed limits" and "[The anti-stacking clause] does nothing to cure the ambiguity created by its limit of liability clause combined with the multiple listed limits on the declarations page"); *Barlow v. State Farm*

Mut. Auto. Ins. Co., 2018 IL App. (5th) 170484, ¶17 (declarations page that lists the symbol for "$250,000 policy limits" sixteen times separately for each of 16 vehicles insured under the policy "creates an ambiguity which can reasonably be interpreted as favoring aggregation of the 16 vehicles' limits of liability for underinsured motorist coverage").

Importantly, these cases contain "anti-stacking" provisions with language similar to the Owners Policy here:

> These Underinsured Motor Vehicle Coverage limits are the most ***we*** will pay regardless of the number of:
> a. ***insureds***;
> b. claims made;
> c. vehicles insured; or
> d. vehicles involved in the accident.
> *Barlow, supra* 2018 IL App. 170484 at ¶7.

> A. The limit of liability shown in the Schedule or in the Declarations for this coverage is our maximum limit of liability for all damages resulting from any one accident. This is the most we will pay regardless of the number of:
> 1. 'Insureds';
> 2. Claims made;
> 3. Vehicles or premiums shown in the Declarations; or
> 4. Vehicles involved in the accident.
> *Johnson, supra* 377 Ill. App. 3d at 605-606.

> LIMITS OF LIABILITY
> There will be no stacking or combining of coverage afforded to more than one auto under this policy. The limit of liability shown on the declarations page for the coverages under Part C is the most we will pay regardless of the number of:
> 1. Claims made;
> 2. Covered autos;
> 3. Autos and trailers shown on the declarations page;
> 4. Insureds;
> 5. Lawsuits filed;
> 6. Motor vehicles and trailers involved in an accident;
> 7. Heirs or survivors of person with bodily injury; or
> 8. Premiums paid."
> *Cherry, supra,* 2018 IL App 170072 ¶5.

> The limit of liability shown in the Schedule or in the Declarations for each person for Underinsured Motorist Coverage is our maximum limit of liability for all damages, including damage for care, loss of service or death, arising out of 'bodily injury' sustained by any one person in any one accident. Subject to this limit for each person, the limit of liability shown in the Schedule or in the Declarations for each accident for Underinsured Motorist Coverage is our maximum limit of liability for all damages for 'bodily injury' resulting from any one accident.
> This is the most we will pay regardless of the number of:
> 1. 'Insureds;'
> 2. Claims made;
> 3. Vehicles or premiums shown in the Schedule of Declarations; or
> 4. Vehicles involved in the accident."
> *Bowers* 2014 IL App (3d) 130655 at ¶3.

> The limit of liability shown on the **Declarations Page** is the most we will pay regardless of the number of:
> 1. claims made;
> 2. **covered vehicles**;
> 3. **trailers** shown on the **Declarations Page**;
> 4. **insured persons**;
> 5. lawsuits brought;
> 6. vehicles involved in an **accident**; or
> 7. premiums paid.
> *Progressive Premier Ins. Co. v. Kocher*, 402 Ill. App. 3d at 756, 757.

The court in each one of these cases determined that the above "anti-stacking" clause was not sufficient to overcome the ambiguity created in a declarations page which list limits of liability more than once for each of the multiple autos insured under the policy. Owners argued, and the appellate court agreed, that section II(C)(5) of the Limit of Liability provision contains a more "explicit" anti-stacking clause than the "traditional" one in section II(C)(1). (2023 IL App (4th) 220827, ¶66; A022). A quick look at (C)(5) reveals it to be not that different than those listed above which were found to be not sufficient to overcome the ambiguity:

> 5. The Limit of Insurance for this coverage may not be added to the limits for the same or similar coverage applying to other autos insured by the policy to

> determine the amount of coverage available for any one accident or covered pollution cost or expense, regardless of the number of:
>
> a. Covered autos;
> b. Insureds;
> c. Premiums paid;
> d. Claims made or suits brought;
> e. Person injured; or
> f. Vehicles involved in the accident.

(C.1047; A123). Comparing the Owners Policy with the anti-stacking provisions above, they all say the same thing: the limits of insurance coverage shown in the declarations will not be increased, stacked or added together regardless of the number vehicles insured, premiums paid etc. There might be slightly different ways of saying it, but they are all saying that same thing. Indeed, the anti-stacking clause in *Cherry, supra*, "no combining" coverages language is similar to the as Owners Policy. All of the above reported decisions hold that regardless of how clear these anti-stacking provisions may appear, the multiple listing of liability limits for each vehicle in the declarations renders the policy ambiguous:

> [A]lthough we recognize that the policy has specific antistacking language stating that "[t]here will be no stacking or combining of coverage afforded to more than one auto under this policy," this clause does nothing to cure the ambiguity created by its limit of liability clause combined with the multiple listed limits on the declarations page.

Cherry, supra, 2018 IL App 170072, ¶22; *see also*, *Barlow, supra* 2018 IL App. 170484 at ¶18 ("when the contents of the body of the policy conflict with the language on the declarations pages, an ambiguity exists that must be construed in favor of the insured").

E. The *Hess* Decision Again Re-Affirms *Bruder dicta* and its Progeny

The Supreme Court once again addressed the issue of intra-policy stacking of limits in its recent decision *Hess v. Estate of Klamm*, 2020 IL 124649. In *Hess*, the at-fault driver was provided liability insurance under an auto policy that insured four separate vehicles.

The injured occupants of the other vehicle involved in the crash were attempting to "stack" the $100,000 per person liability limits for each of the four vehicles insured under the at-fault driver's policy. There were two pages to the declarations in the policy: the first page listed three of the four vehicles and only listed the $100,000/$300,000 liability limits one time. The second page of the declarations listed the fourth vehicle and again listed the $100,000/$300,000 another time. Hence, while there were four vehicles insured under the policy, the declarations listed the policy limits two times, one per page. The policy also had the following "anti-stacking" provision:

> LIMIT OF LIABILITY
> A. The limit of liability shown in the Declarations for each person for Bodily Injury Liability is our maximum limit of liability for all damages, including damages for care, loss of services or death, arising out of 'bodily injury' sustained by any one person in any one auto accident. Subject to this limit for each person, the limit of liability shown in the Declarations for each accident for Bodily Injury Liability is our maximum limit of liability for all damages for 'bodily injury' resulting from any one auto accident.
> The limit of liability shown in the Declarations for each accident for Property Damage Liability is our maximum limit of liability for all 'property damage' resulting from any one auto accident.
> This is the most we will pay regardless of the number of:
> 1. 'Insureds';
> 2. Claims made;
> 3. Vehicles or premiums shown in the Declarations; or
> 4. Vehicles involved in the auto accident.

Hess, 2020 IL 124649, ¶5.

In addressing whether the policy allowed stacking of the liability limits, the Court noted that "this court's decisions in *Bruder* and *Hobbs* guide our analysis in this case." *Id.* at ¶20. "[A]ccording to *Bruder*, if the liability limit is listed only once, it is reasonable to conclude that the policy provides only that amount of coverage per person, regardless of how many vehicles are listed and how many separate premiums are paid." *Id.* However,

"[i]t would not be difficult to find an ambiguity" if the policy listed individual liability limits for each covered vehicle. . . . [I]f there were a separate limit listed for each vehicle on the declarations page, there would be little to suggest that the parties intended to limit coverage to the amount provided for only one of the vehicles. *Id.* Rather, "[i]t would be more reasonable to assume that the parties intended that, in return for the two premiums, two $100,000 coverage amounts were afforded." *Id.*

The Court in *Hess* noted that the anti-stacking clause was essentially the same as in *Hobbs*, and similar to *Bruder*. However, unlike the declarations pages in *Hobbs* and *Bruder*, the declarations pages in *Hess* listed the liability limits two times, once on each of the two declarations pages. The question was whether this created an ambiguity under the *Bruder dicta*. After first noting that the *Bruder dicta* did not create a "*per se*" rule of ambiguity any time the limits were listed more than once, the Court concluded that the multiple listing of liability limits in *Hess* did not create an ambiguity. The reason, the Court noted, was because the obvious reason for listing the limits of liability two times was because there was simply not enough room on the first declarations page to list all four vehicles. *Hess*, 2020 IL 124649 at ¶25. Hence, the last vehicle had to be listed on a second declarations page, which merely reiterated all the available coverages. In other words, unlike the scenario identified in the *Bruder dicta*, the multiple listing of limits could not be reasonably interpreted to provide separate limits for each vehicle because there was another clear reason for the multiple listing – a lack of space.

The Court in *Hess* specifically addressed the decisions in *Cherry* and *Johnson* and held that they were distinguishable from the current case ***because*** they squarely fell within

the scenario of the *Bruder dicta*. "Both [*Cherry* and *Johnson*] allowed stacking of underinsured motorists coverage in a multivehicle policy. In contrast to the policy in this case, however, the policies in *Cherry* and *Johnson* listed the liability limits separately for each covered vehicle. Based on this fact, the courts concluded that a reasonable person could believe that the policy provided coverage in an amount totaling the limits listed for all covered vehicles." *Id.* at ¶26 In contrast, "in this case it is not reasonable to conclude from the policy provisions that the policy provided more than $100,000 in bodily injury coverage per person for any one auto accident." *Id.*

Accordingly, *Hess* reaffirmed the *Bruder dicta* and specifically indicated that the cases of *Cherry* and *Johnson* were a proper application of the *Bruder dicta*. It is important to note that the court distinguished *Cherry* and *Johnson* solely on the basis of the declarations pages. The "anti-stacking" clauses in both *Cherry* and *Johnson* were essentially the same as in *Hess*. Such clauses were not sufficient to overcome the ambiguity created by a declarations page which lists separately the limits for each of multiple autos insured as in *Cherry* and *Johnson.* In *Hess*, the anti-stacking clause was sufficient not because it was different than or clearer than *Cherry* and *Johnson*, but because the declarations pages did not create an ambiguity, (i.e., there was a reasonable explanation unrelated to stacking for the listing of two limits).

IV. THE APPELLATE COURT ERRONEOUSLY RELIED UPON A FEDERAL DISTRICT COURT DECISION WHICH MISAPPLIED THE *HESS* DECISION

Given the *Bruder dicta*, the subsequent affirmations in *Hobbs, Hess* and all the decisions from the Third and Fifth District - all of which establish firm precedent that the

separate listing of liability limits for each auto insured gives rise to an ambiguity in favor of stacking – how did the Fourth District get it wrong here? Rather than follow the Third and Fifth Districts precedents [4] – with which it obviously disagrees – the appellate court here chose instead to rely on the federal district court decision not even cited by Owners, *Kovach v. Nationwide Gen. Ins. Co.,* 475 F. Supp.3d 890 (C.D. IL 2020), and that decision's misapplication of the *Hess* decision. (2023 IL App (4th) 220827, ¶¶53-62, A053-A062). *Kovach* interprets *Hess* in a way that, as long as the insurer had a reason for separately listing the limits of liability for each vehicle covered, no ambiguity existed. This is simply a misread of *Hess*.

Kovach involved an auto policy where the declarations page separately listed $100,000 liability limits for each of the four vehicles. *Kovach*, 475 F. Supp.3d at 893-95. Plaintiff sought to stack all four limits pursuant to the *Bruder dicta* and Fifth District precedent. The court in *Kovach* rejected stacking based on *Hess.* It noted that the "*Hess* decision makes it clear that listing the liability limits multiple times is not always an indicator that the policy in question is ambiguous." *Id*. at 897. Rather, according to *Kovach*, *Hess* stands for the proposition that as long as the insurer has "a reasonable justification to list their liability limits multiple times in the declarations," no ambiguity will be found. *Id.*

[4] In its Opinion, the appellate court here cited to one and only one of the conflicting Appellate Court decisions, *Cherry v. Elephant Insurance Co*, 2018 Il App (5th) 170072, ¶¶ 20-22, for the general proposition that "some appellate courts" have found "certain multivehicle policies with anti-stacking clauses ambiguous because the declarations pages listed a separate premium and limit of liability for each vehicle." (2023 IL App (4th) 220827 at ¶46, A016). However, the court did not discuss *Cherry* further, nor any of the numerous other cases with similar holdings, and certainly did not attempt to distinguish such cases or explain why a different result should obtain here on a similarly structured declarations page.

Because the insurer in *Kovach* asserted a reasonable justification for listing the liability limits for each vehicle (it needed to show how other coverages varied between the vehicles), the court in *Kovach* concluded there was no ambiguity. *Id*. at 897-898. The Fourth District found *Kovach* controlling, indicating that Owners had the same "reasonable justification" to list liability limits multiple times, (to show how other coverages varied between the vehicles). (2023 IL App (4th) 220827, ¶¶56-58, A018-020).

Both the court in *Kovach* and the Fourth District in this case misinterpret *Hess* and the Fifth District cases cited therein. Contrary to what *Kovach* asserts, the pivotal distinction in *Hess* was whether the limits were listed "for each vehicle insured" as opposed to simply being listed "more than once." *Hess*, ¶22. Recall that the policy in *Hess* listed the limits two times, once on the first page for the first three vehicles and a second time on the next page for the fourth vehicle. It was in this context that *Hess* stated:

> [While in *Hobbs* we said] it would not be difficult to find an ambiguity arising from a declarations page that lists the liability limits separately ***for each covered vehicle***. . . . this should not be construed as "establishing a *per se* rule that an insurance policy will be deemed ambiguous as to the limits of liability anytime the limits are noted ***more than once*** on the declarations."

Hess, at ¶22 (quoting *Hobbs*)(emphasis supplied). The crucial distinction the Supreme Court was making in *Hess* was that while the declarations in that case may have listed the limits "more than once" the limits ***were not*** listed separately "***for each car insured.***"[5] when the Court stated:

> The policy in this case does not list liability limits separately for each covered vehicle. It lists the limits once on the first page of the declarations, to the left of

[5] This is the context of the Supreme Court's admonition against a *per se* rule of ambiguity: listing the limits ***more than once*** may not always create an ambiguity as in *Hess;* rather, it is the listing of limits ***for each vehicle*** that creates the ambiguity, as demonstrated above.

> Autos 1, 2, and 3, and once on the second page, to the left of Auto 4. We do not believe it is reasonable to read the policy as allowing stacking of the liability coverage either four times, as the circuit court found, or two times, as the appellate court found. The only reasonable explanation for restating the liability limits on the second page is that the information for all four vehicles could not fit on one physical page. There simply was not enough space on the first page for an additional column listing the coverages and premiums for Auto 4.

Hess, at ¶25. In other words, the declarations pages in *Hess* clearly did not intend to provide limits for each covered vehicle – a fact that would have given rise to the reasonable expectations of multiple coverages as per the *Bruder dicta*. It was not that the insurer had a "justification" for listing the limits a second time. It was that the limits were not separately listed for ***each*** vehicle covered by the policy. Indeed, this Court in *Hess* could not have been any clearer:

> [I]t is clear that the deciding factor in both [*Hobbs* and *Bruder*] was whether the liability limits were listed separately for each of the covered vehicles, not whether they were listed "twice."

Hess, at ¶27. This interpretation is also borne out by *Hess*' approving analysis of the Fifth District cases in *Cherry, supra* and *Johnson, supra*, that followed *Bruder's dicta* and allowed stacking. *Hess* distinguished those cases from the policy in its cases based *exclusively* on the fact that the declarations listed limits separately for ***each*** vehicle insured:

> [*Cherry* and *Johnson*] allowed stacking of underinsured motorists coverage in a multivehicle policy. ***In contrast to the policy in this case,*** however, the policies in *Cherry* and *Johnson* listed the liability limits ***separately for each*** covered vehicle. Based on this fact, the courts concluded that a reasonable person could believe that the policy provided coverage in an amount totaling the limits listed for all covered vehicles. See *Cherry*, ¶ 31 ("we find that the plaintiffs could reasonably conclude that Richard Cherry had purchased $50,000 of underinsured benefits four times, resulting in $200,000 of underinsured motorist coverage for each plaintiff"); *Johnson*, 377 Ill. App. 3d at 610 ("the circuit court's decision granting Johnson $200,000 in underinsured-motorists coverage, a figure arrived at by aggregating the $50,000 limit for underinsured-motorists coverage on each of the four vehicles carrying that coverage in Johnson's insurance policy, was correct").

Hess, at ¶26 (emphasis supplied).

The present case is no different than *Cherry* and *Johnson*. Here, the liability limits are also listed separately for each vehicle insured. In the words of *Hess*, "based on this fact, . . . a reasonable person could believe that the policy provided coverage in an amount totaling the limits listed for all covered vehicles." *Id.* at ¶26.[6] Far from supporting the Fourth District's opinion in this case, *Hess* explicitly supports applying *Cherry, Johnson* (as well *Goben, Yates, Skidmore, Bowers,* and *Barlow)* to this factually similar case. *Kovach*, and the Fourth District in this case, simply got it wrong.

The Fourth District's decision in this case cannot be reconciled with the *Bruder dicta*, reaffirmed in *Hobbs* and *Hess*, and the Third and Fifth District Appellate court decisions applying *Bruder, Hobbs,* and *Hess*. The fact that the appellate court here did not even address, let alone attempt to distinguish *Goben, Yates, Skidmore, Johnson, Kocher, Bowers, Cherry,* and *Barlow* suggest an indifference to, if not an outright distain for the decisions of other divisions of the Appellate court which directly address the issue.

V. IN ADDITION TO THE CLEAR APPLICABILITY OF THE *BRUDER DICTA* TO THE OWNERS DECLARATION PAGES, THE OWNERS POLICY IS AMBIGUOUS IN OTHER RESPECTS

As stated above, this case is controlled by the *Bruder dicta* and its progeny. However, as pointed out by the trial court in its 73-page decision, the anti-stacking and declarations pages in the Owners Policy involve additional ambiguities beyond those

[6] An insurer's "justification" for listing limits more than once does not answer the central question: what coverage does the insured reasonable expect based on the language employed. *Kovich* turns the inquiry on its head, focusing not on the reasonable expectations of the insured but on the insurer's subjective reasons for employing the ambiguous terms.

identified in the case law that provide additional basis for construing the policy broadly to allow stacking. (C.1520-1540; A042-A062). Contrary to Owners and the Fourth District's assertions, the trial court was not stretching to find "creative possibilities,"[7] it was grappling with a difficult to read and internally inconsistent policy, especially from the viewpoint of a reasonable insured party.

A. The Policy has Two Declaration Sections that Are Conflicting

The anti-stacking provision of Owners Policy refers the reader to the Declaration page to determine the Limits of Insurance. (C.1046; A122). *Bruder* recognized that an anti-stacking clause that refers to the declarations page potentially creates an ambiguity between the two. In the Owners Policy, unlike any of the reported decisions applying the *Bruder* dicta, there are two different sections of the declarations pages (ITEM TWO and ITEM THREE). On appeal, Owners asserted that they are completely consistent, and that the latter is simply a more detailed "schedule" of the former. (Owners Appellant Brief, pp. 2-8; C1029-1036; A105-A112). While ITEM TWO lists the dollar limits only once and its heading for "Limit of Insurance" says "for any one accident or loss," (C1029; A105), the heading itself is of no moment. The Owners Policy specifically states: "The descriptions in the headings of the policy and all applicable endorsements are solely for convenience and are not part of the terms and conditions of coverage." (C1041; A117).

[7] The admonition against "creative possibilities" comes directly from the *Bruder* decision. *See, Bruder,* 156 Ill.2d at 193. Obviously, the ambiguity created by the multiple listing of policy limits for each vehicle insured as recognized in *Bruder* is not one of those prohibited "created possibilities."

But more importantly, contrary to what Owners asserts, ITEM THREE indicates it is an "amended" Declarations sheet and contains different coverages. It is titled "ITEM THREE – SCHEDULE OF COVERED AUTOS, ADDITIONAL COVERAGES AND ENDORSEMENTS." (C.1031; A107). At the very beginning of the section, it specifically states that "This policy is amended in consideration of the additional or return premium shown below. This Declarations voids and replaces all previously issued Declarations bearing the same policy number and premium term." *Id*. After listing coverages for "Hired Autos" and "Non-Owner Autoes Liability" (not at issue here), ITEM THREE goes on to list seven "Scheduled Autos" with separate liability limits and premiums listed separately for each of these seven vehicles. (C1032-1036; A108-A112).

Completely consistent with the *Bruder dicta*, ITEM THREE amends the policy's declarations section indicating that the insured had purchased separate $1,000,000 combined liability limits on each of the seven vehicles listed. Importantly, the coverages have changed from those listed in ITEM TWO. Specifically, some *but not all* of the vehicles listed have $100,000 per person/ $300,000 per accident in Uninsured/Underinsured Motorist Coverage and $5,000 per person in Medical Payments coverages, (vehicles number 1, 2, 3 and 5 have this additional coverage and vehicles 4, 6, and 7 do not). This is a change from the coverages listed in ITEM TWO, where all "Scheduled Autos" (i.e., symbol "7") are listed as having Uninsured/Underinsured Motorist Coverage and Medical Payments coverage. (C1029-1030; A105-A106). In other words, ITEM TWO is inconsistent with the coverage provided in ITEM THREE. As such, while the anti-stacking clause refers the reader to the declarations, it does not indicate

whether ITEM TWO coverages or ITEM THREE coverages apply. Owners claim they are consistent. But how can that be if there are different and inconsistent coverages between the two? ITEM THREE says it has "amended" coverages. (C1030; A107). It says it includes "additional" coverages. (*Id.*). It states, "This Declarations voids and replaces all previously issued Declarations." (*Id.*). As such, it is a reasonable interpretation that ITEM THREE is not subject to any terms in ITEM TWO and is the controlling declarations for the policy. While Owners may claim that such is not the intended purpose of forms, at the very least it is a reasonable interpretation of the policy if not the most compelling. Either is sufficient to require the policy be construed against Owners and in favor of broader coverage.

B. The Policy Uses the Undefined and Separately Listed Terms of "Combined Liability Limit" and "Combined Liability Limits" Which at the Very Least Imply that Liability Limits are "Combined."

The trial court rightly made much of the fact that the policy uses the terms "combined liability" and "combined liability limits" to describe its limits of liability both in the anti-stacking clause and the declarations. (C.1046-1047; A122-A123). These undefined terms certainly create the reasonable inference that the limits of liability are "combined" and/or, even more to the point, that there is more than one "combined liability" limit which get added together to result in the "combined liability limits." These terms are not defined in the policy and using the common everyday meaning of "combined" and the plural "limits" certainly, at a minimum, supports the interpretation that the policy's multiple listing of dollar limits for each vehicle are to be "combined" in order to constitute "combined liability limits." (C.1046-1047; A122-A123).

Owners responded that this interpretation is "wrong" because "combined liability limit" "is simply its bodily injury and property damage liability limits rolled into a single limit." (Owners' appellant's brief at 27-28). The policy does not define the term that way, or at all. Moreover, if that is the intended meaning of the phrase, it is clearly a misnomer. It would not be a "combined liability limit" but a "single liability limit." To the extent it is a term of art in the insurance industry, such is not the standard by which the court is to interpret it. *Outboard Marine Corp v. Liberty Mutual Ins. Co*, 154 Ill. 2d 90, 115 (1992)(undefined terms given their plain, ordinary, and popular meaning with reference to the average ordinary person). Ultimately, because it was Owners that chose the terms, and because they appear in a clause which attempts to limit coverage, they must be strongly construed against Owners and in favor of broader coverage. *Squire, supra,* 69 Ill. 2d 167, 179 (1997).

VI. THE FOURTH DISTRICT'S DISCUSSION REGARDING THE STACKABILITY OF LIABIITY INSURANCE IS BOTH IN ERROR AND IRRELEVANT, AS OWNERS WAIVED THE ISSUE

In its written opinion in this case, the Fourth District goes at length to discuss the issue of whether liability insurance – as opposed to UM and UIM insurance – is even stackable. (2023 IL App (4th) 220827, ¶¶12-15; A004-A006). Ultimately, the appellate court "declined to answer" that question because it found the anti-stacking clause in Owners Policy unambiguously prohibited stacking, citing *Hess, supra* at ¶30. (*Id*. at ¶15; A006). In *Hess*, the insurer specifically asked the court to adopt a *per se* rule that stacking should not be allowed in liability policies. *Id*. The Supreme Court declined to address the issue because it found no stacking was available under the terms of the policy. *Id*.

A. The Issue Has Been Forfeited by Owners

Here, Owners did not assert at the trial court level the argument that liability insurance, unlike UM/UIM coverage, cannot be stacked by its very nature. (See Owners' Answer to First Am Cmpl, C372-C380; Owners Motion for Summary Judgment, C1245-C1251; Owners' Response in Opposition to Plaintiff's Motion for Summary Judgment, C.1303-C1328; Owners Reply in Support of Motion for Summary Judgment, C1355-C1369; Report of Proceedings from 8/27/2021, SUP R 4-142).

Owners' failure to raise that argument at the trial court level clearly acts as a waiver or forfeiture of the issue. *See, Vantage Hosp. Grp. Inc. v. Q III Dev., LLC*, 2016 IL App (4th) 160271, ¶49 ("It has long been the law of the State of Illinois that a party who fails to make an argument in the trial court forfeits the opportunity to do so on appeal," citing *1010 Lake Shore Ass'n v. Deutsche Bank National Trust Co.*, 2105 IL 118372, ¶14).

The appellate court should have never addressed the issue. The reason it did so, we can presume, is because, in its Reply Brief, pp. 2-12, Owners discussed at length arguments as to why stacking should apply to UM/UIM coverage but not to liability coverage. In other words, it raised the issue on appeal for this first time, and not in its primary brief but instead in its Reply Brief when Appellants could not respond. Indeed, almost one-half of its Reply Brief is spent discussing an argument that it never raised at the trial court level nor in its primary appellate brief. The reason Owners waited until its Reply Brief to use 12 pages to discuss the issue is because it knew it had waived the argument by not raising at the trial court level. Hence, after a lengthy argument on the issue, Owners promptly conceded on page 12 of its Reply Brief that "Owners does not ask this Court to adopt a *per*

se rule that primary liability limits can never be stacked." But the damage had been done, it had raised a substantive argument which Appellants had no opportunity to refute or address. And which the appellate discussed in a manner favorable to Owners.

Owners rationalized the "relevance" of its argument of no-stacking of liability coverage as merely illustrating why all of the UM/UIM decisions which allowed stacking did not apply to liability coverage: it asserted that by their nature UM/UIM coverage and Liability coverage are different. (Reply Brief at 2-9, 12). It is humbly submitted that this was nothing more than a back-door attempt (almost successful) at raising an argument it had already forfeited. There is no meaningful distinction between arguing UM/UIM stacking cases do not apply to liability insurance and arguing stacking does not apply to liability insurance. While Owners conceded that it was not asking for a *per se* rule on the no-stacking-of-liability-insurance (because it knew it had forfeited the issue), in effect, it was arguing for a reversal because liability coverage could not be stacked. Owners not only waived this argument but expressly disavowed it in its Reply Brief. The appellate should not have addressed it and nor should this Court.

B. Illinois Has Applied Stacking Concepts to Liability Coverage; There is No True Justification to Treat Liability Coverage and UM/UIM Coverage Differently on Stacking.

Aside from the forfeiture of the issue, both the appellate court and Owners are simply wrong on the application of stacking principles to liability coverages as opposed to uninsured motorists/ underinsured motorist ("UM/UIM") coverages. The appellate court failed to mention let alone analyze the Illinois decision which has applied stacking to liability coverage, *Skidmore v. Throgmorton*, *supra,* 323 Ill. App. 3d 417, 425 (5th Dist.

2001). As set forth earlier in this brief, *Skidmore* followed the *Bruder dicta* and held that two auto policies which listed the bodily injury liability coverage limits separately for four vehicles could be stacked despite an anti-stacking clause and even though only one of the four vehicles was involved in the accident. *Id*. at 425. The court in *Skidmore* specifically rejected the same argument that Owners belatedly argued here: that the UM/UIM cases allowing for stacking were not applicable to liability coverage:

> Safeco argues that this line of cases is distinguishable because they involved underinsured- or uninsured-motorist coverages and not liability coverage as in this case. While the difference in coverage is a factual distinction, we note that the insurer employed the same policy language for both the liability and the uninsured- or underinsured-motorist coverages. The reasoning of the Illinois Supreme Court in *Bruder v. Country Mutual Insurance Co.* cannot be limited to uninsured- or underinsured-motorist coverage, and it must be applied in situations involving the identical policy language, located elsewhere in the policy.

Id. at 425. As this quote indicates, *Skidmore* clearly holds that under Illinois law, whether a policy can be interpreted to allow for stacking is based entirely on the language the of the policy and not whether the coverage involved is liability or UM/UIM.

The appellate court in this case ignored *Skidmore.* Instead, it cited *dicta* from a case Owners relied upon in its Reply Brief, *Kopier v. Harlow*, 291 Ill.App. 3d 139 (2d Dist. 1997). To be clear, *Kopier* is not a stacking case. There, the at-fault driver was operating one of three vehicles his parents separately insured when he struck and killed another motorist. The policy covering the auto involved in the accident had liability coverage of only $25,000. The other policies covering the two non-accident vehicles had liability coverage limits of $50,000 and $100,000 respectively. Plaintiff was not attempting to stack all three limits. Rather, it was attempting to reach the $100,000 limit covering one of the non-involved vehicles based on a policy term that stated, “where there is coverage under

more than one policy, the highest limit would apply." *Kopier*, 291 Ill.App.3d at 141. The sole question on appeal was whether the policy insuring the non-accident vehicle with $100,000 in liability limits provided coverage for the at-fault driver's negligence.

In addressing this issue, the court in *Kopier* went on a tangent and cited to the general insurance treatise, 6B *J. Appleman & J. Appleman, Insurance Law & Practice*, §4291 (Supp.1997) asserting how auto liability policies generally follow the vehicle and not the insured and that some jurisdictions prohibit stacking on that basis. 291 Ill. App.3d at 143. As we know, since the decision in *Kopier*, the *Skidmore* decision demonstrates that Illinois is not one of those jurisdictions that prohibits it. Moreover, there are other jurisdictions that likewise allow stacking of liability coverage. *See Goodman v. Allstate Ins. Co*, 523 N.Y.S.2d 391 (NY App.Div. 1987)(stacking of liability coverage limits allowed; court noted that if insurer wanted to exclude coverage on vehicle not involved in accident, it should clearly state so); *Shelter Mutual Insurance Company v. Lester, 544 S.W.3d 276* (Mo.App. 2018)(stacking of liability coverage limits allowed); *Karscig v. McConville*, 308 S.W.3d 499 (Mo. 2010)(same).

And not all commentators agree with *Appleman*. Other well-recognized authorities assert that the concept that liability coverage follows the vehicle is "out molded" and that liability coverage can in fact follow the insured person, as in cases involving "other autos" and "non-owned auto" policy provisions. *See 12 Lee R. Russ & Thomas F. Segalla, Couch on Insurance,* §169.109.[8] Indeed, the liability coverage in Owners Policy at issue does

[8] Interestingly, *Appleman* disagreed with the concept of the stacking of any coverages, including UM/UIM coverages and actually advocated courts to reconsider the principle. *See* 8C J*ohn A. Appleman & Jean Appleman, Insurance Law and Practice* Sec. 5101

not simply follow the scheduled vehicles but rather follows its insured, providing liability coverage for its negligence whenever the insured (Farrell) is operating "non-owned vehicles", "hired vehicles" as well as certain "mobile equipment." (See, ITEM TWO, Combined Liability applies to vehicle symbols 8 (hired autos), 9 (non-owned autos) and 19 (mobile equipment subject to compulsory financial responsibility laws); C1029-1030; A105-106). Unless excluded by another provision in the policy, Owners' liability coverage follows the insured to essentially any vehicle it is operating within the course of its business – truly portable coverage.

In its Reply Brief on appeal, Owners argued that the public policy behind UM/UIM coverage is different than liability coverage and therefore a different result should apply to stacking. (Owners Reply Brief, pp. 5-6). This is simply wrong on two grounds: the public policy is not different between the two and, whatever mechanical differences that exist in how the two types of coverage work is not a basis to treat them differently for stacking purposes.

To be clear, liability insurance and UM/UIM insurance are both mandated by statute in Illinois. *See* 625 ILCS 5/7-601 (mandatory liability insurance); 215 ILCS 5/143a-2 (mandatory uninsured/underinsured motorist coverage). The mandate is specific to any policy issued in Illinois covering a motor vehicle, (i.e., the mandate is vehicle-specific for

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(1981)("It is time for those courts, which have been so generous with the funds of others, to take a new look at this problem"). Given its views - clearly at odds with Illinois Supreme Court precedent on allowing stacking where the policy is ambiguous – it is not surprising it advocates against a rule for stacking in the case of liability coverage. As stated, this is inconsistent with the Illinois courts interpretation of insurance contracts, finding in favor of more liberal coverage when the policy is ambiguous.

both liability and UM/UIM coverage). *Id*. Interestingly, while an insured can "opt-out" of UM coverage, see 215 ILCS 5/143a-2(1) and (2), there is no similar provision allowing an insured to opt-out of mandatory liability coverage. This would suggest that there is stronger public policy in favor of the protections provided by liability coverage.

Nevertheless, contrary to Owners' argument, the public policy behind both types of coverages is the same: to provide financial protection to individuals injured by a person who negligently operates a vehicle. *See*, *Thounsavath v. State Farm Mut. Auto. Ins. Co*. 2018 IL 122558 ¶¶25, 26. The purpose of mandatory liability insurance requirement "is to protect the public by securing payment of their damages." *Progressive Universal Insurance Co. of Illinois v. Liberty Mutual Fire Insurance Co.*, 215 Ill. 2d 121, 129, 828 N.E.2d 1175, 293 Ill. Dec. 677 (2005). The Supreme Court has recognized that "to further that end," Illinois statutes also require uninsured and underinsured motorist coverage to place the policyholder in substantially in the same position he would occupy if the tortfeasor had the minimum required liability insurance (UM coverage) or adequate liability insurance (UIM coverage). *Thounsavath, supra,* at ¶25. Hence, the public policy for all such automobile coverage is the same:

> [U]nder Illinois law, liability, uninsured motorist, and underinsured motorist coverage are "inextricably linked." Liability, uninsured motorist, and underinsured motorist coverages all "serve the same underlying public policy: ensuring adequate compensation for damages and injuries sustained in motor vehicle accidents."

Thounsavath, at ¶26, *quoting Schultz v. Illinois Farmers Ins,* 237 Ill.2d 391, 404 (2010).

Mechanically, while serving the same end, the coverages are slightly different in how they work: Liability coverage provides coverage for injuries to a person which are caused by the negligence of the insured. UM/UIM coverage provides coverage to a person

injured by the negligence of a person not insured or inadequately insured. As the Supreme Court has noted, however, both types of coverage, ultimately, are for the protection of persons injured by a negligent motorist, like Appellants here.

As mentioned above, liability coverage is not necessarily tied to a certain motor vehicle. While it can be tied to anyone negligently driving an auto insured by the policy, it can also be tied to the – the named insured – who causes harm to third parties while operating any other vehicle not necessarily insured by the policy. It is not the car, but the motorist which triggers coverage in both instances. ("cars don't cause accidents, motorists do"). As in UM/UIM coverage, liability coverage does not require that the injured party be in a vehicle when injured – they can be on a bike, as a pedestrian or sitting on a park bench. In order for coverage to be invoked, the injured party simply needs have to been injured by the negligence of an insured person using a vehicle. As stated, vehicle the insured is operating does not have to be the one named in the policy. The insured's liability coverage is portable in that it follows him or her to any vehicle he or she is operating at the time – be it a rental car, a grandmother's car or a friend's car – as long as that vehicle is not excluded under the policy. So yes, liability coverage does follow the insured.

UM/UIM coverage is no different in principle. It provides coverage for any uninsured or underinsured vehicle which is negligently operated so as to cause harm to the insured. Just as in liability coverage, it does not matter where the injured party is when he or she is hurt – in a car, on a bike or on a park bench. Like liability coverage, protection is afforded to the injured party due to the negligence of the operator of a vehicle. The coverages are complimentary and serve two sides of the same coin: protect the public

against negligent motorists by providing financial means to pay for damages. Neither requires the injured party to be in a car, although they can be. Both do require that the injuries be caused by a motorist negligently operating a vehicle. This is obvious, because we are talking about car insurance (not some other type of liability coverage). Both liability coverage and UM/UIM coverage essentially act as a financial backer to the negligent motorist. As *Couch on Insurance*, *supra*, stated, the mechanical recitation that "liability coverage follows the automobile" is outdated and conceptionally wrong.

The question to ask is why should the issue of stacking be treated differently under liability coverage versus UM/UIM coverage? Both coverages involve the reasonable expectations of the insured in purchasing protection for claims involving bodily injury. Both are mandated by statute. Both are intended to protect innocent injury parties (be it occupants of cars, pedestrians, or bicyclists) from the negligence of motorists. Both, to some extent, are tied to vehicles (the one causing harm) and both to some extent are portable. Should not the terms of the policy control whether stacking is allowed rather than a general insurance principle – and an erroneous, outdated one at that? Portability does not end the analysis. The question is why does portability matter when both types of coverage are intended to protect innocent injury parties like the Appellants here?

Ultimately, despite *Kopier*'s general comments on liability coverage being tied to a vehicle, it recognized that such did not address the issue it had to decide. It concluded, as it must, that whether or not there was coverage under the second policy covering the non-accident vehicle depended, completely, on the language of the policy. *Kopier*, 291 Ill. App.3d at 143. Because there was a specific exclusion in the policy for the non-accident

vehicle which brought it outside the scope of coverage for that accident (e.g., an exclusion where the insured was driving a vehicle it owned but not insured under the specific policy where limits were sought), the court in *Kopier* easily concluded that there was no coverage afforded under the higher limit policy. *Id*. at 144-145.

Here, the Owners Policy has no similar exclusion nor any provision limiting coverage to only the vehicle involved in the collision. Curiously, Owners cites the policy's general grant of coverage in Section II.A as proof that coverage "follows" the vehicle. That section provides that "we will pay all sums an insured legally must pay as damages . . . caused by an accident and resulting from the ownership, maintenance of use of a covered auto." (C.1043; A119). Here, there is no dispute that this language brings the subject claim within coverage. The insured's liability "resulted from the use of a coverage auto." So the claim is covered. The question is not whether the claim is covered but "by how much?" That question is not answered in Section II.A, but in the declarations. Moreover, unlike *Kopier*, neither Section II.A nor any other part of the policy has a provision which excludes coverage for vehicles that were not involved in the accident.[9] Without such an exclusion, whether the coverages listed for the non-accident vehicles apply to this loss is based entirely on the declarations pages as set forth in *Bruder.*

[9] Owners also argued, for the first time on appeal, the fact that Section II.C.3 specifically provides that a covered auto and connected trailer will be considered a single auto and such does not increase the "Limit of Liability." Aside from the fact that by not raising the argument at the trial court level, it has forfeited the argument, such has no application to this case. As per Ex.A, ¶11, to Plaintiff's First Amended Complaint, the livestock trailer that was attached to the insured tractor at the time of the semi v. bus accident is not one of the insured vehicles listed under Owners' policy (i.e., it was not one of the other six listed vehicles in the declarations page). (*Compare* C.296 with C.1032-1035). Hence, this term does not affect Plaintiffs' right to receive all seven $1 million limits listed in the policy.

Ultimately, Owners had it within its power to write a policy that addressed all the concerns of ambiguity as set forth for that last 30 years by our Supreme Court and appellate courts. It could have easily avoided the claim of ambiguity by not listing separate policy limits for seven separate vehicles. It could have instead included only a single policy limit for all listed vehicles. It could have limited liability coverage under the policy to the vehicle actually involved in the accident. It could have eliminated misnomers like "combined liability limit" and "combined liability limits." But it did none of these things. As such, it must live with the policy it wrote with all its ambiguities. *Cherry, supra*, 2018 IL App (5th) 170072, ¶12 (the fault for a poorly written insurance clause falls upon the drafter). These ambiguities must be strongly construed against it and in favor of broader coverage.

The appellate court ignored these general rules of insurance contract interpretation. It ignored the factual identity of the policy in this case and the scenario set forth in the *Bruder dicta* where ambiguity "could be easily found." It ignored the long line of reported decision that followed the *Bruder dicta* and found ambiguity where the liability limits, like here, were listed multiple times for each vehicle insured – decisions that have been favorably treated by subsequent Supreme Court decisions. The Fourth District Appellate Court erred in its review of the policy at issue and in its application of controlling Illinois law on stacking. Its decision should be reversed.

CONCLUSION AND REQUESTED RELIEF

For the foregoing reasons, Appellants Mark and Karen Kuhn, Kathleen Crabtree, Executor of the Estate of Charles C. Crabtree, deceased, Steven B. Price, Jessica O'Brien, identified as Jess O'Brian above, Montinique Howard, Haley Willan, Grace Storm, Abby

Hoeft, Olivia Reed, and Joriana Bischoff respectfully requests that this Court reverse the Opinion and Decision of the Fourth District Appellate Court in this matter and affirm the August 15, 2022 Decision and Order of the Trial Court in all respects, affirming that summary judgment be granted in his favor and against Appellee Owners Insurance Company.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 315, 341(a) and (b) and 342. The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service and those matters to be appended to the brief under Rule 341(a) is 50 pages.

Date October 31, 2023

/s/ Terence B. Kelly
Terence B. Kelly

Terence B. Kelly ARDC# 6228445
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(309) 829-7069
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tkelly@kwklawyer.com

NOTICE OF FILING AND PROOF OF SERVICE

The undersigned being first duly sworn, deposes and states that on October 31, 2023, there was electronically filed and served upon the Clerk of the above Court Appellants' Brief and Appendix of Appellants Mark and Karen Kuhn, Kathleen Crabtree, Executor of the Estate of Charles Crabtree, Steven B. Price, Jess O'Brian, Montinique Howard, Haley Willan, Grace Storm, Abby Hoeft, Olivia Reed and Joriana Bischoff. Service of Appellants Brief and Appendix will be accomplished through the filing manager, Odyssey eFileIL and via email to the following counsel of record on the 31st day of October 2023.

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersign certifies that the statements set forth in Notice of Filing and Proof of Service are true and correct.

Date October 31, 2023

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APPENDIX

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2023 IL App (4th) 220827

NO. 4-22-0827

FILED
June 28, 2023
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

MARK KUHN and KAREN KUHN, Plaintiffs-Appellees, v. OWNERS INSURANCE COMPANY; B. McLEAN ARNOLD, Special Representative of Ryan Hute, Deceased; JASON FARRELL, Individually; JASON FARRELL, d/b/a Jason Farrell Trucking; 3 GUYS AND A BUS, INC.; KATHLEEN CRABTREE, Executor of the Estate of Charles C. Crabtree, Deceased; STEVEN B. PRICE; JESSICA O'BRIEN; MONTINIQUE HOWARD; HALEY WILLAN; GRACE STORM; ABBY HOEFT; OLIVIA REED; KIRSTEN LELLELID; and JORIANA BISCHOFF, Defendants (Owners Insurance Company, Defendant-Appellant; Kathleen Crabtree; Steven B. Price; Jessica O'Brien; Montinique Howard; Haley Willan; Grace Storm; Abby Hoeft; Olivia Reed; Kirsten Lellelid; and Joriana Bischoff, Defendants-Appellees).	)	Appeal from the Circuit Court of McLean County No. 19MR643 Honorable Scott Kording, Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court, with opinion.
Justices Turner and Harris concurred in the judgment and opinion.

OPINION

¶ 1 In November 2019, plaintiffs, Mark and Karen Kuhn (the Kuhns), filed a declaratory judgment action seeking a judicial determination of the available liability insurance covering an accident between a semitruck owned by Jason Farrell and a school bus driven by Mark.

The semitruck was insured under a policy issued by defendant, Owners Insurance Company (Owners), and that policy also insured six other vehicles—two other semitrucks and four trailers—that were not involved in the accident. Each vehicle had a limit of $1 million per accident. The Kuhns sought a declaration that the coverage limits for all of the covered vehicles should be aggregated, or "stacked," resulting in a total of available liability insurance of $7 million for the accident.

¶ 2 In April 2021, the parties filed cross-motions for summary judgment pursuant to section 2-1005 of the Code of Civil Procedure (735 ILCS 5/2-1005 (West 2020)). The Kuhns argued the policy was ambiguous because it listed a limit of coverage separately for each vehicle (for a total of seven times) and, as a result, the coverages should be stacked. Owners argued that the policy was unambiguous and contained an antistacking clause, which provided that "[t]he Limit of Insurance for this coverage may not be added to the limits for the same or similar coverage applying to other autos insured by this policy to determine the amount of coverage available for any one accident." Subsequently, the parties fully briefed the cross-motions and made oral arguments to the trial court.

¶ 3 In August 2022, the trial court entered a written judgment in favor of the Kuhns, concluding that (1) the policy was ambiguous; (2) because the ambiguity should be construed against Owners, stacking of the policy's coverage limits was permitted; and (3) the aggregate limit of insurance for liability coverage under the policy was $7 million. Accordingly, the court granted the Kuhns' motion for summary judgment and entered judgment against Owners.

¶ 4 Owners appeals, arguing the trial court erred by concluding that (1) the antistacking clause was ambiguous and (2) stacking of the policy's coverage limits was permitted. We agree, reverse the trial court's judgment, and remand with directions.

¶ 5 I. BACKGROUND

¶ 6 A. The Concept of "Stacking" Coverage Limits of Automobile Insurance

¶ 7 Because resolution of this case involves an uncommon and generally unfamiliar area of auto insurance law, we begin by explaining the concept of "stacking" at issue here.

¶ 8 1. *What Is Stacking?*

¶ 9 "Stacking ordinarily involves combining or aggregating the policy limits applicable to more than one vehicle where the other vehicles are not involved in the accident." *Progressive Premier Insurance Co. of Illinois v. Kocher*, 402 Ill. App. 3d 756, 760, 932 N.E.2d 1094, 1098 (2010). "The issue of whether coverage may be stacked arises only because the existence of coverage is a given." *Hobbs v. Hartford Insurance Co. of the Midwest*, 214 Ill. 2d 11, 23, 823 N.E.2d 561, 567 (2005). That is, stacking, by its nature, requires that one occurrence is covered by either (1) multiple policies or (2) multiple vehicles under the same policy, so that those multiple sources of coverage may be combined. See *Bruder v. Country Mutual Insurance Co.*, 156 Ill. 2d 179, 186-87, 620 N.E.2d 355, 359 (1993) (explaining that whether the antistacking clause appeared in only one of two policies did not matter because coverage can only be stacked when an occurrence is covered more than once).

¶ 10 2. *Stacking of Uninsured and Underinsured Motorist Coverages*

¶ 11 Stacking frequently arises in the context of underinsured motorist (UIM) or uninsured motorist (UM) coverage (see *Progressive Premier Insurance Co. v. Cannon*, 382 Ill. App. 3d 526, 530, 889 N.E.2d 790, 794 (2008)) because (1) UIM and UM coverage is provided to an insured person "*regardless of the vehicle* in which the insured person is located when injured" (emphasis added) (*Squire v. Economy Fire & Casualty Co.*, 69 Ill. 2d 167, 179, 370 N.E.2d 1044, 1049 (1977)), (2) the purpose of UIM and UM is " 'to place the insured in the same position he

would have occupied if the tortfeasor had carried adequate insurance' " (*Cummins v. Country Mutual Insurance Co.*, 178 Ill. 2d 474, 483, 687 N.E.2d 1021, 1026 (1997)), and (3) UIM and UM coverage is required by statute to be included in all automobile insurance policies (*Squire*, 69 Ill. 2d at 176; 215 ILCS 5/143a, 143a-2 (West 2020)). These three factors mean that someone who obtains insurance for multiple vehicles is required to have UIM and UM coverage for *each vehicle*, which necessarily means that if such a person is in an accident caused by an uninsured or underinsured vehicle, then that person is potentially covered by the UIM and UM at least twice, once for each vehicle. See *Squire*, 69 Ill. 2d at 179-80 (concluding that, in the absence of clear antistacking language, an accident victim was entitled to aggregate UM coverages under the terms of an insurance policy that insured two vehicles and listed the UM coverage and premium for each vehicle separately).

¶ 12 3. *Stacking of Auto Liability Coverages*

¶ 13 If stacking in the UIM/UM context were not sufficiently confusing, the concept becomes even more unclear in the context of auto liability coverage. Unlike UIM/UM coverage, which is sought by a *person* from his or her own auto insurance policy—sometimes notwithstanding the fact that the covered auto was not involved in the accident (see *Kocher*, 402 Ill. App. 3d at 760)—auto liability coverage attaches to a particular *vehicle* (see *West v. American Standard Insurance Co. of Wisconsin*, 2011 IL App (1st) 101274, ¶¶ 9-10, 952 N.E.2d 1274). Recall that "[t]he issue of whether coverage may be stacked arises only because the existence of coverage is a given." *Hobbs*, 214 Ill. 2d at 23. Generally, for auto liability coverage to be applicable, the automobile must (1) be covered by the policy and (2) cause damage while being used as an automobile. *Kopier v. Harlow*, 291 Ill. App. 3d 139, 142-43, 683 N.E.2d 536, 539 (1997). Accordingly, it is not clear that "coverage is a given" for vehicles not involved in the

accident because they did not cause the accident.

¶ 14 The Second District Appellate Court succinctly explained as follows:

> " 'The insurer's undertaking in an automobile liability policy to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of injury "arising out of the ownership, maintenance or use of the owned automobile" is directly related to and required the involvement of one of the vehicles specifically mentioned in the policy or a replacement or temporary substitute therefor for which a specific premium was charged; coverage provided by such undertaking is automobile-based and not person-based and is insurance on the vehicle and not in the nature of a personal accident policy.' 6B J. Appleman & J. Appleman, Insurance Law & Practice § 4291 (Supp. 1997).
>
> For this reason, courts, whether or not they allow the stacking of uninsured motorist coverage or medical payment coverage, do not allow the stacking of liability coverage. [Citations.] Although plaintiff here does not argue that the coverages should be stacked, the rationale behind not allowing stacking of liability coverage—that liability policies insure particular cars—is contrary to plaintiff's position. Because the insurance attaches to a particular car, plaintiff is incorrect that he should be allowed to access the liability limit for another insured vehicle not involved in the accident." *Id.*

¶ 15 However, the Illinois Supreme Court recently declined to consider adopting a *per se* rule barring stacking of automobile liability coverage as a matter of law because the antistacking provision in that case was unambiguous and enforceable as written. *Hess v. Estate of Klamm*, 2020 IL 124649, ¶ 30, 161 N.E.3d 183. We also decline to answer whether stacking of liability coverage

is *per se* prohibited because we similarly conclude that the antistacking provision in this case is likewise enforceable.

¶ 16 B. The Declaratory Judgment Complaint

¶ 17 In November 2019, the Kuhns filed their complaint for declaratory judgment against Owners, in which they sought a judgment that Owners was required to pay $7 million pursuant to the relevant insurance policy. The Kuhns attached to their declaratory judgment complaint a copy of (1) the underlying personal injury complaint and (2) the declarations and insurance policy at issue. The parties stipulated that (1) the declarations and policy were true and correct copies of the insurance provided and (2) the policy should be interpreted under Illinois law.

¶ 18 1. *The Facts of the Underlying Complaint*

¶ 19 The declaratory judgment complaint alleged that, in September 2019, the Kuhns filed the underlying personal injury complaint against defendants B. McLean Arnold, special representative of Ryan Hute, deceased; Jason Farrell individually; Jason Farrell d/b/a Jason Farrell Trucking; and 3 Guys and a Bus, Inc. (we note these "underlying defendants" are not parties to this appeal), asserting various claims of negligence relating to a car accident. In December 2018, Hute was driving a 2010 Kenworth semitruck owned by Farrell that collided with a school bus driven by Mark Kuhn and occupied by several other people. The semitruck and school bus were traveling in opposite directions on Interstate 74 at the time of the accident. Mark and many of the bus passengers were severely injured or died in the crash. The underlying complaint alleged that, at the time of the accident, Hute was (1) acting in the scope of his employment with Farrell, Farrell Trucking, "and/or" 3 Guys and a Bus, Inc. and (2) engaged in several acts of negligence that caused the crash.

¶ 20 2. *The Insurance Policy at Issue*

¶ 21 The Kuhns' complaint for declaratory judgment alleged that the 2010 Kenworth semitruck and Hute were both covered by an Owners insurance policy that insured a total of three semitrucks (including the Kenworth) and four trailers. Farrell owned or operated all of the covered trucks and trailers. The policy provided "Combined Liability" coverage on each of the seven vehicles of up to "$1 Million each accident."

¶ 22 The declaratory judgment complaint noted that the policy provided liability coverage as follows: "We [(Owners)] will pay all sums an insured legally must pay as damages because of bodily injury or property damage to which this insurance applies, caused by an accident and resulting from the ownership, maintenance or use of a covered auto as an auto." The policy further provided that Owners would "pay damages for bodily injury, property damage and covered pollution cost or expense up to the Limit of Insurance shown in the Declarations for this coverage." The Kuhns alleged that the term "Limit of Insurance" was not defined in the policy.

¶ 23 The complaint further alleged that the declarations pages had two separate sections outlining coverage and policy limits, which the complaint described as follows:

> "The first [section], titled 'ITEM TWO—SCHEDULE OF COVERED AUTOS AND COVERAGES,' contains a chart outlining various different types of coverages and limits, with separate premiums paid for each type of coverage, and lists a single one million dollar *** limit for 'Combined Liability' coverage.
>
> The second [section], titled 'ITEM THREE—SCHEDULE OF COVERED AUTOS, ADDITIONAL COVERAGES AND ENDORSEMENTS,' contains a separate and different list of coverages, including separate listings for seven separate vehicles, with separately listed limits and separately listed premiums paid for each. This section lists seven separate one million dollar *** limits for

'Combined Liability' coverage, one limit for each listed vehicle."

¶ 24 The declaratory judgment complaint asserted that the policy was ambiguous because it set forth two differing amounts of coverage available—namely, a single $1 million limit and seven separate $1 million limits. Accordingly, the declaratory judgment complaint sought a declaration that the policy should be interpreted to provide a $7 million limit.

¶ 25 To help the reader, the declarations pages containing Item Two and the first page of Item Three are shown below.

Owners Page 1 58979 (10-16)
Issued 12-06-2018

INSURANCE COMPANY
6101 ANACAPRI BLVD., LANSING, MI 48917-3999

AGENCY PRINS INSURANCE INC
07-0677-00 MKT TERR 038 (712) 729-3252

ITEM ONE

NAMED INSURED JASON FARRELL
JASON FARRELL TRUCKING

ADDRESS 3717 210TH ST

CLINTON IA 52732-8920

COMMERCIAL AUTO POLICY DECLARATIONS
PREFERRED PROGRAM

Endorsement Effective 11-27-2018
POLICY NUMBER 51-829-065-00
Company Use 39-04-IA-1806

Company Bill

POLICY TERM
12:01 a.m. 06-22-2018 to 12:01 a.m. 06-22-2019

Entity: Individual

IN RETURN FOR THE PAYMENT OF THE PREMIUM, AND SUBJECT TO ALL THE TERMS OF THIS POLICY, WE AGREE WITH YOU TO PROVIDE THE INSURANCE AS STATED IN THIS POLICY.

ITEM TWO - SCHEDULE OF COVERED AUTOS AND COVERAGES

This policy provides only those coverages where a charge is shown in the premium column below. Each of these coverages will apply only to those **autos** shown as covered **autos**. **Autos** are shown as covered **autos** for a particular coverage by the entry of one or more of the symbols from the COVERED AUTOS section of the Commercial Auto Policy next to the name of the coverage.

COVERAGES		COVERED AUTOS SYMBOLS	LIMIT OF INSURANCE FOR ANY ONE ACCIDENT OR LOSS	PREMIUM
Combined Liability		7, 8, 9, 19	$1Million each accident	$6,311.69
Uninsured/Underinsured Motorist Coverage		7	Uninsured Motorist - $100,000 each person/ $100,000 each accident	$27.72
		7	Underinsured Motorist - $100,000 each person/ $100,000 each accident	$53.31
Medical Payments		7	$5,000 each person	$39.27
Physical Damage	Comprehensive	7	$250 deductible applies for each covered auto unless a deductible appears in ITEM THREE.	$2,120.34
	Collision	7	$500 deductible applies for each covered auto unless a deductible appears in ITEM THREE.	$5,579.75
	Road Trouble Service			No Coverage
	Additional Expense			No Coverage
			Premium for Endorsements and Terrorism Coverage	$201.50
			ESTIMATED TOTAL PREMIUM*	$14,333.58

* This policy may be subject to final audit.

Owners Page 3 58979 (10-16)
Issued 12-06-2018

INSURANCE COMPANY
6101 ANACAPRI BLVD., LANSING, MI 48917-3999

COMMERCIAL AUTO POLICY DECLARATIONS
PREFERRED PROGRAM

AGENCY PRINS INSURANCE INC
07-0677-00 MKT TERR 038 (712) 729-3252

Endorsement Effective 11-27-2018
POLICY NUMBER **51-829-065-00**
Company Use 39-04-IA-1806

NAMED INSURED JASON FARRELL
JASON FARRELL TRUCKING

ADDRESS 3717 210TH ST

CLINTON IA 52732-8920

Company Bill

POLICY TERM
12:01 a.m. 06-22-2018 to 12:01 a.m. 06-22-2019

This policy is amended in consideration of the additional or return premium shown below. This Declarations voids and replaces all previously issued Declarations bearing the same policy number and premium term.

ITEM THREE - SCHEDULE OF COVERED AUTOS, ADDITIONAL COVERAGES AND ENDORSEMENTS

		TERRITORY	CLASS
Hired Autos		048 Clinton County, IA	SPL
COVERAGES	**LIMITS**	**PREMIUM**	**CHANGE**
Combined Liability	$1Million each accident	$72.91	
Terrorism Coverage		.36	
	TOTAL	$73.27	
			No Charge

ITEM DETAILS: Estimated cost of hire - liability $ If Any (Subject to audit)

160 1184

		TERRITORY	CLASS
Non-Owned Autos Liability		048 Clinton County, IA	SPL
COVERAGES	**LIMITS**	**PREMIUM**	**CHANGE**
Combined Liability	$1Million each accident	$56.33	
Terrorism Coverage		.28	
	TOTAL	$56.61	
			No Charge

160 1184

¶ 26 The declarations page for the semi involved in the accident provided as follows:

Page 6 58979 (10-16)

OWNERS INS. CO. Issued 12-06-2018

AGENCY PRINS INSURANCE INC Company **POLICY NUMBER** **51-829-065-00**
07-0677-00 MKT TERR 038 Bill Company Use 39-04-IA-1806

NAMED INSURED JASON FARRELL Term 06-22-2018 to 06-22-2019

		TERRITORY	CLASS
5. 2010 KW T660 VIN: 1XKAD49X1AJ270127		048 Clinton County, IA	
COVERAGES	**LIMITS**	**PREMIUM**	**CHANGE**
Combined Liability	$1Million each accident	$2,265.28	
Uninsured Motorist	$ 100,000 each person/$ 100,000 each accident	9.24	
Underinsured Motorist	$ 100,000 each person/$ 100,000 each accident	17.77	
Medical Payments	$ 5,000 each person	13.09	
Comprehensive	ACV - $2,500 deductible	1,117.83	
Collision	ACV - $2,500 deductible	2,848.38	
Terrorism Coverage		31.36	
	TOTAL	$6,302.95	
			No Charge

Interested Parties:
Lienholder: MAQUOKETA STATE BANK, 203 N MAIN ST, MAQUOKETA, IA 52060-2204

Additional Endorsements For This Item: 58329 (10-16) 58330 (10-16) 58402 (05-16)

ITEM DETAILS: Extra heavy truck-tractor operated within a 300 mile radius.
USE CLASS (00753): Truckers - Miscellaneous.
Commercial Auto Plus Coverage Package applies.
Vehicle Count Factor Applies.
A 5% seat belt credit has been applied to BI and/or Med Pay premium.
Diminished Value Coverage applies.

160 0143665 A 1184

		TERRITORY	CLASS
6. 2000 NON OWNED TRAILER VIN: NON OWNED Secured Interested Party Changed		048 Clinton County, IA	
COVERAGES	**LIMITS**	**PREMIUM**	**CHANGE**
Combined Liability	$1Million each accident	$78.66	
Comprehensive	ACV - $2,500 deductible	133.85	
Collision	ACV - $2,500 deductible	327.49	
Terrorism Coverage		2.70	
	TOTAL	$542.70	
			No Charge

Interested Parties:
Lienholder: XTRA LEASE LLC, 850 66TH AVE SW, CEDAR RAPIDS, IA 52404-4709

ITEM DETAILS: Livestock trailer operated within a 300 mile radius.
USE CLASS (00753): Truckers - Miscellaneous.
Vehicle Count Factor Applies.
Diminished Value Coverage applies.

160 0080000 1184

¶ 27 In May 2020, the Kuhns filed their first amended complaint for declaratory judgment in which they added the following people as nominal defendants to the declaratory judgment action solely for the purpose of binding them by the terms of any judgment: (1) Kathleen Crabtree, executor of the estate of Charles C. Crabtree, deceased, (2) Steven B. Price, (3) Jessica O'Brien, (4) Montinique Howard, (5) Haley Willan, (6) Grace Storm, (7) Abby Hoeft, (8) Olivia Reed, (9) Kirsten Lellelid, and (10) Joriana Bischoff (collectively, potential claimants). The potential claimants are people other than the Kuhns who were injured in the accident, some of whom have filed lawsuits against Farrell and participated in the proceedings below. Because the potential claimants raise the same arguments and are aligned with the Kuhns, we do not address their arguments separately.

¶ 28 In June 2020, Owners filed an answer, denying that (1) the policy was ambiguous and (2) it permitted stacking.

¶ 29 C. The Cross-Motions for Summary Judgment

¶ 30 In April 2021, the Kuhns filed a motion for summary judgment, and Owners filed a cross-motion for summary judgment. The Kuhns argued that the wording of the policy and accompanying declarations were ambiguous pursuant to Illinois case law because the coverages and premiums set forth in the declarations were repeated for each insured vehicle. See *Bruder*, 156 Ill. 2d at 192 ("It would not be difficult to find an ambiguity created by such a listing [(next to the premiums for each vehicle)] of the bodily injury liability limit for each person insured. It could easily be interpreted that *** [the] total limit [should be] $200,000 *** because a figure of $100,000 would be shown for each [vehicle]."). That is, the declarations pages identified each covered vehicle and, below that information, listed (1) each type of coverage on that vehicle, (2) the limit of liability for each coverage on that vehicle, and (3) the premium paid for each type

of coverage on that vehicle. Because the limits were listed for each of the seven covered vehicles along with a corresponding premium for the coverage, the Kuhns asserted that the declarations were ambiguous and the policy should be interpreted to permit the stacking of liability limits to provide a maximum coverage of $7 million.

¶ 31 Owners argued that the policy declarations were consistent with each other and not ambiguous. Specifically, Owners contended that (1) Item Two provided a summary of the coverages, limits, and premiums for all vehicles under the policy and (2) Item Three provided that same information broken down on a vehicle-by-vehicle basis. Additionally, Owners contended that the policy's antistacking provisions were unambiguous and prohibited aggregated limits for the same or similar coverage on vehicles not involved in the accident.

¶ 32 Owners explained that the terms of the liability coverage were set forth in section II of the policy, titled "COVERED AUTOS LIABILITY COVERAGE." Subsection A described the "coverage" and provided that Owners would "pay all sums an insured legally must pay as damages *** caused by an accident and resulting from the ownership, maintenance or use of a covered auto as an auto."

¶ 33 Paragraph C of the liability coverage section of the policy provided as follows:

> "C. LIMIT OF INSURANCE
>
> **We** will pay damages for **bodily injury**, **property damage** and **covered pollution cost or expense** up to the Limit of Insurance shown in the Declarations for this coverage. Such damages shall be paid as follows:
>
> 1. When combined liability limits are shown in the Declarations, the limit shown for each **accident** is the total amount of coverage and the most we will pay for damages because of or arising out of **bodily injury**, **property**

damages and **covered pollution cost or expense** in any one **accident**.

* * *

5. The Limit of Insurance for this coverage may not be added to the limits for the same or similar coverage applying to other **autos** insured by this policy to determine the amount of coverage available for any one **accident** or **covered pollution cost or expense**, regardless of the number of:

a. Covered **autos**;

b. Insureds;

c. Premiums paid;

d. Claims made or **suits** brought;

e. Persons injured; or

f. Vehicles involved in the **accident**." (Bold in original.)

¶ 34 Owners argued that section II.C. constituted an unambiguous antistacking provision that cleared up any arguable ambiguity in the declarations and should be enforced as written. In particular, subsection 5 explicitly stated that the limits for the same or similar coverage applying to other vehicles could not be added to determine the amount of coverage for an accident.

¶ 35 In their response, the Kuhns argued that the antistacking provision was ambiguous because the term "Limit of Insurance" was undefined and subject to different interpretations. Specifically, the "Limit of Insurance" section stated that the limits of coverage set forth in the declarations would be the most Owners would pay. The Kuhns contended that Item Two and Item Three stated a different "Limit of Insurance" without saying which controls, rendering the antistacking provision ambiguous.

¶ 36 D. The Trial Court's Decision

¶ 37 In August 2021, the trial court conducted a hearing on the motions and took the matter under advisement. In August 2022, the court issued a 73-page written order analyzing the parties' arguments and dozens of cases addressing when stacking is permitted or when an antistacking clause bars stacking. Ultimately, the court concluded that (1) Illinois case law weighed heavily in favor of finding the policy ambiguous and (2) stacking was permitted in this case because the declarations listed the limit of insurance multiple times, specifically, once for each vehicle. Accordingly, the court entered summary judgment in favor of the Kuhns and ruled that the limit of insurance Owners was required to pay was $7 million.

¶ 38 This appeal followed.

¶ 39 II. ANALYSIS

¶ 40 Owners appeals, arguing the trial court erred by concluding that (1) the antistacking clause was ambiguous and (2) stacking of the policy's coverage limits was permitted. We agree, reverse the trial court's judgment, and remand with directions.

¶ 41 A. The Applicable Law and the Standard of Review

¶ 42 1. *The Standard of Review*

¶ 43 "The filing of cross-motions for summary judgment constitutes an implicit agreement between the parties that there are no genuine issues of material fact and only a question of law is presented to the court." *West Bend Mutual Insurance Co. v. Krishna Schaumburg Tan, Inc.*, 2021 IL 125978, ¶ 30, 183 N.E.3d 47. A reviewing court reviews the entry of summary judgment in favor of a party *de novo*. *Id.* Similarly, construction of an insurance policy presents a question of law that an appellate court reviews *de novo*. *Id.*

¶ 44 2. *Construction of the Policy*

¶ 45 The Illinois Supreme Court recently described the law governing the interpretation

of insurance policies in the context of "stacking" in *Hess v. Estate of Klamm*, 2020 IL 124649, ¶¶ 15-16, 161 N.E.3d 183, in which it wrote the following:

> "Under Illinois law, 'the general rules governing the interpretation of other types of contracts also govern the interpretation of insurance policies.' *Hobbs v. Hartford Insurance Co. of the Midwest*, 214 Ill. 2d 11, 17, 823 N.E.2d 561 (2005). The 'primary objective' in interpreting an insurance policy 'is to ascertain and give effect to the intention of the parties, as expressed in the policy language.' *Id.* Unambiguous policy language is applied as written unless it conflicts with public policy. *Id.*
>
> In general, antistacking provisions in insurance policies are not contrary to public policy. *Grzeszczak v. Illinois Farmers Insurance Co.*, 168 Ill. 2d 216, 229-30 (1995). Thus, an unambiguous antistacking clause will be given effect by a reviewing court. *Hobbs*, 214 Ill. 2d at 18. If the clause is ambiguous, however, it will be construed liberally in favor of coverage and strictly against the insurer who drafted the policy. *Id.* at 17. Policy language is ambiguous if it is susceptible to more than one reasonable interpretation. *Id.* Only reasonable constructions of the language will be considered, not 'creative possibilities' suggested by the parties. See *Bruder v. Country Mutual Insurance Co.*, 156 Ill. 2d 179, 193 (1993) ('Reasonableness is the key.'). Moreover, we ' "will not strain to find ambiguity in an insurance policy where none exists." ' "

¶ 46 When an antistacking clause refers to the limit of coverage in the declarations page, the formatting of the declarations page becomes important in determining whether the policy language is susceptible to more than one reasonable interpretation. *Kovach v. Nationwide General*

Insurance Co., 475 F. Supp. 3d 890, 897 (C.D. Ill. 2020) (citing *Hess*, 2020 IL 124649, ¶¶ 22, 24). The Illinois Supreme Court has repeatedly stated that "it would not be difficult to find an ambiguity arising from a declarations page that lists the liability limits separately for each covered vehicle." *Hess*, 2020 IL 124649, ¶ 22 (citing *Hobbs*, 214 Ill. 2d at 21, and *Bruder*, 156 Ill. 2d at 192). "In the absence of other qualifying language in the antistacking clause, '[t]here would be little to suggest in such a listing that the parties intended that coverage was to be limited to that provided for only one of the two [vehicles].' " *Hobbs*, 214 Ill. 2d at 25 (quoting *Bruder*, 156 Ill. 2d at 192). Based on this wording, some appellate courts have found certain multivehicle policies with antistacking clauses were nonetheless ambiguous because the declarations pages listed a separate premium and limit of liability for each vehicle. See, *e.g.*, *Cherry v. Elephant Insurance Co.*, 2018 IL App (5th) 170072, ¶¶ 20-22.

¶ 47 However, the Illinois Supreme Court has made clear that its suggestion that listing the limits of coverage multiple times in the declarations may create an ambiguity "should not be construed as 'establishing a *per se* rule that an insurance policy will be deemed ambiguous as to the limits of liability anytime the limits are noted more than once on the declarations.' " *Hess*, 2020 IL 124649, ¶ 22 (quoting *Hobbs*, 214 Ill. 2d at 26 n.1). "Rather, the question should be decided on a case-by-case basis. [Citation.] Moreover, the declarations page should not be read in isolation but must be construed together with the other provisions in the policy." *Id.*

¶ 48 B. This Case

¶ 49 In this case, the "Limit of Insurance" provisions refer back to the declarations to define the policy limits ("We will pay damages *** up to the Limit of Insurance shown in the Declarations for this coverage."). Item Three of the declarations lists each vehicle covered by the policy, seven in all, and lists (1) the type of coverage provided, (2) the limits of that coverage, and

(3) the premium paid for that coverage. Because this information is provided for each vehicle, the declarations pages state seven separate times that the "combined liability" limit on each vehicle is $1 million for each accident.

¶ 50 The Kuhns argue that the declarations' listing the limit of insurance for each vehicle is enough to render the policy ambiguous and to permit stacking. The Kuhns also argue that (1) the "Limit of Insurance" provisions refer the reader back to the declarations pages to determine the limits but (2) because the provisions do not specify whether the insured should look at Item Two or Item Three, the provisions are ambiguous.

¶ 51 Reading the policy as a whole and interpreting its plain language, we conclude that (1) the declarations are consistent, not ambiguous, and (2) the antistacking clause set forth in the policy clarifies any possible ambiguity.

¶ 52 1. *The Declarations Pages*

¶ 53 Because the "Limit of Insurance" provisions (1) refer to the declarations pages and (2) the declarations pages list the limit of insurance for each vehicle, the policy could arguably be viewed as ambiguous under *Hess*. However, we agree with the district court's decision in *Kovach*, a factually similar case that analyzed the declarations and antistacking provisions of an auto policy very similar to those at issue in this case and concluded the antistacking provisions applied.

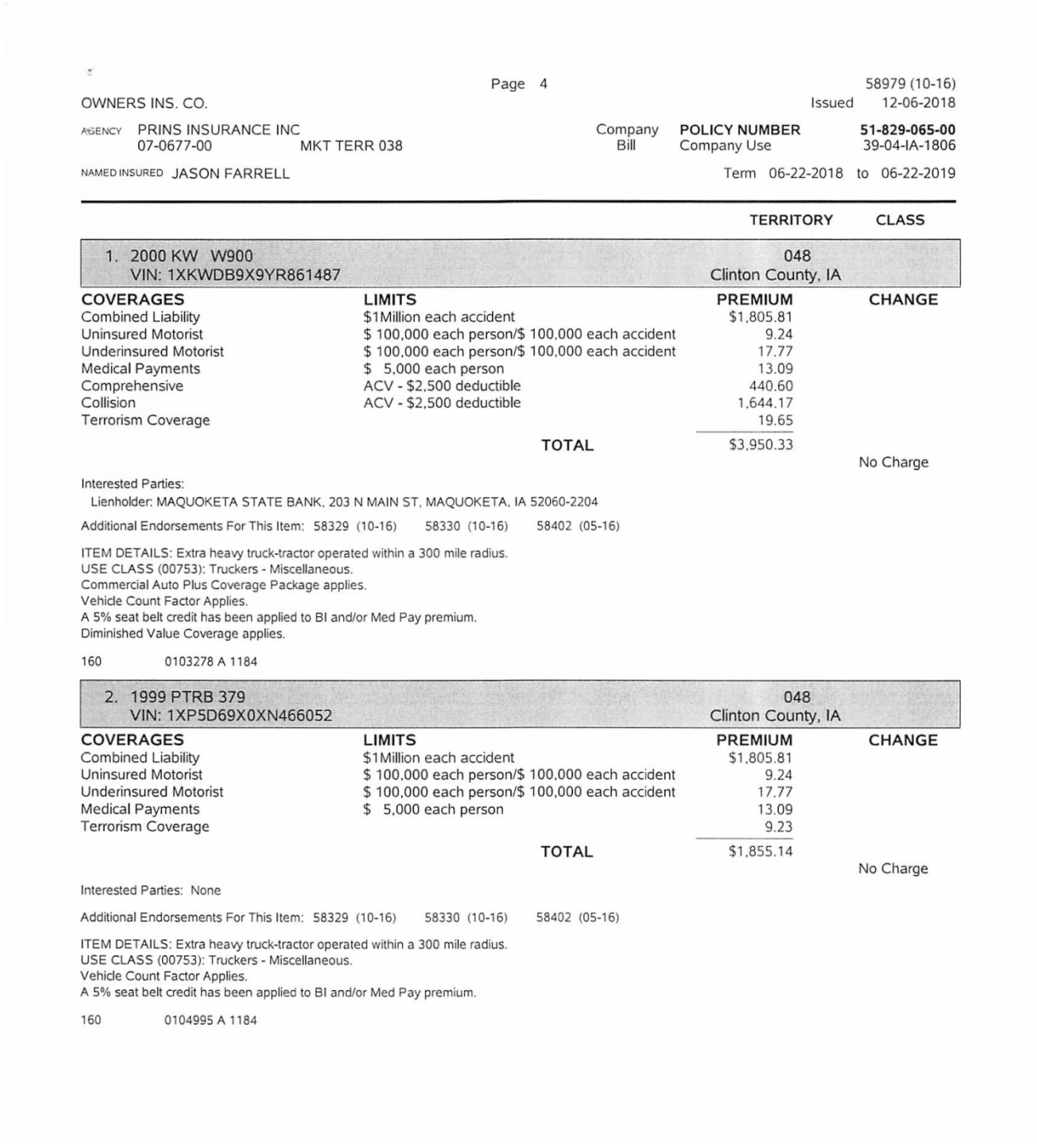
¶ 54 In *Kovach*, the policy at issue covered four scheduled vehicles, and in the declarations pages, the policy listed for each vehicle the applicable coverages, limits of liability, and premium amounts for those coverages. *Kovach*, 475 F. Supp. 3d at 893-95. Although the coverage limits were the same, the types of coverages, and the premiums therefor, varied based on the insured vehicle. *Id.*

¶ 55 The federal district court carefully examined the Illinois Supreme Court's decision

in *Hess* and noted that "the decision hinged on if there was a reasonable way to read the policy as allowing stacking." *Id.* at 897. (The supreme court in *Hess* wrote, "Although the liability limits are technically listed twice [in the declarations], we find this does not create an ambiguity with respect to stacking." *Hess*, 2020 IL 124649, ¶ 24.) The district court in *Kovach* explained that the *Hess* court "found that it was persuasive that the defendant had needed multiple pages to list the vehicles which that policy covered." *Kovach*, 475 F. Supp. 3d at 897 (citing *Hess*, 2020 IL 124649, ¶ 24). Based on this reasoning, the district court concluded that defendants in stacking cases "need to have a reasonable justification to list their liability limits multiple times in the declarations." *Id.*

¶ 56 The district court agreed with the insurer in that case that the insurer was justified in stating coverages and liability limits for each vehicle insured because the coverages varied from vehicle to vehicle. *Id.* "It seems reasonable for a company to desire to lay out in detail what exactly is happening with each vehicle when coverages vary." *Id.*

¶ 57 In this case, Owners similarly needed multiple pages because (1) it was insuring seven different vehicles (four trailers and three semitrucks) and (2) the types of coverages and premiums for those coverages varied based on each vehicle. The following page of the declarations concretely demonstrates the point.



Page 4 58979 (10-16)

OWNERS INS. CO. Issued 12-06-2018

AGENCY PRINS INSURANCE INC Company Bill POLICY NUMBER Company Use 51-829-065-00 39-04-IA-1806
07-0677-00 MKT TERR 038

NAMED INSURED JASON FARRELL Term 06-22-2018 to 06-22-2019

		TERRITORY	CLASS
1. 2000 KW W900 VIN: 1XKWDB9X9YR861487		048 Clinton County, IA	
COVERAGES	**LIMITS**	**PREMIUM**	**CHANGE**
Combined Liability	$1Million each accident	$1,805.81	
Uninsured Motorist	$ 100,000 each person/$ 100,000 each accident	9.24	
Underinsured Motorist	$ 100,000 each person/$ 100,000 each accident	17.77	
Medical Payments	$ 5,000 each person	13.09	
Comprehensive	ACV - $2,500 deductible	440.60	
Collision	ACV - $2,500 deductible	1,644.17	
Terrorism Coverage		19.65	
	TOTAL	$3,950.33	
			No Charge

Interested Parties:
Lienholder: MAQUOKETA STATE BANK, 203 N MAIN ST, MAQUOKETA, IA 52060-2204

Additional Endorsements For This Item: 58329 (10-16) 58330 (10-16) 58402 (05-16)

ITEM DETAILS: Extra heavy truck-tractor operated within a 300 mile radius.
USE CLASS (00753): Truckers - Miscellaneous.
Commercial Auto Plus Coverage Package applies.
Vehicle Count Factor Applies.
A 5% seat belt credit has been applied to BI and/or Med Pay premium.
Diminished Value Coverage applies.

160 0103278 A 1184

		TERRITORY	CLASS
2. 1999 PTRB 379 VIN: 1XP5D69X0XN466052		048 Clinton County, IA	
COVERAGES	**LIMITS**	**PREMIUM**	**CHANGE**
Combined Liability	$1Million each accident	$1,805.81	
Uninsured Motorist	$ 100,000 each person/$ 100,000 each accident	9.24	
Underinsured Motorist	$ 100,000 each person/$ 100,000 each accident	17.77	
Medical Payments	$ 5,000 each person	13.09	
Terrorism Coverage		9.23	
	TOTAL	$1,855.14	
			No Charge

Interested Parties: None

Additional Endorsements For This Item: 58329 (10-16) 58330 (10-16) 58402 (05-16)

ITEM DETAILS: Extra heavy truck-tractor operated within a 300 mile radius.
USE CLASS (00753): Truckers - Miscellaneous.
Vehicle Count Factor Applies.
A 5% seat belt credit has been applied to BI and/or Med Pay premium.

160 0104995 A 1184

¶ 58 Based on the level of detail provided in setting forth the coverages, limits, and premiums for each vehicle, Owners clearly needed to provide information over multiple pages. Similarly, the coverages varied based on the vehicle insured; for example, the premiums for vehicle 1 and vehicle 2 (both semitrucks) were identical for liability, UIM/UM coverage, and medical

payments, but only vehicle 1 had comprehensive and collision coverage.

¶ 59 The "Limit of Insurance" language provides, "When combined liability limits are shown in the Declarations, the limit shown for each accident is the total amount of the coverage and the most we will pay for damages *** in any one accident." The antistacking provisions refer the insured specifically to "the limit shown for each accident." Regardless of whether the insured looks to Item Two or Item Three to determine the limit of coverage, the same answer is reached.

¶ 60 The table shown in Item Two shows the following:

COVERAGES	COVERED AUTOS SYMBOL	LIMIT OF INSURANCE FOR ANY ONE ACCIDENT OR LOSS	PREMIUM
Combined Liability	7, 8, 9, 19	$1 Million each accident	$6,311.69

Clearly, based on Item Two, the "Limit of Insurance" listed in the declarations is "$1 Million each accident" for all scheduled vehicles. Importantly, the term "Limit of Insurance" appears only once in the declarations: in Item Two.

¶ 61 Item Three also leads to the same conclusion. Item Three provides for each vehicle the types of coverage provided, the limits of those coverages, and the premiums for such coverages for that vehicle. Every scheduled vehicle in policy had combined liability coverage with a limit of "$1 Million each accident" listed next to the premium therefor. That is, every single item contained in Item Three (1) has combined liability coverage, (2) a premium listed for that coverage, and (3) a limit of $1 million each accident. Given that the antistacking provisions limit coverage to "the limit shown for each accident," an insured looking for the "Limit of Insurance" in Item Three would likewise conclude that the limit was "$1 Million each accident," the same as provided by Item Two. We agree with *Kovach* that "the Limit of [Insurance] clause in this case is much clearer if each individual limit listed as [Combined Liability] is indeed the maximum [Owners] would pay for each [accident]." *Kovach*, 475 F. Supp. 3d at 898. Because the "Limit of Insurance" clause

directs the insured to the limit in the declarations for "each accident," we conclude that the policy is unambiguous.

¶ 62 Moreover, the premiums listed for combined liability coverage for each item in Item Three add up to a total of $6311.69, which is the same as the premium amount listed in Item Two for the same coverage. The same is true relating to the other types of coverages and premiums. Further, the total estimated premium is the same in Item Two as it is in Item Three. Accordingly, no insured could believe that he was paying separate premiums for combined liability to be stacked. Instead, the insured would recognize that Item Two and Item Three convey the same information in different ways and each premium under each vehicle was providing combined liability coverage of "$1 Million each accident," just as the declarations provide.

¶ 63 Item Three "does nothing more than indicate the amount of liability coverage provided for each owned vehicle and the premium allotted for that coverage. To the extent that this schedule could create some confusion about whether the liability coverage could be stacked, the 'Limit of Insurance' provision," specifically subsection II.C.5. prohibiting the adding of limits, clarifies that question. *West Bend Mutual Insurance Co. v. Vaughan's Fetch, Inc.*, 2022 IL App (5th) 210168-U, ¶ 27; see also *Pekin Insurance Co. v. Estate of Ritter*, 322 Ill. App. 3d 1004, 1005, 750 N.E.2d 1285, 1286 (2001).

¶ 64 2. *The Antistacking Clause*

¶ 65 Even if some ambiguity existed, the policy's antistacking clause clears up any possible confusion. In *Hobbs*, the supreme court stated that listing a limit of liability for each vehicle could lead to an ambiguity "*[i]n the absence of other qualifying language in the antistacking clause*." (Emphasis added.) *Hobbs*, 214 Ill. 2d at 25. The Prudential Property and Casualty Insurance Company policy at issue in *Hobbs* had an antistacking clause that provided,

" 'This limit of coverage applies regardless of the number of *** insured cars *** or cars involved in the accident or loss. Coverages on other cars insured by us cannot be added to or stacked on the coverage of the particular car involved.' " *Id.* at 28. The supreme court rejected arguments similar to the ones the Kuhns make here and concluded that the "antistacking clause will be enforced as written." *Id.* at 31. The court noted, "We will not *** torture ordinary words until they confess to ambiguity." (Internal quotation marks omitted.) *Id.*

¶ 66 Not only does this policy contain the "traditional" antistacking provision described in *Hess*, *Hobbs*, and *Bruder* in subsection C.1., defining "combined liability," it also has an *explicit* antistacking clause. Subsection C.5. provides as follows:

> "**5.** The Limit of Insurance for this coverage may not be added to the limits for the same or similar coverage applying to other **autos** insured by this policy to determine the amount of coverage available for any one **accident** or **covered pollution cost or expense**, regardless of the number of:
>
> **a.** Covered **autos**;
>
> **b. Insureds**;
>
> **c.** Premiums paid;
>
> **d.** Claims made or **suits** brought;
>
> **e.** Persons injured; or
>
> **f.** Vehicles involved in the **accident**." (Bold in original.)

¶ 67 We conclude that the explicit antistacking clause contained in section II.C.5. of the policy, like the antistacking clause in *Hobbs*, is unambiguous and should be enforced as written. We agree with Judge Easterbrook, who wrote, "[An antistacking clause's] function is to say that *even if* some other clause suggests the possibility of stacking, that is not what the policy means. It

is a disambiguator. To see ambiguity in the policy is to learn why the anti-stacking clause was included." (Emphasis in original.) *Grinnell Select Insurance Co. v. Baker*, 362 F.3d 1005, 1007 (7th Cir. 2004).

¶ 68 The Kuhns also argue that the antistacking provisions themselves are ambiguous because terms like "Limit of Insurance" and "combined liability limits" are not defined. We disagree. The structure of section II of the policy, and the fact that subsection C is titled "Limit of Insurance," clearly demonstrates that the "definition" of "Limit of Insurance" is contained within the provisions that follow. That is, all of subsection C "defines" what is meant by "Limit of Insurance."

¶ 69 Similarly, subsection C.1. defines what is meant by "combined liability" as that term is used in the declarations. And because subsection C is a structurally a part of section II—the section of the policy that provides the terms of "Covered Autos Liability Coverage"—the meaning of the term "coverage" as used in subsection C is controlled by the other provisions in that section, particularly subsection A.

¶ 70 Other sections of the policy specifically deal with (1) property damage coverage and (2) UM/UIM coverage, and those sections contain their own antistacking clauses for those specific types of coverage. We conclude that the antistacking provisions are not ambiguous on their face or when read together with the other provisions of the policy and the declarations.

¶ 71 In sum, we agree with the observation from Owners in its brief that "[h]ere, instead of applying the Policy's clear anti-stacking provision, the trial court engaged in the very sort of tortured and strained reading of the Policy to find an ambiguity that this Court and the Illinois Supreme Court have repeatedly rejected. This was error." Accordingly, we reverse the judgment of the trial court and remand with directions for it to enter summary judgment in favor of Owners,

declaring the "Limit of Insurance" for combined liability under the applicable policy is $1 million.

¶ 72 III. CONCLUSION

¶ 73 For the reasons stated, we reverse the trial court's order granting the Kuhns' motion for summary judgment and remand with directions to enter summary judgment in favor of Owners.

¶ 74 Reversed and remanded with directions.

Kuhn v. Owners Insurance Co., 2023 IL App (4th) 220827

Decision Under Review:	Appeal from the Circuit Court of McLean County, No. 19-MR-643; the Hon. Scott Kording, Judge, presiding.
Attorneys for Appellant:	Krysta K. Gumbiner, of Dinsmore & Shohl LLP, of Chicago, Kathryn W. Bayer, of Dinsmore & Shohl LLP, of Cincinnati, Ohio, and Conor B. Dugan (*pro hac vice*) and Ashley L. Yuill (*pro hac vice*), of Warner Norcross and Judd LLP, of Grand Rapids, Michigan, for appellant.
Attorneys for Appellee:	K. Lindsay Rakers, of Sumner Law Group LLC, of St. Louis, Missouri, for appellees Mark Kuhn and Karen Kuhn. Chase T. Molchin, of Ginzkey Law Office, of Bloomington, for appellees Kathleen Crabtree, Jessica O'Brien, Montinique Howard, Haley Willan, Grace Storm, Abby Hoeft, Olivia Reed, and Joriana Bischoff. Terence B. Kelly, of Kraft, Wood & Kelly LLC, of Bloomington, for appellee Steven B. Price. No brief filed for other appellees.

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF MCLEAN

MARK KUHN and KAREN KUHN, Plaintiffs, vs. OWNERS INSURANCE COMPANY, MICHAEL POWELL, Special Representative of RYAN HUTE, Deceased, JASON FARRELL, Individually and d/b/a JASON FARRELL TRUCKING, 3 GUYS & A BUS, INC., KATHLEEN CRABTREE, Executor of Estate of CHARLES C. CRABTREE, Deceased, STEVEN B. PRICE, JESSICA O'BRIEN, MONTINIQUE HOWARD, HALEY WILLAN, GRACE STORM, ABIGAIL HOEFT, OLIVIA REED, KIRSTEN LELLELID, and JORIANA BISCHOFF, Defendants.	)	No. 19-MR-643

OPINION AND ORDER ON CROSS-MOTIONS FOR SUMMARY JUDGMENT

This cause came before the court for hearing on August 27, 2021, on cross-motions for summary judgment. The court took the motions under advisement. After reviewing the parties' filings and considering the arguments presented, the court, being fully advised in the premises, hereby disposes of the cross-motions and issues this Opinion and Order on Cross-Motions for Summary Judgment to reflect the ruling and the reasoning behind it.

I. BACKGROUND

The key procedural and substantive background in this case leading to this decision is set forth below.

A. Declaratory Judgment Action and Underlying Litigation

This declaratory-judgment case seeks judicial interpretation of, and adjudication of the parties' rights under, a certain policy of automobile insurance to the extent it provides coverage for damages and losses allegedly resulting from a particular automobile collision that occurred on or about December 5, 2018, in McLean County, Illinois. The collision is the subject of multiple lawsuits pending in this court, including Crabtree v. Farrell *et al.*, No. 19-L-1 (Cir. Ct. McLean County); Kuhn v. Hute *et al.*, No. 19-L-29 (Cir. Ct. McLean County); Price v. Farrell *et al.*, No. 20-L-108 (Cir. Ct. McLean County); and Reed *et al.* v. Hute *et al.*, No. 20-AR-2 (Cir. Ct. McLean County) (collectively the "underlying litigation").

B. The Parties

For purposes of the proceedings addressed by this Opinion and Order, the following are the parties directly involved in the summary-judgment litigation: the Plaintiffs, MARK KUHN and KAREN KUHN ("Plaintiffs"); (ii) the Defendant, OWNERS INSURANCE COMPANY ("Owners"); (iii) the Defendant, STEVEN B. PRICE ("Price"); and (iv) the Defendant, KATHLEEN CRABTREE ("Crabtree"). Although multiple other defendants have been named in this action, none of them participated actively in the summary-judgment litigation addressed by this order.

C. The Pleadings

Plaintiffs initiated this cause in November 2019 by filing a declaratory-judgment complaint. After obtaining leave to do so by agreement, Plaintiffs filed an amended complaint in May 2020. Owners answered Plaintiffs' amended pleading in June 2020. Price also answered

Plaintiffs' declaratory-judgment complaint in August 2020. That same month, Price filed a cross-claim against Owners, which Owners subsequently answered in October 2020. No other pleadings have been filed by any party in the case.

D. Cross-Motions for Summary Judgment

In April 2021, Plaintiffs filed a motion for summary judgment. Owners filed its own summary-judgment motion a few days later. These cross-motions are the subject of this Opinion and Order.

1. *Briefing Schedule*

In March 2021, the court entered an Agreed Order Setting Summary Judgment Briefing Schedule (the "agreed briefing schedule") establishing deadlines for the parties to file and brief their then-anticipated cross-motions for summary judgment. Plaintiffs and Owners later timely filed their summary-judgment motions and then their briefs in compliance with the agreed briefing schedule.

2. *Parties' Insurance Policy Stipulation*

At around the same time they filed their cross-motions for summary judgment, Plaintiffs and Owners filed a joint stipulation confirming their agreement that the insurance policy attached to it is a true and correct copy of the automobile insurance policy at issue in this case. They further stipulated the policy should be reviewed, considered, and interpreted by the court in its determination of the parties' cross-motions. Price and Crabtree never disputed any part of this stipulation.

3. *Owners' Motion to Strike*

In mid-August 2021, Price filed a short brief joining the position taken by Plaintiffs in their summary-judgment motion. A few days later, Crabtree filed a short brief essentially identical to that filed by Price. The Price and Crabtree briefs both were filed after the deadlines established by the agreed briefing schedule. In response, Owners filed its Motion to Strike Certain Defendants' Summary Judgment Papers ("Owners' motion to strike"). Owners' motion to strike asked the court to strike the Price and Crabtree briefs for failure to comply with the agreed briefing schedule.

Prior to the substantive hearing on the summary-judgment cross-motions that occurred on August 27, 2021, the court heard Owners' motion to strike. Although Price and Crabtree filed briefs not in compliance with the agreed briefing schedule, the court found the briefs were merely placing of record their positions by joining the request for relief sought in Plaintiffs' summary-judgment motion. Neither Price nor Crabtree advanced new arguments or cited authorities beyond those contained in Plaintiffs' motion. The court denied Owners' motion to strike and permitted Price and Crabtree to participate in the oral arguments in the hearing on the cross-motions for summary judgment.

In ruling on Owners' motion to strike, the court authorized Owners to raise anew any concerns if any oral argument from Price or Crabtree were to catch Owners' counsel by surprise. During the summary-judgment hearing, Price and Crabtree made no arguments and cited no authorities outside the scope of that which Plaintiffs' summary-judgment papers advanced. Owners' counsel also never claimed to have been surprised unfairly by any oral argument advanced by Price or Crabtree.

4. *Motions Hearing*

The court conducted a substantive hearing on the cross-motions for summary judgment on August 27, 2021. The hearing on the summary-judgment motions lasted approximately two hours. At the conclusion of the hearing, the court took the cross-motions under advisement.

5. *Under Advisement*

Although perhaps common litigation issues raised in automobile-collision cases in the experience of the parties' counsel, the matters raised in the summary-judgment cross-motions were relatively new to the undersigned judge. The court carefully reviewed the parties' motions (and their voluminous attachments) and their briefing papers during its deliberation upon the questions presented by the cross-motions. The court also reviewed multiple times the video recording of the entirety of the parties' oral arguments on the cross-motions. The court further undertook an intensive examination of all of the various caselaw, statutory, and administrative-regulation authorities cited in the parties' briefs.[1]

6. *Supplemental Briefing*

After the cross-motions for summary judgment were briefed and the participating parties had argued the motions at the hearing on August 27, 2021, the court, through its own independent research, subsequently discovered that a new, seemingly on-point reviewing-court opinion had issued while the matter was under advisement. At a hearing in April 2022, the court informed counsel of its discovery of the appellate court opinion issued only a few weeks earlier

[1] Although some authorities cited by the parties' briefs are expressly addressed, this Opinion and Order does not discuss or cite all of them. The omission from this instrument of citations to or discussion of any particular cases or authorities from the parties' briefs does not mean the court did not examine all of them. On the contrary, the court did in fact carefully review all of the cited authorities in its consideration of the summary judgment issues.

in *West Bend Mutual Ins. Co. v. Vaughan's Fetch, Inc.*, 2022 IL App (5th) 210168-U. The court invited the participating parties to submit supplemental briefing on the significance, if any, of this new opinion to the motions under advisement.[2] Plaintiffs, Crabtree, Price, and Owners all timely filed supplemental briefing the following week. The matter remained on the advisement calendar pending the court's review of the parties' supplemental briefing and ultimate resolution of the cross-motions for summary judgment.

7. *Oral Ruling*

At a hearing on June 8, 2022, the court orally announced its intended ruling on the cross-motions for summary judgment. Although still finalizing its lengthy written Opinion and Order, the court was prepared at that time to inform the parties of its long-awaited ruling. The court confirmed on the record in open court that its ruling would not be final until the subsequent issuance of its written Opinion and Order had occurred.

8. *Removal from Advisement Calendar*

Through this Opinion and Order, the court hereby formally removes the cross-motions from its advisement calendar and disposes of them by ruling.

II. ANALYSIS

Plaintiffs (and, derivatively, Price and Crabtree) and Owners have filed cross-motions for summary judgment. 735 ILCS 5/2-1005(a), (b) (West 2022). Generally, a party is entitled to

[2] The court was mindful, and continues to be, that *Vaughan's Fetch* is a Rule 23 opinion. Given what the court's cursory review of the opinion suggested were some remarkably similar factual circumstances between the insurance policy at issue in *Vaughan's Fetch* and the Owners policy in this case, however, the court specifically authorized the parties to provide additional briefing on the opinion to the extent its reasoning might potentially be persuasive in this court's endeavor to resolve the summary judgment issues then under advisement.

summary judgment when the evidence presented by the party establishes both that (i) there exists no genuine issue of material fact underlying a particular legal issue, and (ii) the party is entitled to judgment as a matter of law on the issue based upon the uncontroverted facts. *Travelers Insurance Co. v. Eljer Manufacturing, Inc.*, 197 Ill. 2d 278, 292, 757 N.E.2d 481 (2001). A trial court should grant summary judgment to a party if the party's right to prevail on a legal issue is unquestionable. *Id.*

A. Issues of Fact

For purposes of analyzing the parties' cross-motions for summary judgment, the court must first ascertain whether there exists any genuine issue of material fact. 735 ILCS 5/2-1005(c) (West 2022); see also, *e.g.*, *Mashal v. City of Chicago*, 2012 IL 112341, ¶ 49, 981 N.E.2d 951.

1. *The Collision and the Automobile Insurance Policy*

The court finds the salient facts of this case to be as follows, all of which were established by express agreement of the parties as established by their summary-judgment papers, their joint stipulation, and the admissions and statements of counsel during oral argument.

On or about December 5, 2018, a serious automobile collision occurred in McLean County on Interstate 74 near Downs, Illinois (the "collision"). Plaintiffs and certain other named defendants in this case suffered injuries in the collision when a truck and trailer driven by RYAN HUTE ("Hute")—a decedent now represented in this cause by court-appointed special representative MICHAEL POWELL, presently named as a defendant in this case—collided

head-on with a school bus driven by the Plaintiff, MARK KUHN. The vehicle driven by Hute was a blue 2010 Kenworth Construct T600 semi-truck model bearing vehicle identification number 1XKAD49X1AJ270127 (the "semi-truck"). The semi-truck was owned by the Defendant, JASON FARRELL ("Farrell") (either individually or doing business as "Jason Farrell Trucking" or "Farrell Trucking"), who is also named as a defendant in this case. The collision is the subject of the multiple cases in the underlying litigation.

In November 2018, Owners issued to Farrell a commercial automobile liability insurance policy bearing number 51-829-065-00 ("the Owners policy" or the "Policy"). The Policy named Farrell as an insured, listed Hute as a covered driver, and identified the semi-truck as a covered vehicle. The Policy obligates Owners for at least $1 million[3] in coverage. The Policy was in effect on the date of the collision. Key policy language implicated in this case will be discussed in greater detail in this order below.

2. *No Genuine Issues of Material Fact*

Plaintiffs' summary-judgment papers asserted that there are no disputed factual questions of consequence that would preclude the court from granting summary judgment to at least one of the parties actively participating in this summary-judgment litigation. Although Owners' response to Plaintiffs' summary-judgment motion hinted in passing that there may be factual questions related to the underlying litigation, the balance of Owners' summary-judgment papers maintained the absence of any material fact questions necessary to resolve the declaratory-judgment issues in this case. During oral argument, Plaintiffs and Owners also both expressly agreed that there are no genuine issues of material fact in this case. Price and Crabtree never

[3] Although Owners disputes the claims of the other summary-judgment litigants that the Policy obligates Owners to provide total coverage for more than $1 million in losses from the collision, there is no dispute from any party that the Policy requires Owners to provide at least $1 million in coverage.

disputed this point. Based upon the parties' agreement (either express or apparent), and after considering the parties' filings and oral arguments, the court finds that there are no genuine issues of material fact that would preclude the court from considering and granting summary judgment.

B. Issues of Law

Since there are no genuine issues of material fact, the court is free to analyze the legal questions at issue in these summary-judgment proceedings to determine which of the cross-movants is entitled to judgment as a matter of law. Making that determination necessarily requires the court to interpret the Owners policy.

1. *Disputed Legal Question—Ambiguity of Policy*

The parties agree, and the court finds, that there is only one legal issue in dispute in these summary-judgment proceedings—namely, whether the Policy is ambiguous as written. More precisely stated, the question is whether the Policy unambiguously prohibits intrapolicy limits stacking, or whether the Policy, when read as a whole, so muddies the water on that question that one must conclude that whether stacking is prohibited cannot be determined in light of irreconcilably conflicting or otherwise ambiguous policy language. The question whether the limits in an insurance policy may be combined (or "stacked") is a question of law. *Travelers*, 197 Ill. 2d at 292; *Bruder v. Country Mutual Insurance Co.*, 156 Ill. 2d 179, 185, 620 N.E.2d 355 (1993). Thus, the dispute between Plaintiffs and Owners about whether the Policy unambiguously prohibits stacking of limits is ripe for determination in a summary-judgment context.

The court is aware that the stakes are high for the parties participating in the summary-judgment motion practice. If the Policy were found to be clear and unambiguous, then the legal consequence of that determination would be that Owners is responsible under the Policy for providing $1 million in total coverage for losses resulting from the collision. On the other hand, if the Policy were determined to be ambiguous on the issue of whether intrapolicy limits could be stacked, then the application of limits-stacking principles could compel Owners to provide up to $7 million in total coverage for losses resulting from the collision.[4]

At the outset of its legal analysis, the court notes that the summary-judgment papers of Plaintiffs and Owners each cite to a great many authorities, primarily of the caselaw variety, from various Illinois and federal courts. The parties expended considerable ink and effort to clang their caselaw swords against one another when deploying their briefs and oral arguments in this motion-practice combat. In honor of the high stakes and the very substantial work invested by the parties' counsel, the court endeavored to perform as thorough a review of the legal question addressed in this instrument as it was possible for the undersigned judge to muster.

2. *General Principles for Interpreting Automobile Insurance Policies*

This case generally involves the concept of intrapolicy-limits stacking. This typically encompasses situations where an injured party seeks to hold an insurer liable under an automobile policy for the limits of multiple different vehicles listed in a policy, even when not all of them were involved in a given loss or collision. *Premier Insurance Co. of Illinois v. Kocher*, 402 Ill. App. 3d 756, 760, 932 N.E.2d 1094 (5th Dist. 2010). To decide the case, the

[4] At oral argument, Crabtree argued that if the court were to deem it inappropriate to stack the limits associated with vehicles not involved in the collision, then the court should nevertheless stack the limits for both the covered automobile involved in the collision and a separate non-owned trailer referenced in the policy, thereby resulting in Owners having a total coverage obligation of $2 million.

court must interpret the Owners policy.

It is well settled under Illinois law that the meaning of an automobile insurance policy is a question of contract law. *Hobbs v. Hartford Insurance Co. of the Midwest*, 214 Ill. 2d 11, 17, 823 N.E.2d 561 (2005); *Bruder*, 156 Ill. 2d at 185. Judicial interpretation of an insurance policy starts with the policy's terms. *Bruder*, 156 Ill. 2d at 185. A policy's particular language embodies what was intended by the insurer and the insured. *Id.* If the language is unclear, vague, or confusing, then a policy will be deemed ambiguous. *American States Insurance Co. v. Koloms*, 177 Ill. 2d 473, 479, 687 N.E.2d 72 (1997); *Bruder*, 156 Ill. 2d at 185. Fanciful yet unreasonable constructions of a policy cannot conjure true ambiguities in it. *Hobbs*, 214 Ill. 2d at 17; *Bruder*, 156 Ill. 2d at 193. Instead, a court will give to a policy only a regular and reasonable interpretation. *Gillen v. State Farm Mutual Insurance Co.*, 215 Ill. 2d 381, 393, 830 N.E.2d 575 (2005). Similarly, a court is to refrain from stretching an insurance policy's text in an effort to wrench from it an ambiguity that plainly is not there. *Hess v. Estate of Klamm*, 2020 IL 124649, ¶ 16, 161 N.E.3d 183; *Travelers*, 197 Ill. 2d at 293.

Generally, if the text of an insurance policy is not ambiguous, then courts are to apply the text as it reads, unless the language conflicts with public policy. *Gillen*, 215 Ill. 2d at 396; *Hess*, 2020 IL 124649, ¶ 15; *Hobbs*, 214 Ill. 2d at 17. After all, no legal principle in Illinois mandates evisceration of clearly drafted insurance policy language merely to spare an insured discontent from being unable to access greater levels of insurance coverage. *Menke v. Country Mutual Insurance Co.*, 78 Ill. 2d 420, 426, 401 N.E.2d 539 (1980). On the other hand, the existence of an ambiguity in the language of an insurance policy necessitates looking beyond the policy itself for assistance in construing the agreement. *Bruder*, 156 Ill. 2d at 185. In the context of policies of insurance, courts consider matters of public policy to divine what an ambiguous policy should

be held to mean. *Id.* When two conflicting interpretations of an insurance policy exist, Illinois courts apply the one that gives the advantage to the insured, rather than to the insurer that wrote the document being interpreted. *Koloms*, 177 Ill. 2d at 479; *Bruder*, 156 Ill. 2d at 185. Two primary reasons undergird this public-policy approach to reading an ambiguous policy against the insurer. *Cherry v. Elephant Insurance Co.*, 2018 IL App (5th) 170072, ¶ 12, 94 N.E.3d 1265. First, since one who purchases insurance is doing so to obtain coverage, any content in the policy that may jeopardize the coverage in question should be interpreted with an eye toward fulfilling the purchaser's intention to have coverage. *Id.* Second, insurance policies are drafted by insurers, and failure to draft ambiguous provisions of policies more clearly is the fault of the drafters. *Id.*; see also *Gillen*, 215 Ill. 2d at 396 (noting that an "insurer has the capacity to draft intelligible contracts" (citation omitted)).

Inclusion of language expressly forbidding the "stacking" of insurance limits—frequently called "antistacking" provisions—ordinarily does not contravene public policy. *Hess*, 2020 IL 124649, ¶ 16; *Grzeszczak v. Illinois Farmers Insurance Co.*, 168 Ill. 2d 216, 229-30, 659 N.E.2d 952 (1995). In fact, the Illinois Insurance Code even provides that an insurer may endeavor to include terms in an insurance policy that restrict aggregation of specifically enumerated policy limits. 215 ILCS 143a-2(5) (West 2022). Generally, an antistacking provision that is clear and unambiguous will be applied as written. *Hess*, 2020 IL 124649, ¶ 16. If an ambiguity exists, however, then any insurance policy language attempting to limit the insurer's coverage obligations—including through antistacking clauses—will be interpreted broadly in favor of providing greater coverage for an insured. *Hobbs*, 214 Ill. 2d at 17; *Caster v. Motors Insurance Co.*, 28 Ill. App. 2d 363, 366, 171 N.E.2d 425 (4th Dist. 1961). The primary inquiry in deciding such questions is whether, after analyzing an insurance policy in its entirety, a specific portion of

"the policy language is susceptible to more than one reasonable interpretation." *Founders Insurance Co. v. Munoz*, 237 Ill. 2d 424, 433, 930 N.E.2d 999 (2010) (citing *Hobbs*, 214 Ill. 2d at 17).

3. *Relevant Provisions of the Owners Policy*

The Owners policy is at issue and subject to judicial interpretation in this declaratory-judgment action and may justly be construed under Illinois law. An insurance policy typically contains multiple sections. A policy form document, declarations pages or sheets, and endorsements collectively comprise an insurance contract. *Makela v. State Farm Mutual Insurance Co.*, 147 Ill. App. 3d 38, 46, 497 N.E.2d 483 (1st Dist. 1986). The declarations section of an insurance policy is only one of multiple parts of an insurance contract. *Hobbs*, 214 Ill. 2d at 23. Interpreting an insurance policy requires reviewing not merely a single portion of the contract, but rather the entire document. *Id.*; see also *Zurich Insurance Co. v. Raymark Industries, Inc.*, 118 Ill. 2d 23, 50, 514 N.E.2d 150 (1987). The relevant portions of the Policy at issue for summary-judgment purposes are its antistacking provision and the declarations pages.

a. *The Policy's Antistacking Clause*

The Policy contains a provision designed to limit Owners' liability. Section II.C. of the Policy states in pertinent part as follows regarding the bodily injury coverage provided by the Policy:

> **"C. LIMIT OF INSURANCE**
>
> **We** will pay damages for **bodily injury, property damage** and **covered pollution cost or expense** up to the Limit of Insurance shown in the Declarations for this coverage. Such damages shall be paid as follows:

1. When combined liability limits are shown in the Declarations, the limit shown for each **accident** is the total amount of coverage and the most **we** will pay for damages because of or arising out of **bodily injury, property damage** and **covered pollution cost or expense** in any one **accident**.

2. When separate **bodily injury** and **property damage** limits are shown in the Declarations:

   a. For **bodily injury**:

   (1) The limit shown for "each person" is the amount of coverage and the most we will pay for all damages because of or arising out of **bodily injury** to one person in any one **accident.**

   (2) The limit shown for "each accident" is the total amount of coverage and the most **we** will pay, subject to **2.a.(1)** above, for all damages because of or arising out of **bodily injury** to two or more persons in any one **accident**.

* * *

5. The Limit of Insurance for this coverage may not be added to the limits for the same or similar coverage applying to other **autos** insured by this policy to determine the amount of coverage available for any one **accident** or **covered pollution cost of expense**, regardless of the number of:

   a. Covered **autos**;
   b. **Insureds**;
   c. Premiums paid;
   d. Claims made or **suits** brought;
   e. Persons injured; or
   f. Vehicles involved in the **accident**.

   All **bodily injury**, **property damage** and **covered pollution cost or expense** resulting from continuous or repeated exposure to substantially the same conditions will be considered as resulting from one **accident**."

Policy[5], at 21-22 (emphasis in original[6]). The foregoing text represents the Policy's primary language constituting the antistacking clause.

b. *The Policy's Declarations*

The Owners policy also contains nine separate pages that comprise the declarations. Policy, at 4-12. The Policy's declarations are spread across two separate "item" designations contained within these pages. "Item Two," which spans two pages of the declarations, is entitled "Schedule of Covered Autos and Expenses." Policy, at 4-5. An introductory paragraph on the "Item Two" first page states that the Policy "provides only those coverages where a charge is shown in the premium column" in the table on the same page. The table, in turn, lists multiple rows of various types of coverage. The "Combined Liability" coverage, which appears to be the insurance coverage at issue in this case, is listed in a row adjacent to details reflected in successive columns labeled, from left to right, a set of four "Covered Autos Symbols" ("7, 8, 9, 19"), a "Limit of Insurance for Any One Accident or Loss" ("$1Million [*sic*] each accident"), and a "Premium" ($6,311.69). Policy, at 4. The numbers listed as "Covered Auto Symbols" are not defined anywhere on the page on which the table appears. Instead, the key to decoding the "Covered Auto Symbols" appears on the bottom of the next page of the declarations (which also is the second page of "Item Two"). Policy, at 5.

The second subdivision of the declarations pages spans seven pages. Policy, at 6-12.

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[5] The page numbers reflected in the original policy document itself are not used for reference in this order because the pagination starts over partway through the original Policy as it transitions to a different section. Instead, citations to pages of the Policy are, for purposes of this order, made to the page numbers as shown by the "Owners Page #" reference convention contained at the bottom of each page of Exhibit 1 attached to the parties' Joint Stipulation filed April 22, 2021.

[6] All quotations from the Policy that appear later in this document will exclude any formatting that shows emphasis in the text that appears in the original Policy. Likewise, given the blanket exclusion of emphasis from original quoted text, subsequent citations to the Policy in this order, when quoting from the Policy, will not parenthetically repeat the fact that any emphasis in the original text has been omitted.

This declarations section is entitled "Item Three – Schedule of Covered Autos, Additional Coverages and Endorsements." Policy, at 6. The first page of the "Item Three" section of the declarations is then broken into two subparts. The first subpart is labeled "Hired Autos," and the second is called "Non-Owned Autos Liability." Under each of these two subparts on the first page of "Item Three," the term "Combined Liability" is listed in a row adjacent to details reflected in successive columns labeled, from left to right, "Limits" and "Premium." Policy, at 6.

"Item Three" thereafter continues into the next four pages, and each page is then divided into additional subparts. These four pages' subparts appear under headings slightly dissimilar to those on the first page of "Item Three." Specifically, these four pages appear to reflect a successive list of seven separate, specifically identifiable vehicles listed with a numerical prefix from ranging from "1" to "7." Policy, at 7-10. Each vehicle heading on these four pages reflects the numerical prefix, followed by a year-make-model designation for a vehicle, as well as a corresponding vehicle identification number (except for vehicle number 6, a "2000 Non Owned Trailer" with no vehicle identification number reported). Under each separate vehicular heading, the term "Combined Liability" is again listed independently in a row adjacent to details reflected in successive columns labeled, from left to right, "Limits" and "Premium." Policy at 7-10. The semi-truck involved in the collision that is the subject of the underlying litigation appears to be vehicle number 5 shown on the fourth page of the "Item Three" portion of the declarations. Policy, at 9.

The final two pages of the declarations contain additional Policy-related information. The estimated total premium is shown on the penultimate page of "Item Three" in the declarations. Policy, at 11. A "Scheduled Drivers List," which lists Hute as one such driver, appears on the last page of the declarations. Policy, at 12.

4. *Evaluating Ambiguity in the Owners Policy*

As an initial matter, the court notes that Plaintiffs seek a judicial determination that the Owners policy is ambiguous in its attempts to prohibit intrapolicy-limits stacking. Yet Plaintiffs are neither insureds under nor the insurer for the Owners policy. Owners raised this point in its summary-judgment motion. Owners' 4/26/2021 Mot., at 4. Nevertheless, that Plaintiffs (as well as Crabtree and Price) are not parties to the insurance contract is of no moment here; a non-contracting injured party is permitted to seek declaratory-judgment relief involving liability under an applicable insurance policy. *Skidmore v. Throgmorton*, 323 Ill. App. 3d 417, 422, 751 N.E.2d 637 (5th Dist. 2001). Injured parties (and their representatives) are more akin to beneficiaries of a policy who are legally authorized to assert and seek adjudication of their rights. *Id.* Furthermore, Owners has not substantively suggested, let alone persuasively argued, that Plaintiffs are not permitted to seek declaratory-judgment relief from the judicial interpretation of an insurance policy to which they are not parties.

As noted earlier, this court is obligated to interpret the Owners policy as a whole. In an effort to discharge its duty to construe the Policy fairly and completely, the court has reviewed the entirety of the Policy multiple times. Beyond details necessary to confirm the identity of the insurer and the insured, as well as the Policy's effective dates, the key portions of the Policy for purposes of resolving the summary judgment issues are the antistacking provisions and the declarations pages recited or described above. In reliance upon the general principles for interpreting insurance policies outlined above, the court, through its multiple examinations of those two relevant sections of the Owners policy, has attempted to determine whether the Policy is sufficiently clear. Specifically, the relevant inquiry remains whether the Policy is ambiguous or not in prohibiting intrapolicy-limits stacking.

a. *Construing the Antistacking Provision Alone*

The court is mindful of its ultimate obligation to construe the Owners policy as a whole. *Johnson v. Davis*, 377 Ill. App. 3d 602, 607, 883 N.E.2d 521 (5th Dist. 2007). No court's final evaluation of the ambiguity of any insurance policy can be done by reading any portion of the document "in isolation." *Id.* Nevertheless, the first analytical question in evaluating whether the Policy unambiguously prohibits intrapolicy-limits stacking is to determine whether the Policy's antistacking provisions, standing alone, are themselves clear and unambiguous. If the antistacking language is internally unclear when viewed in isolation, then the court could theoretically halt its analysis and declare the Policy to be fatally ambiguous, thereby resulting in a construction favoring expanded coverage through stacking of the policy's limits. After all, if the antistacking provision does not itself unambiguously forbid intrapolicy-limits stacking, then it is difficult to conceive how the insurance policy as a whole could clearly forbid stacking. On the other hand, if the antistacking clause is clear and unambiguous, then the court appropriately should continue with its analysis of the balance of the Policy's relevant provisions.

Section II(C) of the Owners policy appears to contain the Policy's antistacking provision. One might credibly claim that only subsection (C)(5) of the Policy expressly forbids intrapolicy limits stacking. Policy, at 22. In fairness to the litigants, however, the court cast a wider interpretive net over all of subsection (C) for purposes of evaluating the antistacking provision. The reason for this approach is that, as explained below, a key term in subsection (C)(5) is not really defined in the Policy, and understanding what it means necessitates looking to earlier portions of subsection (C). Thus, the court believes looking at other portions of subsection (C) is warranted to drill down to the true meaning of subsection (C)(5). In addition, since an antistacking provision obviously seeks to limit the insurer's liability, and since Section II(C) of

the Policy is entitled "Limit of Insurance"—which happens to be the aforementioned, undefined key term in subsection (C)(5)—the court believes no harm can be done by ensuring a thorough review of the entirety of subsection (C).

The liability-restriction provision contained in Section II(C) of the Policy is lengthy. Policy, at 21-22. Subsection (C)'s introductory paragraph begins by providing that Owners "will pay damages for bodily injury . . . up to the Limit of Insurance shown in the Declarations for this coverage." Policy, at 21. The Policy's antistacking language goes on in subsection (C)(1) to say that for instances where the "combined liability limits" appear in the declarations pages, "the limit shown for each accident is the total amount of coverage and the most we will pay for damages because of or arising out of bodily injury . . . in any one accident." Policy, at 21. Subsection (C)(2)(a)(1) states that when the declaration pages show a bodily-injury limit on a per-person basis, then the "limit shown for 'each person' is the amount of coverage and the most we will pay for all damages because of or arising out of bodily injury to one person in any one accident." Policy, at 21-22. Subsection (C)(2)(a)(2) further addresses limitations on Owners' coverage obligations through contemplated stacking efforts. This subsection states that "the limit shown for 'each accident' is the total amount of coverage and the most [Owners] will pay, subject to 2.a.(1) above, for all damages because of or arising out of bodily injury to two or more persons in any one accident." Policy, at 22. In subsection (C)(5), the Owners policy concludes its antistacking provisions by elaborating further: "The Limit of Insurance for this coverage may not be added to the limits for the same or similar coverage applying to other autos insured by this policy to determine the amount of coverage available for any one accident . . . , regardless of" a number of different, commonly enumerated variables often used as a basis for stacking policy limits. Policy, at 22.

At first blush, the antistacking clause contains many elements commonly found in valid stacking-prohibition provisions in automobile insurance policies. It contains language seemingly attempting to slam the door on various potential approaches to aggregating limits. This language includes references to the "Limit of Insurance" in the introductory paragraph, contains "any one accident" qualifying language in subsection (C)(1), and states in subsection (C)(5) that "coverage may not be added to the limits for the same or similar coverage applying to other autos insured by this policy," irrespective of the presence or absence of multiple variables. Policy, at 21-22. Even so, the court cannot say that the Policy's antistacking language is a model of clarity. A more searching examination of the antistacking language reveals significant barriers to a finding that there is no ambiguity.

The antistacking clause does not merely list a single set of applicable "Limit of Insurance" figures that would apply on a per-accident (or, where applicable, per-person) basis to all of the vehicles covered by the Policy. Drafting this provision in that way would have ensured that Owners' claim that only a single per-accident insurance limit applies to all covered automobiles could stand on exceedingly firm ground. Instead, in the very first sentence of this antistacking clause, the Owners policy expressly refers the reader to the declarations pages that begins 17 pages earlier in the Policy. Policy, at 4, 21. This drafting approach reveals that Owners wanted to incorporate into the Policy's antistacking language the "Limit of Insurance" reflected in the declarations. Policy, at 21.

Owners certainly could have listed its apparently intended overall limit-of-insurance figure in subsection (C)'s antistacking language. See, *e.g.*, *Obenland v. Economy Fire & Casualty Co.*, 234 Ill. App. 3d 99, 104, 115, 599 N.E.2d 999 (1st Dist. 1992) (in case barring intrapolicy-limits stacking, $300,000 per-person and per-accident limits "shown in the

Declarations" were also printed in text of liability-limitation clause). It appears that a $1 million figure is shown uniformly each of the many times it is listed as a combined-liability coverage limit throughout the declarations pages. Policy, at 4, 6-10. In other words, rather than referring to the reader to the "Limit of Insurance shown in the Declarations for this coverage," Owners conceivably could have written the first sentence of the subsection (C)'s antistacking language to read, "We will pay damages for bodily injury, property damage and covered pollution cost of expense up to a maximum limit of insurance of $1 million per accident," or words to that effect. This revision to subsection (C)—which then clearly would have defined Owners' intended liability limit once and uniformly for the whole policy, rather than requiring the reader to refer to the declarations pages several pages earlier in the document—surely would have strengthened Owners' claim that the antistacking language's $1-million-per-accident insurance limit is unambiguous. By referring the reader to the declarations pages (and thereby drawing in all the problems such incorporation-by-reference drafting technique can cause), instead of just stating in the first sentence of Subsection (C) that the absolute maximum coverage of $1 million per accident is the "Limit of Insurance," Owners missed an opportunity to snuff out what seems to be a readily available avenue of attack by a claim that the antistacking provision is internally ambiguous.

The absence of this arguably clearer approach to drafting the antistacking clause is not necessarily fatal by itself. A document is not rendered legally ambiguous merely because one can conceive of a potentially better way to have written part of it. The court understands that Owners may have had legitimate reasons for not listing the $1-million-per-accident limit a single time in the antistacking clause itself. For instance, while it may be true that Owners could have drafted its policy with a single $1-million-per-accident liability limit in the antistacking clause, a

different policy could conceivably have different maximum per-accident liability restrictions for different types of coverage or in various situations not presented here. By noting that Owners *could* have included the per-accident limit in the antistacking clause in the Policy being construed in this case, the court does not go so far as to indicate that the law requires it to do so. Instead, the court is merely pointing out one way that Owners could have addressed the issues in the Policy now under scrutiny in this case.

Unfortunately, there are other problems with the Policy's antistacking provision. Owners' insertion of Sections II(C)(1) and II(C)(2)—right in the middle of what might otherwise be a fairly typical antistacking clause—makes understanding the clause as a whole far more difficult. For example, subsection (C)(1) uses the plural term "combined liability limits" (emphasis added), immediately followed by a reference to the singular term in the phrase "limit shown" in the same textual sentence. Policy, at 21. The term "combined liability limits" does not appear to be defined anywhere in the Policy. Furthermore, use of the plural term "combined liability limits" in subsection (C)(1) could cause one reasonably to question whether the declarations pages to which the prior paragraph refers the reader should properly be characterized as reflecting only a single non-aggregating "limit," which is the position taken by Owners. If so, then it is not clear why Owners would have used the plural word "limits," which term unequivocally suggests the availability of multiple limits. If Subsection (C)(1) began with the words "When a combined liability limit is shown in the Declarations" (as opposed to "When the combined liability limits are shown in the Declarations), the confusion that arises from the interplay of the plural word "limits" and the singular word "limit" would be alleviated, and the antistacking clause would not internally be suggesting the availability of multiple "combined liability limits." Policy, at 21 (emphasis added).

More broadly, the court cannot understand why the plural "combined liability limits" phrase is used at all in subsection (C)(1). Beyond the interpretation of this language urged by Owners, use of the adjective "combined" seems to indicate that combination or aggregation of limits in the declarations pages is expressly contemplated, rather than forbidden, by Section II(C) of the Policy. The absence of a specific definition of the term "combined liability limits" helps Owners not at all here. It should be noted that expression of the court's confusion admittedly does not mean that there might not be some crystal-clear explanation for why the plural word "limits" (and perhaps also the word "combined") is deployed there and in that fashion; rather, the court notes only that such an explanation has not become apparent to it in the many months during which this case has been under advisement.

The issues with subsection (C)(1) unfortunately do not end there. This paragraph does not appear to include the kind of language frequently cited by reviewing courts as helping to ameliorate interpretive confusion—that is, language suggesting that the per-accident limitation is "regardless of the number of" certain variables. See, *e.g.*, *Squire v. Economy Fire & Casualty Co.*, 69 Ill. 2d 167, 173, 370 N.E.2d 1044 (1977); *Hanover Insurance Co. v. Cormack*, 78 Ill. App. 3d 368, 371, 396 N.E.2d 1076 (1st Dist. 1979). While this regardless-of-the-number language does crop up later in subsection (C)(5) (as discussed in this order below), this key language's omission in subsection (C)(1) certainly does not help resolve the plural-vs.-singular problem in the use of the word "limit" in subsection (C)(1).

Additionally, Section II(C)(2)'s reference to occurrences on the declarations pages "[w]hen separate bodily injury *and* property damage limits are shown" leaves further questions about the antistacking clause's true meaning as written. Policy, at 21-22 (emphasis added). To the extent that subsections (C)(2)(a)(1) and (a)(2) seek to make clear that no aggregation of per-

person or per-accident limits (that may otherwise be shown on or suggested by the declarations pages) should be permitted, they fall short of the mark. It is unclear why subsections (1) and (2) of Section II(C)(2)(a) would apply only if separate bodily injury limits *and* separate property damage limits appear in the declarations. Policy, at 21. Since subsections (1) and (2) separately identify the types of limits involved—"bodily injury" in the former, and "property damage" in the latter—it would have made far more sense for the conjunction "or" to appear in place of the word "and." Subsection (C)(2)(a)(2)'s internal reference to the immediately preceding paragraph—that is, subsection (a)(1)—appears to be an additional sub-limitation on a per-person allocation of any coverage obligations. Policy, at 21-22. What the Policy means by saying that subsection (C)(2)(a)(2)'s per-accident coverage limitation is "subject to" subsection (a)(1) also is not clear. It may mean what Owners wants it to say—namely, that the per-accident "Limit of Insurance" (whatever that term means) is the cap on the insurer's liability per accident no matter how many persons are injured. The subject-to-(a)(1) language also could reasonably be interpreted to mean that the per-accident limit must surrender, give way, yield, or be "subject to," any per-person limits if the number of persons injured in any single accident were to require payments in excess of the per-accident limits. As written, Section II(C)(2) is extremely difficult to follow as presented by the Policy.

Moreover, the foregoing drafting gaffes—irrespective of whether they were unintentional errors or deliberate word choices—conspire to disturb the interpretive waters in which the language of Section II(C)(5) might ordinarily have floated comfortably. Subsection (C)(5)—the last provision of the Policy's antistacking provision that Owners presumably intended to bat clean-up and knock any claims of entitlement to stack intrapolicy limits out of the park—contains some important language intended to help the insurer. Specifically, this subsection

begins by saying that the "Limit of Insurance for this coverage may not be added to the limits for the same or similar coverage applying to other autos insured by this policy to determine the amount of coverage available for any one accident." Policy, at 22. This restriction is followed by important antistacking-related language by indicating that an intended restriction on limits stacking exists "regardless of the number of" six different variables that may exist in various configurations of automobile collisions. Policy, at 22. After identifying these multiple variables that it deems irrelevant to the question of whether stacking of limits may otherwise be permitted, subsection (C)(5) ends by declaring that "[a]ll bodily injury [and] property damage . . . resulting from continuous or repeated exposure to substantially the same conditions will be considered as resulting from one accident." Policy, at 22.

It is here that the court must pause briefly to draw a line in parsing its conclusions thus far in reading the antistacking clause in the Owners policy. If the reasoning advanced by the court to this point were insufficient to support its conclusion that the Policy's antistacking clause were ambiguous by its own terms, and if the court were to overlook subsection (C)(5)'s use of the undefined term "Limit of Insurance," then the court might have concluded that subsection (C)(5), standing by itself, could potentially be a reasonably clear antistacking clause. In other words, if the Policy's antistacking language were contained entirely within only subsection (C)(5), and if the term "Limit of Insurance" were divined to mean what Owners says it should be read to mean, then the court probably would conclude that subsection (C)(5), standing on its own, would *not* be subject to attack on ambiguity grounds. When viewed in isolation, subsection (C)(5) seems to contain key antistacking language that has been found sufficient to resolve ambiguities in some policies construed by Illinois reviewing courts.

The court does not believe, and the parties themselves have not argued, that the

antistacking provision of the Policy is contained solely within subsection (C)(5). Instead, as outlined above, the court finds the relevant antistacking language to be strewn throughout all of Section II(C). If it were objecting to the court's sweeping of earlier portions of subsection (C) into its antistacking clause analysis, Owners might claim that only subsection (C)(5) should be considered the antistacking provision of the Policy, rather than the entirety of subsection (C) that the court has analyzed. One difficulty with this argument would be that the all-important term "Limit of Insurance" that opens subsection (C)(5) is defined nowhere in the Policy. The closest thing the Policy reflects for a definition of the term is the same term's use in the first sentence of the introductory paragraph of subsection (C), which, as discussed in this order above, fails to provide any specific definition and instead merely redirects the reader to the declarations pages. Thus, while Owners' defense that the antistacking clause is itself not internally inconsistent would be strengthened if only subsection (C)(5) were deemed to be the clause in question, that subsection's use of the indeterminate term "Limit of Insurance," and the necessity of looking elsewhere in subsection (C) to figure out what that term means when interpreting the Owners policy, somewhat undercuts any ground Owners might gain if the court's construction of the antistacking provision were restricted to subsection (C)(5) alone. In concluding that it is appropriate to examine all of the language in subsection (C) and that the entire subsection is the Policy's antistacking clause, the court notes that Owners itself identified subsection (C) as "[t]hat section" of the Policy containing the "anti-stacking clause" (and not merely subsection (C)(5)). Owners' 4/26/2021 Mot., at 2, 7; Owners' 5/27/2021 Response, at 7. Likewise, Plaintiffs urge the court to interpret all of Section II(C) when analyzing limits-stacking issues. Pls.' 4/21/2022 Memo, at 13-14.

Reading the entire antistacking clause together as a whole and in isolation, the reader

justifiably could be uncertain whether the singular term "Limit of Insurance" identified in Section II(C)(5) refers to a single, non-aggregating per-accident or per-person insurance limit, or, alternatively, to the more nebulous and expansive possible set of "combined liability limits" in the declarations pages (and as referenced in subsection (C)(1)). Policy, at 21-22. Here again, the court notes that simply defining in Section II(C) what the "Limit of Insurance" for the policy is by writing that it is $1 million per accident—no matter what other portions of the Policy may say—would potentially have removed any credible claim that the Policy is subject to interpretive ambiguity. That the antistacking policy does not make this statement, and that Section II(C) points the reader elsewhere to the declarations pages in the Policy, arguably subjects the antistacking provision to multiple different reasonable interpretations.

A key theme of Owners' arguments in this case has been that the language of the antistacking clause, and its subsection (C)(5) in particular, would eliminate any confusion that may result from other portions of the Policy. Owners advanced this argument primarily to claim that a good antistacking provision would eliminate any confusion that may result from problems with the structure or content of a policy's declarations page. This precise argument has been the conclusion of multiple federal courts tasked with applying Illinois law to the limits-stacking cases before them. See, *e.g., Grinnell Select Insurance Co. v. Baker*, 362 F.3d 1005, 1007 (7th Cir. 2004). Unfortunately for Owners, this argument seems rather unpersuasive, and far too weak to carry the day, when the language of the Policy's antistacking clause is itself internally inconsistent and hard to follow. Simply put, while a good antistacking provision might theoretically have eliminated confusion, the Owners antistacking provision is *not* a particularly good one.

In summary, the antistacking language contained in Section II(C) of the Policy suffers

from four significant problems: (1) It fails to declare clearly and unambiguously a single per-person or per-accident limit that would apply to all automobiles covered in the declarations; (2) it alternately uses singular and plural versions of the word "limit" in a way that makes the antistacking clause internally confusing, especially in subsection (C)(1); (3) the conjunctive linking of "separate bodily injury and property damage limits" in subsection (C)(2)(a) renders that entire subsection somewhat impenetrable to the mind seeking to understand what it means or how its two subsections—(2)(a)(1) and (a)(2)—would operate; and (4) use of the undefined term "Limit of Insurance" in subsection (C)(5)—which, when read in conjunction with the first paragraph of subsection (C), seems to leave the definition of the key term "Limit of Insurance" up to whatever the declarations pages may offer when interpreted—undermines any claim that the antistacking provision's final subsection settles any ambiguity claim.

As a result of the foregoing problems that are revealed when Section II(C) of the Policy is evaluated on its own and in isolation, the antistacking provision is, at best, unintelligible in some respects. At worst, the Policy's antistacking clause is subject to multiple different reasonable interpretations. After careful consideration, and for the foregoing reasons, the court finds that the Policy's antistacking clause is ambiguous in and of itself as to whether it prohibits intrapolicy-limits stacking.

b. *Construing the Declarations Pages Alone*

The court remains aware that its ultimately responsibility is to construe the entire Owners policy as a whole. Just as it has done with the antistacking clause, however, the court next endeavors to learn what it can from evaluating the policy's declarations pages in isolation. In doing so, the court notes that any determination it may make about whether ambiguities exist in

the declarations pages by themselves would not end the process of construing the Policy. Whereas the court probably could halt its analysis and declare the Policy ambiguous when the antistacking provisions are themselves unclear, the same is not true for a declarations-in-isolation review. The whole point of an antistacking clause, it has been reasonably argued, is to clear up any lack of clarity that declarations pages may create based on what they say or how they are structured. Even so, it makes sense to look briefly at the declarations pages alone before examining the interplay of the antistacking clause and the declarations together. For example, if the declarations of a policy were drafted such that there could be no reasonable construction of them to suggest that stacking of limits might be permitted, then what the antistacking provision says (or does not say) would be either irrelevant or of little consequence. To put it another way, if the declarations pages do not lend themselves to multiple interpretations or some other form of reasonable confusion, then an insurance policy could be easily found to be unambiguous.

Accordingly, the court next turns its attention to the Owners policy's declarations pages. The first page of the "Item Two" portion of the declarations pages contains a chart. Policy, at 4. As outlined earlier, the chart's third column from the left is labeled "Limit of Insurance for Any One Accident or Loss." Policy, at 4. In the "Combined Liability" row of this chart, a "$1Million [*sic*] per accident" figure is listed in exchange for a single listed premium. Policy, at 4. If the court were to stop examining the declarations pages here on the first page of "Item Two" of the declarations, then it might be able to call the case for Owners.

Plaintiffs argue that inclusion of numerical codes in the chart on the first page of the "Item Two" section of the declarations creates ambiguity. The court disagrees with Plaintiffs on this point. After examining the chart and its use of numerical symbols to refer to different types of covered automobiles, the court sees no reason to conclude that the use of symbols is fatally

unclear. See *Hanson v. Lumley Trucking, LLC*, 403 Ill. App. 3d 445, 932 N.E.2d 1179 (5th Dist. 2010).

A cursory review of the aforementioned chart appears to say that the "Limit of Insurance" for all "Combined Liability" coverages for all covered automobiles is $1 million per accident. Regrettably, flipping through subsequent pages in the Policy's declarations shows why the court must not stop on that first page of "Item Two." Beginning on the second of the pages comprising the "Item Three" section of the declarations, seven specifically enumerated vehicles are listed. Policy, at 7-10. For and under each and every one of these seven vehicles, an additional chart appears. Policy, at 7-10. Each chart contains a first row that indicates, when read from left to right, that the "Combined Liability" coverage of "$1Million [*sic*] per accident" is provided in exchange for a listed premium. Policy, at 7-10. The net effect of the charts for vehicles numbered 1 through 7 is a separate per-vehicle listing reflecting that the insurer is providing $1 million of combined liability coverage per accident. Policy, at 7-10.

Retreating back to the question that applies to the declarations pages, the court has examined whether the declarations as written create any ambiguity about whether the Policy could reasonably be read to permit intrapolicy-limits stacking. In view of the weight of the authorities cited by the parties in this summary-judgment litigation, the answer is clear: Yes, the declarations pages, when read alone and in isolation, could be read to suggest that Owners contracted to provide seven different $1-million-per-accident coverages in exchange for seven different listed premiums.

Of course, an insured's payment of multiple premiums for a particular kind of insurance coverage does not mean an insured is always warranted in claiming some higher level of protection than if only one premium had been tendered. *Luechtefeld v. Allstate Insurance Co.*,

167 Ill. 2d 148, 157-58, 656 N.E.2d 1058 (1995). Thus, that an insurance policy's declarations might list a separate itemized premium on a per-vehicle basis does not necessarily mean that the insurer has consented to the stacking of the various policy coverage limits that would correlate with the various premiums paid. *Id.* The key inquiry nowadays, as Illinois law has developed in cases analyzing the stacking of insurance policy limits, is really more an issue of how an insurance policy's declarations pages are structured.

In *Bruder v. Country Mutual Ins. Co.*, the Illinois Supreme Court confronted a complicated factual scenario quite dissimilar from the underlying facts in the case at bar. 156 Ill. 2d at 185, 187. The value of the opinion stems from its discussion of the apparent legal significance that exists when liability limits for multiple automobiles covered by a policy are listed separately next to each covered vehicle in the policy's declarations. The *Bruder* policy's declarations page itemized two covered automobiles in rows that read from left to right, and in which, for each of the two vehicles, separate adjacent columns outlined the premiums charged for each vehicle in a given row. *Id.* at 192. The per-person liability limit, however, was listed only once on the declarations page, presumably encompassing both of the covered vehicles shown on that page within the single per-person liability limit listed on that same page. *Id.* The absence of a listing of the liability limit in each of the "sentence-like lines" in which each covered automobile appeared was significant to the supreme court's decision that no ambiguity existed in what the policy's liability limits were. *Id.* Since no ambiguity existed, the high court concluded that the policy could not be read to open the door to the possibility of stacking the two policy limits. *Id.* at 194.

The *Bruder* court went on to hypothesize about the ease with which an ambiguity in the policy could have resulted if the liability limit had been listed within each row in which a

separate covered vehicle were identified. *Id.* at 192. In such a scenario, the supreme court concluded that "[i]t would not be difficult to find an ambiguity created by such a listing." *Id.* Under such circumstances, the supreme court declared that "[i]t would be more reasonable to assume that the parties intended that" multiple liability limits were established. *Id.* This language undoubtedly is *dicta* because the supreme court expressly noted that its hypothetical was "not the case" before it. *Id.* at 192-93. In fact, later decisions from the supreme court itself have confirmed that this language from the *Bruder* opinion was *dicta*. See, *e.g., Hess*, 2020 IL 124649, ¶ 20 (expressly characterizing operative *Bruder* language as "*dicta*").

Nevertheless, what is now commonly called the "*Bruder dicta*" is a stepping-off point at which begin the various lines of reviewing-court opinions cited by the parties in the case at bar in support of their respective summary-judgment positions. See, *e.g.*, *Bowers v. General Casualty Insurance Co.*, 2014 IL App (3d) 130655, ¶ 10, 20 N.E.3d 843 (calling *Bruder* "the seminal case in the interpretation of antistacking clauses"); *Striplin v. Allstate Insurance Co.*, 347 Ill. App. 3d 700, 703, 807 N.E.2d 1255 (2d Dist. 2004). Although usually not credited with controlling authority or as binding precedent, statements of judicial *dictum* like those in *Bruder* generally are "entitled to much weight and should be followed unless found to be erroneous." *Pekin Insurance Co. v. Estate of Goben*, 303 Ill. App. 3d 639, 649, 707 N.E.2d 1259 (5th Dist. 1999) (determining *Bruder dicta* was Supreme Court's pronouncement of central reasoning to case's outcome); see also, *e.g.*, *Cates v. Cates*, 156 Ill. 2d 76, 80 (1993) (distinguishing judicial *dictum* from general *obiter dictum* and finding the former "entitled to much weight"). When such *dictum* issues from a court of last resort (such as our own state's highest court), our supreme court has characterized that such *dictum* is "tantamount to a decision" that should be "followed unless found to be erroneous." *Cates*, 156 Ill. 2d 76, 80, 619 N.E.2d 715 (1993). Thus, for

purposes of the analysis of the Owners policy, this court concludes that the *Bruder dicta* is the supreme court's pronouncement of the law on how declarations pages should be analyzed, and unless somehow found to be plainly wrong, the *Bruder dicta* should be applied here.

In reviewing all of the published opinions cited by the parties in their briefing papers, the court located no set of declarations pages analyzed in any such opinion that was similar in structure to the declarations in the Owners policy. In the Policy involved in this case, the declarations span nine pages. Policy, at 4-12. The "Item Two" portion of the declarations contains a chart listing combined liability limits of $1 million per accident in exchange for a single premium. Policy, at 4. Then, in the "Item Three" portion of the declarations, a new chart appears listing seven different vehicles over several pages, with each vehicle having its own express listing of combined liability limits, including another listing of $1 million per accident as an insurance limit, as well as associated (yet different) premiums. Policy, at 6-10. This combination of multiple different charts complicates Owners' path to summary judgment. While it is true that the insurer's view of how the charts should be interpreted—that is, the "Item Two" chart is merely a summary of the subsequent charts and tables reflected across several pages of "Item Three"—there is obviously another reasonable way to read the declarations: The insurer was offering multiple per-accident insurance limits, one for each of the covered vehicles.

By way of illustration, one reasonably could assert that if Owners truly meant the "Item Two" chart (and accompanying listing of per-accident coverage limits and associated premium) to be merely a summary, and not a separate expression, of liability limits that could not be exceeded by the content of "Item Three" on subsequent pages, then Owners easily could have said so. Among other obvious places for such an expression would have been in the introductory paragraph at the start of "Item Two." Policy, at 4. Alternatively, Owners could have made this

clear on one, or even *any*, of the multiple "Item Three" pages of the Policy's declarations. Policy, at 6-10. By failing to articulate precisely what the reader should understand to be included within the scope of the "Item Two" and "Item Three" components of the Policy's declarations pages, Owners missed another opportunity to draft carefully and avoid the ambiguity claim advanced by Plaintiffs (and Price and Crabtree). When addressing this issue, Owners argued that Plaintiffs are required to show that an ambiguity exists between "Item Two" and "Item Three." Owners' 5/27/2021 Response, at 1. Plaintiffs have done so by demonstrating either that there is an actual interpretive conflict between what "Item Two" and "Item Three" mean, or that it is at least materially unclear why the declarations pages were written as they exist in the Policy. The court believes that it is Owners' responsibility at this point to demonstrate how there is only one clear interpretation of what the Policy's declarations mean.

Yet another issue in the Owners policy's declarations pages—and an issue that actually supports Plaintiffs' suggestion that "Item Two" and "Item Three" may not be merely different ways of expressing the same content—is the curious inclusion of certain language on the first page of "Item Three." Specifically, Owners wrote the following: "This policy is amended in consideration of the additional or return premium shown below." Policy, at 6. This text appears nowhere in "Item Two," including on the page where the initial chart is printed. Policy, at 4. If this language were intended to apply to the coverage listed in the chart in "Item Two," then it seems the language would have been printed there, either in the first instance in the Policy or as the only instance in the Policy. Inserting this language *after* "Item Two," and only at the start of "Item Three," makes little sense if the "Item Two" and "Item Three" charts are really just different representations of identical data. Owners supplied no compelling explanation for why this occurred. Even if Owners had offered some rationale, though, the explanation essentially

would need to eliminate the ambiguity that would reasonably exist in a reader's mind, rather than simply offer a plausible explanation for the discrepancy. Thus, one could read the Policy's declarations as suggesting that "the additional or return premium shown below" in "Item Three" is separate from the premiums listed in the chart on the first page of "Item Two." Policy, at 4, 6. From there, it is an easy and reasonable step of logic to conclude that the "additional or return premium" on "Item Three" would have purchased something—likely new or additional coverage—beyond that reflected in "Item Two." To be clear, it also may be, as Owners surely would argue, that the language at the top of the first page of "Item Three" was also referring to the coverage listed in the "Item Two" chart. That certainly is one way to read it. The point, though, is that there is at least one other reasonable way to read it, and therein lies the problem for Owners.

As it chooses to frame the question, Owners essentially argues, "If our explanation is a reasonable explanation for why the declarations pages say what they say and are structured how they are structured, then the court must find the declarations to be unambiguous." As the court understands the relevant question, though, the issue is not whether the insurer can articulate a reasonable explanation for why the policy was drafted in the way the insurer drafted it. Instead, and in contrast to the insurer's proposed framing of the inquiry here, the court concludes that the issue is more properly framed in a different way. Specifically, rather than asking whether the insurer has a reasonable explanation, the better question—the controlling one, as it were—is this: Is the insurer's explanation *the only reasonable interpretation* of how the declarations were written? If the answer is yes, then the policy in question would not be ambiguous. If the answer is no, then the policy may very well be held to be ambiguous, irrespective of how reasonable the insurer's explanation might be. When looking at the Policy's declarations pages in isolation, the

court holds them to be quite problematic and subject to multiple reasonable interpretations.

c. *Construing the Antistacking Provision and the Declaration Pages Together*

Although the problems with the antistacking clause and the declarations in the Owners policy are manifest, interpreting an automobile insurance policy often turns on the extent to which the sum of those problems may render a policy ambiguous. As discussed above, one of the biggest problems with understanding the Owners policy is the fact that the antistacking clause, which itself is hardly a model of clarity, specifically draws upon, and expressly refers the reader to, the Policy's declarations pages. When a limitation-of-liability clause (including one that purports to address antistacking) refers the reader to the declarations page to identify a "limit," the court is required to determine what the declarations actually show the limit to be. *Kocher*, 402 Ill. App. 3d at 761. This reality thus leads directly to the other major problem with trying to interpret the Owners policy—the content and structure of the declarations pages makes it difficult to achieve only a single, reasonable interpretation of what the precise maximum-liability limits are under the Policy. The per-vehicle separate listing of insurance coverage limits throughout multiple pages of the declarations greatly exacerbates the scope of the problem. Policy, at 4-10. To be sure, there exists no *per se* rule that listing insurance liability limits multiple times on a policy's declarations page(s) will make the policy ambiguous. *Hess*, 2020 IL 124649, ¶ 22. Instead, as discussed on multiple occasions above, a policy's declarations pages are to be read in conjunction with any antistacking clause it contains. *Id.*, ¶¶ 22, 24. This analysis must be done independently in each case. *Id.*, ¶ 22. Having previously examined and discussed both the antistacking clause and the declarations each in isolation, the court now pivots to conducting the policy-as-a-whole interpretation that undisputedly is required before finalizing

any decision about whether the Policy is ambiguous on intrapolicy-limits stacking.

From the court's review of all of the relevant stacking-related cases cited by the summary-judgment litigants, the Owners policy appears to be somewhat unique in the length and structure of its declarations pages. As hinted in the prior subsection, this fact alone does not necessarily toss the Owners policy into the ambiguity dustbin; nonetheless, the length, content, and structure of the Policy's declarations certainly do not help matters.

The existence of multiple conflicting declarations pages long has been fodder for courts to explore the existence of possible ambiguity in stacking cases. For example, in *Squire v. Economy Fire & Casualty Co.*, the Illinois Supreme Court permitted stacking of multiple per-person limits when the policy at issue contained two separate declarations pages—one in the original policy and a second that was included in an endorsement later added to the policy. 69 Ill. 2d at 170. Although *Squire* was partly decided because the insurer was paid a small additional premium to secure the extra endorsement, the opinion still stands for the proposition that, as of at least 45 years ago, an insurer must beware when an injured party calls upon a court to construe an automobile insurance policy where the content and structure of a policy's declarations pages create any potential dispute about what the policy might mean in terms of available coverage or the aggregation of that coverage. *Id.* at 173-75. The Policy in this case did not contain two separately issued declarations pages like there were in *Squire*. Even so, the "Item Two" and "Item Three" structure containing multiple different charts and tables, each of which in turn contains multiple per-accident coverage limits, fairly could be said to draw upon the same kind of multiple-declarations reasoning underlying part of the supreme court's decision in *Squire*. Owners argued that the holding in *Squire* is not as robust today as it was in the late 1970s due to intervening opinions that have considered a wide variety of policy-interpretation

issues. Owners' 5/27/2021 Response, at 20. Owners is correct on this point. The court here cites to *Squire* merely to point out that the issues inherent with multiple or overly complicated declarations pages has long been a bane to insurer-litigants in Illinois.

When the *Bruder dicta* issued from our supreme court 16 years after *Squire*, the high court unquestionably put insurers on notice for the first time—if not *again*—that they must take great care with how declarations pages are structured to avoid opening the door to claims that policies are ambiguous on limits-stacking issues. *Bruder*, 156 Ill. 2d at 192. Even if that *dicta* were not controlling at the time the opinion was issued in 1993, *Bruder* was, at a minimum, a very clear warning flag to the unwary insurer. In the caselaw that has emerged since *Bruder*, the fundamental principle of its *dicta* has been repeatedly stressed: For an antistacking clause to have effect, the declarations in automobile insurance policies must not be structured in a way that could be read as separately listing insurance limits on a per-vehicle basis.

Following its issuance in 1993, a line of cases flowing from the *Bruder dicta* has consistently upheld its core principles for the last 30 years. In *Pekin Insurance Co. v. Estate of Goben*, a policy involving underinsured-motorist coverage contained an antistacking clause that included important and aforementioned regardless-of-the-number language. 303 Ill. App. 3d at 646. The antistacking clause used the term "Limit of Insurance," but it did not define this term. *Id.* The antistacking provisions expressly referred the reader to the declarations. *Id.* In the declarations pages, multiple vehicles were listed, and a separate set of "limits" was listed with each vehicle. *Id.* at 647. The trial court granted summary judgment in favor of the insured and determined that the policy limits could be stacked. *Id.* at 642. After citing *Bruder* and discussing its *dicta*, the appellate court reasoned that the declarations' same-page listing of coverage limits associated with each of multiple automobiles shown on the declarations created

multiple different reasonable interpretations. *Id.* at 647-649. The per-automobile listing of separate coverages sufficed to create interpretive ambiguity that was not resolved by the antistacking clause. *Id.* at 648-49. Thus, the *Goben* policy was subject to stacking of two separate $500,000-per-vehicle limits, and the trial court was affirmed. *Id.* at 649.

In the year after *Goben* was decided, the appellate court addressed intrapolicy-limits stacking again in *Yates v. Farmers Automobile Insurance Ass'n*, 311 Ill. App. 3d 797, 724 N.E.2d 1042 (5th Dist. 2000). The *Yates* automobile policy included an antistacking provision, and this provision included the common regardless-of-the-number language. *Id.* at 799-800. When describing coverage limits, the antistacking clause read that the "limit of liability" was "*shown in the Declarations* for this coverage." *Id.* at 799 (emphasis in original). The declarations page, in turn, listed per-person and per-accident limits separately "under each of the two vehicles" shown on the page. *Id.* at 800. The trial court granted declaratory judgment and found that two $50,000 policy limits shown on the declarations were subject to stacking. *Id.* at 798. The appellate court affirmed, finding the antistacking clause's attempt to impose a "maximum limit of liability for all damages resulting from any one accident" to be not merely ambiguous, but also "contradictory" in the face of the separate per-vehicle listing of coverage limits in the declarations. *Id.* at 799-800.

In 2001, the appellate court weighed in again on a stacking case in *Skidmore v. Throgmorton*, 323 Ill. App. 3d 417, 751 N.E.2d 637 (5th Dist. 2001). In *Skidmore*, a multiple-vehicle accident occurred, and two separate policies issued to two separate insureds were subject to interpretation. *Id.* at 418-419. In post-trial litigation, the plaintiff sought a judicial determination that the available coverage was greater after stacking coverage limits from multiple different coverages in each of the two policies. *Id.* at 419. The policy at issue in the

case contained an antistacking provision with regardless-of-the-number language. *Id.* at 423. The antistacking clause incorporated the policy's declarations page by reference. *Id.* In the two policies, each had a declarations page that listed two automobiles together with separate coverage limits. *Id.* Upon ultimately concluding that the policy was ambiguous, the trial court held that the four $100,000 coverage limits for each of the four vehicles in the policies (two vehicles in each of the two policies involved) should be permitted. *Id.* at 419. The appellate court affirmed the trial court's authorization of stacking, finding that the trial court properly relied upon, in part, the *Bruder dicta*. *Id.* at 425-26.

The Illinois Supreme Court took up the question of intrapolicy-limits stacking again in *Hobbs v. Hartford Insurance Co. of the Midwest*, 214 Ill. 2d 11, 823 N.E.2d 561 (2005). In consolidated appeals from two cases involving underinsured-motorist coverage in policies each covering multiple automobiles, the supreme court reversed the trial and appellate courts' holdings that stacking was permitted. *Id.* at 15-16, 31. In *Hobbs*, the supreme court discussed and reiterated its *dicta* in *Bruder*. *Id.* at 20-21. Without backing away from the *Bruder dicta*, the supreme court distinguished *Hobbs* from its prior *dicta* because the conditions set forth in the *dicta* were not present; that is, the declarations page in both *Bruder* and *Hobbs* "importantly[] lists the relevant limit of liability only once." *Id.* at 21. Interestingly, the supreme court took the opportunity in *Hobbs* to discuss *Yates* and suggest that the Fifth District's opinion was correct under the *Bruder dicta* in holding that the *Yates* insurance policy was ambiguous because its "declarations page listed the underinsured-motorist limits twice—once for each of the two covered vehicles." *Id.* at 25 (discussing *Yates*). This court finds *Hobbs* significant in this respect because, when first presented with the opportunity to disavow or overrule *Yates* or otherwise repudiate the *Bruder dicta*'s force as a statement of Illinois law, the supreme court did not do so.

This is especially instructive when the supreme court demonstrated in the very same opinion that it would readily overrule a decision of the appellate court if the decision were deemed incorrect. *Id.* at 26-27 (discussing *Hall v. General Casualty Co. of Illinois*, 328 Ill. App. 3d 655, 766 N.E.2d 680 (5th Dist. 2002), finding it "wrongly decided," and expressly overruling it).

In *Johnson v. Davis*, four separate vehicles were covered by the automobile insurance policy being analyzed. 377 Ill. App. 3d at 602. On the declarations, which spanned three pages, each vehicle was listed together with a separate set of coverage limits. *Id.* at 608-09. The trial court found the policy ambiguous, and the insurer appealed. *Id.* at 606. Relying upon the *Bruder dicta*, the *Johnson* court found its policy ambiguous in prohibiting stacking because "the limits of underinsured-motorists coverage are listed four separate times, once for each vehicle," together with "[f]our separate premiums." *Id.* at 609. In concluding that finding the ambiguity required no particular overreaching or creativity on this basis, the appellate court held that the structure of the declarations pages created an ambiguity by conflicting with the language of the antistacking clause in part because the latter referred the reader to the former to discover the liability limit. *Id.* at 609-10. The appellate court affirmed the trial court's summary judgment determination, finding that the four $50,000 limits listed for the four vehicles in the declarations were subject to stacking. *Id.* at 606, 610.

In *Progressive Premier Insurance Co. of Illinois v. Kocher*, two vehicles covered by the same automobile insurance policy collided with one another. *Kocher*, 402 Ill. App. 3d at 757. An antistacking provision specified that the "limit of liability shown on the Declarations Page" would apply, and regardless-of-the-number language was included. *Id.* (emphasis omitted). In a tabular format showing the vehicles at the start of horizontal rows, multiple covered vehicles were listed, and each was in a row showing relevant coverage types adjacent to corresponding

limits for each type. *Id.* at 757. Noting that the case appeared to be the first in Illinois where two vehicles covered by a single policy had collided with one another, the trial court held that the Progressive policy did not unambiguously address what would happen in such a situation. *Id.* at 759. The trial court granted summary judgment in favor of the insured defendant and against the insurer, and stacking of two $100,000 bodily injury limits—one for each vehicle involved in the crash—was permitted. *Id.* On appeal, the *Kocher* court noted that the case was not a "true" stacking case because the insured was simply seeking to aggregate the coverages for both of the covered vehicles involved in the collision, rather than, for example, a third covered automobile that was not involved. *Id.* at 764. After citing to a number of stacking-related cases that had been decided at that point (2010), the appellate court summarized the authorities as inducing a rule of sorts. *Id.* at 761. The appellate court articulated this rule as follows:

> "[W]here the declarations page lists the policy limits . . . more than once, this creates an ambiguity regarding whether the coverage may be stacked and that ambiguity must be resolved in favor of the insured. Where, however, the limit is shown only once, these cases have held that there is no ambiguity and the coverages do not stack."

Id. (citing several cases, including the supreme court's *Bruder* and *Hobbs* opinions). The *Kocher* opinion noted that, despite having the opportunity to do so when deciding the *Hobbs* case, the supreme court did not overrule the *Yates* approach to interpreting an insurance policy by focusing on its declarations page. *Kocher*, 402 Ill. App. 3d at 762. According to *Kocher*, the supreme court applied the *Bruder dicta* in *Hobbs* and declared that *Yates* was decided correctly. *Id.* at 762. Noting that *Bruder* provided a clear statement of the law in Illinois, the *Kocher* court determined that the supreme court placed great "importance of the declarations page layout in interpreting the policy as a whole." *Id.* (citing *Bruder*). In the policy in question, the presence of separate listings of bodily-injury limits with each separate involved vehicle created an ambiguity,

so the trial court's order permitting aggregation of two vehicles' limits was affirmed. *Id.* at 764-66.

In *Bowers v. General Casualty Insurance Co.*, underinsured-motorist coverage in an automobile insurance policy found itself subject to judicial scrutiny. 2014 IL App (3d) 130655, ¶ 1. The policy's declarations listed three covered vehicles, as well as three separate limits and three separate premiums (one for each listed automobile). *Id.*, ¶ 2. Using typical regardless-of-the-number language, the policy's antistacking clause referred to "[t]he limit of liability shown in the Schedule or in the Declarations" twice, once on a per-person basis and once on a per-accident basis. *Id.*, ¶ 3. Considering summary-judgment cross-motions, the trial court ruled in favor of the plaintiffs and interpreted the policy to allow stacking of the underinsured-motorist coverages. *Id.*, ¶ 5. After declaring the *Bruder dicta* to be "seminal" in construing antistacking provisions in insurance policies, the appellate court found significant that "[t]he antistacking provision in the policy tied the limit of UIM coverage to the limit shown on the declarations page." *Id.*, ¶ 11. The *Bowers* opinion traced the line of reasoning from the *Bruder dicta* through some of the cases discussed above in this order. *Id.*, ¶¶ 11-13 (discussing *Goben*, *Yates*, *Hobbs*, and *Johnson*). The appellate court noted that the policy's endorsement indicated that the liability limit is the most the company would pay for all damages irrespective of certain variables, and yet the policy's antistacking provision also said that the "limit of liability is based on the description in the declarations page," which indicated coverage was available for three separate vehicles, each with its own listed limit. *Id.*, ¶ 14. Finding these two policy provisions to be "contradictory" and "inconsistent," the *Bowers* court affirmed the trial court's decision allowing limits stacking. *Id.*, ¶ 19.

In *Cherry v. Elephant Insurance Co.*, the appellate court again reviewed an automobile

insurance policy in the context of cross-motions for summary judgment. 2018 IL App (5th) 170072, ¶ 1. The policy contained a detailed antistacking clause, which even specifically used the term of art when articulating that "[t]here will be no *stacking* or combining of coverage afforded to more than one auto under this policy." *Id.*, ¶ 5 (emphasis added). This attempted prohibition of stacking also was declared to be in effect "regardless of the number of" the interplay of eight separately enumerated variables. *Id.* The antistacking clause referred to "the limit of liability shown on the declarations page." *Id.* The trial court granted the insurer's summary-judgment motion, finding that the insurance policy prohibited stacking of the limits associated with each of the four covered vehicles. *Id.*, ¶ 1. On appeal, the plaintiffs argued that "listing multiple limits on the declarations page creates an ambiguity that is not cured by [the insurer]'s antistacking clause." *Id.*, ¶ 9. Relying upon the *Bruder dicta*, the appellate court agreed, noted that "a declarations page that prints the policy limit more than once could reasonably be interpreted as providing a policy limit that is the sum of the printed limits." *Id.*, ¶¶ 14-16. In the appellate court's view, even the exceedingly direct language stating that there will be no "stacking or combining of coverage" "does nothing to cure the ambiguity created by its limit of liability clause combined with the multiple listed limits on the declarations page." *Id.*, ¶ 21. The *Cherry* trial court was reversed, and stacking of limits was authorized. *Id.*, ¶¶ 31-32

The Illinois Supreme Court's most recent foray into the post-*Bruder* line of cases on stacking issues occurred in *Hess v. Estate of Klamm*, 2020 IL 124649, 161 N.E.3d 183 (2020). The case involved an automobile collision resulting in multiple fatalities. *Id.*, ¶ 3. The relevant two pages of the automobile insurance policy's declarations listed four covered vehicles, with three listed on the first of the two pages, and the fourth vehicle listed on the second page. *Id.*, ¶ 6. A bodily-injury liability limit of $100,000 per person and $300,000 per accident was listed

once on the first page (containing the three vehicles), and those limits were printed again on the second declarations page (where only the fourth vehicle was shown). *Id.* The lower courts permitted stacking (albeit in slightly different forms and for different reasons), primarily reasoning that the bodily-injury limits were shown twice in the declarations pages. *Id.*, ¶¶ 10-11. The supreme court reversed both the trial and appellate courts. *Id.*, ¶¶ 1, 32. In doing so, the supreme court expressly relied upon its prior decisions in *Bruder* and *Hobbs*. *Id.*, ¶ 18. The *Hess* court discussed both of these prior decisions at length, as well as two appellate court opinions that issued between those supreme court opinions. *Id.*, ¶¶ 18-22, 24, 26-27 (discussing *Bruder* and *Hobbs*, plus *Cherry* and *Johnson* from the Fifth District). The supreme court found that the policy in *Hess* contained similar antistacking language as had been approved in *Hobbs*. *Id.*, ¶ 24. The high court also distinguished the declarations in the *Hess* policy from that hypothetical declarations page referenced in the *Bruder dicta*. *Id.*, ¶¶ 24-25. Unlike the theoretical declarations from the *Bruder dicta*, the declarations in the policy before the supreme court in *Hess* listed the liability limits only a single time on each page of the declarations, irrespective of how many vehicles were listed on the page. *Id.* The supreme court found the listing of the liability limits two times in the declarations page was not really a per-vehicle separate listing of the limits like the type of drafting that the *Bruder dicta* predicted may give rise to an easy finding of ambiguity. *Id.*, ¶ 25. Instead, the *Hess* Court found that there was insufficient space to list all four of the policy's covered vehicles on the same declarations page. *Id.* The liability limits were listed only a single time on two adjacent pages, and the supreme court held this was appropriate and not reasonably subject to multiple different interpretations on the question of limits stacking. *Id.*

Unlike the one interpreted in *Hess*, the Owners policy here does not merely list the

liability limits a single time on each of the multiple pages comprising the Policy's declarations. Compare Policy, at 4-10, with *Hess*, 2020 IL 124649, ¶ 25. Instead, the liability limit of $1 million per accident appears next to each and every covered automobile on each and every page of the Policy's declarations on which limits are listed (*i.e.*, in the table on the first page of "Item Two," and in the tabular listing of each of the seven covered vehicles shown on pages two through five in "Item Three"). Policy, at 4, 6-10. By its own terms, therefore, this factual distinction between the two insurance policies limits the extent to which the *Hess* opinion controls the court's interpretation of the Owners policy. *Hess*, 2020 IL 124649, ¶¶ 25-26.

The value of the *Hess* opinion to this court's analysis lies primarily in what it says about the supreme court's view of the *Cherry* and *Johnson* decisions, for both appellate court opinions seem to provide strong support for Plaintiffs' arguments that the Owners policy is ambiguous. While no stacking was permitted in *Hess*, the supreme court specifically distinguished the *Hess* policy from those in the *Cherry* and *Johnson* cases, where stacking was permitted. *Id.*, ¶ 26 (citing and discussing *Cherry* and *Johnson*). In the supreme court's view, chief among the distinguishing factors was that, unlike its finding in the *Hess* opinion, the policies in *Cherry* and *Johnson* "listed the liability limits separately for each covered vehicle." *Id.*, ¶ 26; see also *Cherry*, 2018 IL App (5th) 170072, ¶ 20; *Johnson*, 377 Ill. App. 3d at 609. Thus, amidst the multitude of stacking-related opinions that have emerged from Illinois' reviewing courts in the last few decades, this court finds significant that the supreme court has reaffirmed within the last two-and-one-half years that a per-vehicle listing of liability limits in a policy's declarations could lead a reasonable person to conclude that such a "policy provided coverage in an amount *totaling* the limits listed for all covered vehicles." *Hess*, 2020 IL 124649, ¶ 26 (emphasis added).

Just as it did with *Yates* in its *Hobbs* opinion, the supreme court in *Hess* discussed two

post-*Bruder* appellate court decisions that both applied the *Bruder dicta* and permitted stacking, and yet the supreme court did not criticize, undercut, or overrule those decisions or the reasoning underlying them. *Id.* (discussing *Cherry* and *Johnson*); *Hobbs*, 214 Ill. 2d at 24-26. This court therefore reads *Hess* as an implicit and very recent confirmation by the supreme court of the principles in the *Bruder dicta*. This is paramount in the face of Owners' citations to several Illinois and federal court opinions that would arguably fly in the face of the interpretation seemingly required of the Policy under the *Bruder dicta* and its progeny. The authorities cited by Owners do not persuade the court because to varying degrees they are either factually distinguishable or not adequately in harmony with what the court finds the current law of Illinois to be on the issues of intrapolicy-limits stacking raised in this case.

The foregoing recitation constitutes a long line of cases stemming from the *Bruder dicta* in which its approach to interpreting insurance policies has been repeatedly applied by Illinois reviewing courts and reiterated multiple times by our supreme court. The court credits and relies upon not only the *Bruder dicta*, but also the cases discussed above (*Goben*, *Yates*, *Skidmore*, *Hobbs*, *Johnson*, *Kocher*, *Bowers*, *Cherry*, and *Hess*), in reaching its decision. When read together, a set of interpretive rules can be discerned. Generally, these cases collectively stand for the proposition that when multiple vehicles are listed on a single page of an automobile insurance policy's declarations, and when separate liability limits are listed adjacent to or associated with separate vehicles on that page, there is a high likelihood that multiple reasonable-yet-conflicting interpretations of the policy may exist as to whether the separately listed insurance limits may be aggregated or stacked. The weight of applicable caselaw further counsels that when reading an auto policy as a whole, generally only an exceptionally clear antistacking provision will suffice to save a policy from the stacking of its limits if the

declarations are unclear. At this point, this reality about how Illinois courts interpret insurance contracts should be no surprise to automobile insurers.

Applying the law (as this court finds it to exist) to the facts of this case, the court concludes that the Owners policy is indeed ambiguous on whether it prohibits intrapolicy-limits stacking. The declarations pages are structured in such a way that they are subject to multiple reasonable interpretations about whether per-vehicle limits may be stacked. Likewise, the antistacking clause itself is internally inconsistent and confusing, and Section II(C) of the Policy cannot be read to prohibit stacking unambiguously. At best, when read together, the Policy's antistacking clause and declarations leave the reader with genuine questions about whether the limits may be stacked. As the drafter of the policy, the insurer's failure to craft a well-written and unambiguous policy leaves it exposed to expanded liability under applicable public-policy principles long recognized in Illinois.

Any fair discussion of the weight of applicable caselaw necessarily requires an advocate, and no less a court, to address head-on and meaningfully any authorities that may be contrary to the position taken or decision reached. There are multiple authorities cited by Owners that seem to conflict with parts of the rationale underlying the decision announced in this order. Although an exhaustive exploration of the nuances of each and every seemingly contrary opinion is beyond the capabilities of the undersigned judge, this court discusses below the areas of primary conflict in authorities so that the parties in this case, and any court that may review this court's decision, will know how this court reached its conclusions and the precedential reasoning upon which the court relied.

Owners cited *Menke v. Country Mutual Insurance Co.*, 78 Ill. 2d 420, 401 N.E.2d 539 (1980), as a decision running contrary to the Illinois Supreme Court's *Squire* opinion issued a

few years earlier. In *Menke*, the supreme court found the insurance policy at issue to be unambiguous. *Id.* at 423, 426. The specific provision construed in that case, however, was one drafted specifically to prevent exposing the insurer to claims that the limits from multiple different policies could be aggregated. *Id.* at 423. *Menke* was not an *intra*policy-limits stacking case. It also pre-dated *Bruder* by more than a decade. *Id.* at 420; *Bruder*, 156 Ill. 2d at 179. The court finds *Menke* not particularly helpful to deciding the questions in this case, other than as a source reliably cited for uncontested general principles of law.

Owners also cited an opinion from the appellate court's Fourth District. In *Pekin Ins. Co. v. Estate of Ritter*, 322 Ill. App. 3d 1004, 750 N.E.2d 1285 (4th Dist. 2001), the trial court examined a policy involving underinsured-motorist coverage that included language in the antistacking clause nearly identical to, and a per-vehicle separate listing of coverages on the same declarations page like, the policy involved in *Goben*. *Id.* at 1005. After the trial court granted summary judgment in favor of the insured, the Fourth District heard the appeal. *Id.* at 1004. The *Ritter* court disagreed with the Fifth District's reasoning in both *Goben* and *Yates*, which were two of the earliest appellate court opinions after *Bruder* that discussed policy-limits stacking. *Id.* at 1005-06. The *Ritter* trial court was reversed after the appellate court concluded that there was no interpretive significance to the listing of separate coverage limits next to each vehicle on the declarations pages. *Id.* at 1005. After finding the declarations pages not ambiguous, the reviewing court reasoned that the coverage-limitation provision was clear and that it also would have resolved confusion from the declarations, if any were to exist. *Id.* at 1006.

As a circuit court within the geographical jurisdiction of the Fourth District of the Illinois Appellate Court, this court is mindful of its responsibility to give respect and credence to the

Fourth District's opinions that are relevant to matters appearing on this court's docket. That the Fourth District's *Ritter* opinion expressly disagreed with the Fifth District's reasoning in *Goben* and *Yates* has not gone unnoticed. *Id.* at 1005-06. This court has studied the *Ritter* opinion and endeavored to consider whether this court's decision in the matter at hand conflicts with appellate court precedent from the Fourth District. This court has concluded that the *Ritter* opinion represented a reasonable and appropriate expression of the Fourth District's disagreement—at the time *Ritter* was issued in 2001—with the Fifth District's approach in *Goben* and *Yates*. The Fourth District found no ambiguity in the declaration page's per-vehicle listing of separate coverage limits in a multiple-column format. *Id.* at 1005. The structure of the *Ritter* declarations page is much shorter than, and has very different content and structure from, the extensive and complicated declarations in the Owners policy. *Id.* Thus, based solely on the specific facts and findings in this case, the extent to which *Ritter* would control here seems limited. Perhaps more important is that the *Ritter* opinion held that the antistacking clause at issue there was clear, and that the clause would have "clarifie[d] the question" resulting from the declarations page and resolved the issue against stacking. *Id.* The lengthy and internally confusing antistacking clause in the Owners policy differs materially from the one construed in *Ritter*. *Id.*

In its humble and sincere effort to apply Fourth District precedent correctly, this court ultimately has concluded that *Ritter* does not control here. Even setting aside the significant differences in the content structures of the *Ritter* declarations page and the Owners policy here, *Ritter*'s reasoning seems affected by the involvement of the payment of multiple premiums. *Id.* at 1006. Although referenced in passing, Plaintiffs do not rely extensively on the payment-of-multiple-premiums issue. Furthermore, in leading up to its disagreement with the reasoning in

Goben, the *Ritter* court noted that *Goben* relied "on the *obiter dictum* in *Bruder*." *Id.* at 1005. *Ritter* was an early post-*Bruder* opinion, as were the *Goben* and *Yates* opinions with which *Ritter* took issue. In the more than 20 years since the *Ritter* opinion was issued, the principles of the *Bruder dicta* now have been reaffirmed twice by the Illinois Supreme Court. See *Hobbs*, 214 Ill. 2d at 21, 26 (reaffirming *Bruder dicta* in 2005); *Hess*, 2020 IL 124649, ¶¶ 18-20 (same in 2020). These subsequent high-court opinions obviously could not have been known to the Fourth District in 2001.

It is instructive that, 13 years after *Ritter*, a different district of the appellate court considered the opinion and concluded *Ritter* did not try to reconcile its holding with the *Bruder dicta*, which presumably would have caused a different result. *Bowers*, 2014 IL App (3d) 130655, ¶ 16. The Fifth District impliedly suggested the limited applicability of *Ritter* on the grounds that *Ritter* did not address the multiple-coverage and multiple-premium listings in the declarations page of the policy at issue. *Id.*

Due to the factual differences in the policies at issue, the passage of time, and the subsequent development of intervening case law, it is not clear to this court that the *Ritter* opinion would come down the same way had the facts and policy at issue in that case been presented to Illinois reviewing courts today. As a result, despite its intensive study of *Ritter*, this court believes that the opinion would not control the outcome of the current question in construing the Owners policy under the law of Illinois as it has developed through caselaw published since *Ritter* was handed down. With hope that its understanding of *Ritter* and the reasons it should not be applied are correct, this court declines to rely upon the opinion in reaching the decision announced in this order.

In *Hanson v. Lumley Trucking, LLC*, 403 Ill. App. 3d 445, 932 N.E.2d 1179 (5th Dist.

2010), the appellate court examined a policy that contained an "Item Two" and "Item Three" breakdown in its declarations. 403 Ill. App. 3d at 448. The principal argument addressed in *Hanson* was whether use of the numerical symbol "46" in the declarations' "Item Two" chart, which was a shorthand reference to coverage for 25 different vehicles listed elsewhere in the policy, was enough to create ambiguity. *Id.* at 449. The appellate court concluded that use of an all-inclusive shorthand symbol did nothing to create ambiguity, and the trial court's grant of judgment on the pleadings to the insurer was affirmed after finding that the policy forbid stacking of intrapolicy limits. *Id.* at 447, 450. Since this court similarly found that use of numerical symbols in the "Item Two" chart of the Owners policy did not create ambiguity, the key holding in *Hanson* aligns with this court's determination (albeit not on the central issue in the instant case). This court also notes that although the *Hanson* policy contained an "Item Three" listing of multiple vehicles (like the Owners policy does), the opinion seems to suggest that the separate liability limits were *not* listed for each vehicle in its "Item Three" tables. *Id.* at 448. Since the per-vehicle enumeration of separate liability limits in the Owners policy's "Item Three" schedule is central to this court's analysis of the ambiguity of the Policy, and since the *Hanson* policy's "Item Three" schedule did not list the liability limits separately on a per-vehicle basis, the court finds *Hanson* to be inapplicable in resolving the central ambiguity questions in the case at bar.

Owners cited *Domin v. Shelby Insurance Co.*, 326 Ill. App. 3d 688, 761 N.E.2d 746 (1st Dist. 2001), where intrapolicy-limits stacking was squarely addressed. The policy contained an antistacking provision with regardless-of-the-number language, and which pointed to the declarations to discover the "limit of liability shown in the Schedule or in the Declarations." *Id.* at 690. The declarations page was set up in a columnar format, with multiple automobiles listed

in adjacent columns. *Id.* In each row of the coverages chart, the type of coverage, the amount of each type of coverage, and the per-vehicle corresponding premium for each type of coverage were displayed. *Id.* Relying upon its interpretation of the *Yates* opinion, the trial court sided with the plaintiffs and ruled in a summary-judgment context that stacking of both listed vehicles' limits should be permitted. *Id.* at 691-92. The appellate court reversed the trial court, holding that the *Yates* holding did not compel the outcome reached in the trial court. *Id.* at 692. Applying the direct holding of *Bruder*, the appellate court determined that the controlling fact was that the liability limits were shown only a single time on the declarations page; thus, when read together with the unambiguous antistacking clause, the declarations page created no ambiguity to undercut the antistacking clause's intended effect. *Id.* at 693-94.

Domin appears to be a post-*Bruder* case dealing head-on with intrapolicy limits stacking. Nevertheless, the opinion does not control resolution of the questions involved in interpreting the Owners policy. In *Domin*, the plaintiffs never challenged the clarity of the antistacking clause's terms in isolation. *Id.* at 691. This is materially different from the facts of the instant case, where Plaintiffs have challenged the antistacking clause's coherence, and then persuaded this court to agree with them. Setting aside that factual distinction, though, this court believes the appellate court in *Domin* correctly held that stacking was prohibited under the policy it interpreted based upon the facts before it. *Id.* at 697. The fact that the coverage limits were shown only a single time on the declarations page of the *Domin* policy squares well with the direct holding in *Bruder*. *Bruder*, 156 Ill. 2d at 192-193. The Owners policy, in contrast, clearly does *not* list the coverage limits only once per declarations page. Policy, at 4, 6-10. Therefore, *Domin* is factually distinguishable in a material way and thus is not applicable to interpreting the Owners policy.

In support of its claim that the Policy's antistacking provision was unambiguous, Owners also cited to *Abram v. United Services Automobile Ass'n*, 395 Ill. App. 3d 700, 916 N.E.2d 1175 (1st Dist. 2009), and *Bailey v. Auto-Owners Ins. Co.*, 229 Ill. App. 3d 514, 592 N.E.2d 1133 (4th Dist. 1992). Owners asserted that the antistacking language involved in both *Abrams* and *Bailey* was very similar to the Policy in this case, and that the appellate court denied stacking in both cases. Owners' 4/26/2021 Memo., at 8. In *Abram*, two people expressly covered by the automobile policy both were injured in the same automobile collision. *Abram*, 395 Ill. App. 3d at 701-02. The *Abram* policy's antistacking language generally prohibited stacking of limits, and the First District applied the language to prohibit stacking of uninsured-motorist coverage limits on multiple vehicles in a policy in a situation where two covered persons both were killed in the same automobile collision. *Id.* at 708. In *Bailey*, a general antistacking provision also was applied to block stacking of the limits in two separate automobile policies issued by the same insurer. *Bailey*, 229 Ill. App. 3d at 515. Neither *Abram* nor *Bailey* involved intrapolicy-limits stacking, which is the central question in the case at bar. Moreover, this court's examination of the antistacking provisions involved in those two cases revealed that they were materially dissimilar to the language of subsection (C) in the Owners policy. Both the *Abram* and *Bailey* antistacking provisions contained limited text that was not rife with the kinds of internal inconsistencies and difficult-to-follow language that infect the Owners policy. *Abram*, 395 Ill. App. 3d at 709-714; *Bailey*, 229 Ill. App. 3d at 516. Neither of these opinions provides a basis for saving the Owners policy here. In addition, *Abram* credits the Fifth Circuit's *Johnson* opinion (discussed in this order above) as standing for the proposition that the separate listing of liability limits on a per-vehicle basis in an auto policy's declarations can create ambiguity even when an antistacking clause is present. *Abram*, 395 Ill. App. 3d at 708. Although it

distinguished *Johnson* on underlying factual grounds, *Abram* did not dispute *Johnson*'s premise, which is one upon which this court relies in the case at hand. *Id.* As for *Bailey*, it predated the *Bruder* case and therefore is not substantially helpful in applying what this court finds to be the controlling principles of the Illinois Supreme Court's *Bruder dicta.*

Owners' briefing papers contain multiple citations to *Grzeszczak v. Illinois Farmers Insurance Co.*, where the Illinois Supreme Court rejected a claim that stacking should be permitted. 168 Ill. 2d at 218-19, 234. Although a post-*Bruder* supreme court opinion in which a request to permit stacking was denied might seem helpful when one first learns of it, the fact that *Grzeszczak* involves interpreting multiple different policies issued to a single insured and her children limits the applicability of the opinion when compared to the facts of the case at hand. *Id.* at 218-19. So, too, does the absence of any interpretation of declarations pages listing limits for multiple vehicles restrict the assistance this opinion can provide. *Id.* at 216-34.

The opinion in *Busch v. Country Financial Insurance Co.*, 2018 IL App (5th) 140621, 95 N.E.3d 40, is similarly unavailing. In that case, the Fifth District found no ambiguity in the other-insurance clauses of two separate automobile policies issued to an insured (one policy to a single individual, and the other policy jointly to the individual and another person). *Id.*, ¶ 14. Although the opinion discusses and relies upon the holding in *Bruder*, *Busch* is little help to the court because it involves no discussion of the content, structure, or intrapolicy interplay of declarations pages (or really even the kind of antistacking provision at issue in the Owners policy). *Id.* The *Busch* opinion also is undercut sharply by a thoroughly reasoned dissent. *Id.*, ¶ 18-31 (Goldenhersh, J., dissenting).

The decision in *Kopier v. Harlow*, 291 Ill. App. 3d 139, 683 N.E.2d 536 (2d Dist. 1997), is even more far removed from a factual predicate that would resemble the instant case. In

Kopier, an appeal ensued from a trial court's ruling that the plaintiff was not entitled to stack the limits of three separate automobile policies. *Id.* at 140-42. The case did not focus on whether any policy was ambiguous in prohibiting stacking; rather, the main question was whether the trial court erred in finding that only one of the three policies covered the loss. *Id.* at 142-44. The appellate court affirmed the trial court's conclusion that only one policy applied. *Id.* at 145. Since possible stacking of limits between insurance policies was never really the problem in the case since the *Kopier* court concluded only one policy was in play, this court finds *Kopier* unsuitable for application here and does not rely upon it. *Id.*

Owners also cited *State Farm Mutual Insurance Co. v. McFadden*, 2012 IL App (2d) 120272, 979 N.E.2d 551. In *McFadden*, the appellate court affirmed the trial court's grant of declaratory judgment in favor of State Farm and found that the insureds, who had five separate policies with the insurer, were not permitted to stack the $100,000 liability limit contained in each of the separate policies into a total limit of $500,000. *Id.*, ¶¶ 1-2, 40. The *McFadden* court found the antistacking provision (and other related liability-limiting provisions) in each of the five policies to be clear in its prohibition of stacking. *Id.*, ¶ 2. The provisions at issue, however, were not really similar to the antistacking provision in the Owners policy. Compare Policy, at 21-22, with *McFadden*, 2012 IL App (2d) 120272, ¶ 15. In addition, each one of the *McFadden* policies' five separate declarations pages—one in each of the five policies at issue—listed only a single vehicle and corresponding liability limit. *McFadden*, 2012 IL App (2d) 120272, ¶ 5. Although the *McFadden* opinion concluded that the declarations in the five policies did not create ambiguity, this court notes that the *McFadden* case did not involve declarations in any single policy (or even any single page in all of the declarations sheets) on which liability limits were printed multiple times on a per-vehicle basis, as is the case on multiple different pages in

the Owners policy. Compare *id.*, ¶¶ 5, 24, 35 (noting significance of difference in structures between single declarations page showing multiple vehicles and limits and multiple declarations pages each showing single vehicle and limit), with Policy, at 6-10. While not disagreeing with the outcome of *McFadden* based upon the policy and facts reflected in the opinion, this court finds *McFadden* distinguishable and not controlling of the interpretive questions related to the Owners policy.

Owners relied heavily in its briefs on the opinion in *Striplin v. Allstate Insurance Co.*, 347 Ill. App. 3d 700, 807 N.E.2d 1255 (2d Dist. 2004). In *Striplin*, the trial court granted summary judgment in favor of the plaintiffs and against the insurer after determining that the underinsured-motorist coverage limits for two automobiles in the policy at issue were stackable. *Id.* at 700-02. The policy contained two separate declarations pages, each listing a single vehicle with accompanying coverage and limits. *Id.* at 701. The policy also included the following language prohibiting the stacking of limits for any two vehicles shown on the declarations:

> "The limits of liability applicable to any one auto shown on the policy declarations will not be combined with or added to the limits of liability to any other auto shown on the policy declarations or covered by the policy, even though a separate premium is charged for each of those autos * * *. * * * If two or more autos are shown on the policy declarations and one of these autos is involved in the accident, the limits of liability shown on the policy declarations for the involved auto will apply. If none of the autos shown on the policy declarations is involved in the accident, the highest limits of liability shown on the policy declarations for any one auto will apply."

Id. (emphasis omitted). In the view of the Second District, this language served as a very clear indication that stacking was not permitted under the facts of the case, and it reversed the trial court. *Id.* at 706.

This court agrees that the uniquely drafted antistacking provision in the *Striplin* policy was exceedingly clear in addressing the precise stacking issue raised by the parties before that

court. Unfortunately for Owners, and as discussed in detail in this order above, the Policy before this court is neither specifically tailored to the situation at issue nor drafted in an exceptionally clear way. On the contrary, as discussed in detail earlier in this order, this court found the antistacking clause of the Owners policy to be ambiguous in and of itself. In addition, the *Striplin* policy contained two different single-page declarations sheets, each with a single vehicle listed along with coverage limits. *Id.* at 701. That is significantly different from the multiple-page declarations in the Owners policy, some of which list multiple vehicles on a single page and then separately a per-vehicle set of limits.

Beyond these important factual distinctions, the persuasive force of the *Striplin* opinion is curtailed for another reason. The *Striplin* opinion cited multiple times the decision in *Hall v. General Casualty of Illinois*, 328 Ill. App. 3d 655 (2002), favorably discussing it in some detail. *Striplin*, 347 Ill. App. 3d at 703-04. In doing so, the Second District characterized *Hall* as an indication that the Fifth District had abandoned its prior approach to interpreting insurance policies' declarations pages, which approach was articulated in the district's *Yates* and *Goben* opinions. *Id.* at 703 (indicating that *Hall* reflected that the Fifth District had "retreated" from the approach taken in *Yates* and *Goben*). The heavy reliance that *Striplin* placed on the *Hall* decision undercuts the persuasive force that *Striplin* has here. In the year after *Striplin* was decided, the Illinois Supreme Court issued its decision in the *Hobbs* case. *Hobbs*, 214 Ill. 2d at 11. As discussed earlier in this order, *Hobbs* expressly overruled the Fifth District's *Hall* decision. *Id.* at 26-27. In *Hobbs*, the supreme court merely distinguished *Yates* on its facts, but passed on the opportunity to overrule it. Through *Hobbs*, therefore, the supreme court effectively countermanded the Second District's reasoning in *Striplin* by (1) overruling the *Hall* decision upon which the *Striplin* opinion relied heavily, and (2) not expressing disagreement

with the reasoning in *Yates*, a decision that *Striplin* suggests was wrong in its conclusion that "any listing of multiple liability limits" on declaration pages gives rise to a high probability of creating ambiguity. *Striplin*, 347 Ill. App. 3d at 703-04; see also *Hobbs*, 214 Ill. 2d at 24-26.

Notwithstanding the foregoing difficulties, *Striplin* supplies in one section of the opinion a pretty strong argument about whether the *Bruder dicta* approach effectively makes it impossible for an insurer to forbid intrapolicy-limits stacking in a policy with multiple vehicles shown in the declarations. *Striplin*, 347 Ill. App. 3d at 704. The Second District considered a hypothetical where an insurer would be tasked with attempting to write a policy covering multiple vehicles, and where each of the vehicles would have a different liability limit (*e.g.*, one vehicle with a $50,000 per person/$100,000 per accident limit, and another vehicle with a $100,000 per person/$300,000 per accident limit). *Id.* at 704. The *Striplin* court argued that under an expansive application of the *Bruder dicta*, the hypothetical insurer would never be able to write a policy that does not unambiguously preclude stacking since the separate limits would have to be listed by each vehicle in the declarations. *Id.* at 704. Of course, the Owners policy lists the same combined liability limits for each of the covered vehicles in the declarations, so the hypothetical concern raised in *Striplin* does not really apply here. Policy, at 4-10. Additionally, *Striplin* seems to supply the answer to its own hypothetical by finding that the antistacking language in the policy before it to be written so well as to eliminate any confusion from the declarations, a conclusion with which this court agrees. *Striplin*, 347 Ill. App. 3d at 705-06. This court's decision not to adhere to the direct holding of *Striplin* seems further supported by the Illinois Supreme Court's reaffirmation of the *Bruder dicta* twice since *Striplin* was issued, and both of those supreme court decisions discussed layouts of insurance policy declarations that ultimately were sufficient to withstand claims of ambiguity. *Hobbs*, 214 Ill. 2d at 18-21; *Hess*,

2020 IL 124649, ¶¶ 18-20. Thus, beyond the interesting question it raises about how viable the *Bruder dicta* truly might have been at the time, this court finds *Striplin* unsuitable for resolving the questions about how the Owners policy should be construed here.

Owners also cited three federal-court opinions that merit discussion: *Grinnell Select Insurance Co. v. Baker*, 362 F.3d 1005 (7th Cir. 2004), *Kovach v. Nationwide General Insurance Co.*, 475 F. Supp. 3d 890 (C.D. Ill. 2020), and *Auto-Owners Insurance Co. v. Munroe*, 2009 WL 10685191 (C.D. Ill. 2009). The court finds all three opinions unpersuasive in providing a basis to save the Owners policy from intrapolicy-limits stacking.

In *Grinnell*, a federal court was exercising its diversity jurisdiction and seeking to apply Illinois law as the state's supreme court would declare it to be. 362 F. 3d at 1007. The U.S. Court of Appeals for the Seventh Circuit concluded that the Fifth District of the Illinois Appellate Court was, at the time, a nationwide outlier in its approach to finding ambiguities regularly when declarations pages in insurance policies separately listed liability limits on a per-vehicle basis. *Id.* at 1006-07. Where a policy's declarations may arguably suggest confusion about whether limits may be stacked, the Seventh Circuit reasoned that an antistacking clause serves as "a disambiguator." *Id.* at 1007. While it is true that a clear antistacking clause might help a court determine that a policy does unambiguously prohibit stacking, the antistacking clause in the Owners policy is difficult to follow and is far from clear. Policy, at 21-22. *Grinnell* also was decided before the Illinois Supreme Court reiterated the *Bruder dicta* approach in *Hobbs*, and prior to the high court's *Hess* opinion that approvingly cited multiple appellate court decisions that seem to offer strong support for finding ambiguity in the Owners policy. Compare *Grinnell*, 362 F. 3d at 1006-08, with *Hobbs*, 214 Ill. 2d at 21-23 (reiterating principles of *Bruder dicta*), and *Hess*, 2020 IL 124649, ¶¶ 18-20, 26-27 (reiterating *Bruder dicta* and favorably citing

Fifth District's opinions in *Johnson and Cherry*); see also *Kovach v. Nationwide General Insurance Co.*, 475 F. Supp. 3d 890, 896-97 (C.D. Ill. 2020) (noting that *Grinnell* was somewhat undercut by Illinois Supreme Court's *Hess* decision issued during intervening period). For these reasons, this court concludes that *Grinnell* is neither controlling nor persuasive here.

In *Kovach v. Nationwide General Insurance Co.*, after a declaratory judgment action was removed to federal court state court, the U.S. District Court for the Central District of Illinois granted summary judgment in favor of an insurer after construing an automobile insurance policy covering four vehicles. 475 F. Supp. 3d at 891. The federal trial court examined an antistacking clause that was substantially different from, and far clearer than, the one at issue in the Owners policy. *Id.* at 892-93. The federal trial court distinguished the policy before it from those in the Fifth District's *Johnson* and *Cherry* decisions because it found the liability-limit provisions in the two Fifth District cases were far less clear than the one before the federal trial court. *Id.* at 898. This court also notes that the structure of the *Kovach* declarations page is far simpler than the "Item Two" and "Item Three" organization of the declarations in the Owners policy. Compare *id.* at 893-895, with Policy, at 4-10. Due to the very different antistacking provisions and the dramatically less problematic declarations setup involved in the federal trial court, *Kovach* is of little persuasive assistance to this court given the unique quirks of the Owners policy.

Finally, in support of its position that the same antistacking clause in the Owners policy—that is, the relevant excerpts from Section II(C) of the Policy—has been found to be unambiguous, Owners cited *Auto-Owners Insurance Co. v. Munroe*, 2009 WL 10685191 (C.D. Ill., Sept. 8, 2009).[7] Owners' 4/26/2021 Memo, at 7. This citation is to an "Order on Motion for

[7] Owners' briefing papers supplied this court with the following citation to this case: "*Auto-Owners Ins. Co. v. Munroe*, 2:08-cv-02181, 2009 U.S. Dist. LEXIS 145512, at *7 (C.D. Ill. Sept. 8, 2009)." Owners' 4/26/2021

Summary Judgment" issued by the U.S. District Court for the Central District of Illinois. Owners' briefing papers claimed that the *Munroe* policy contained the "*same* anti-stacking language" as its own policy in the instant case. Owners' 4/26/2021 Memo, at 7 (emphasis added). This court has examined the federal trial court order, and although there are some similarities between the *Munroe* antistacking clause and the antistacking provisions of the Owners policy, they clearly are not the "same." Among several other material differences, the Owners policy uses the undefined term "Limit of Insurance" (discussed in detail in this order above), while the *Munroe* policy never uses that term. *Munroe*, 2009 WL 10685191, at *3. In addition, Owners' briefing papers did not disclose that the U.S. District Court decision it cited to this court was subsequently appealed to the U.S. Circuit Court of Appeals for the Seventh Circuit. *Auto-Owners Insurance Co. v. Munroe*, 614 F.3d 322 (7th Cir. 2010), *aff'g* 2009 WL 10685191. The Seventh Circuit affirmed the trial court's grant of summary judgment in favor of the insurer, but the principal questions reviewed on appeal were whether the underlying automobile collision causing the loss constituted more than one "occurrence" under the insurance policy, and whether a particular endorsement to the policy required the insurer to provide certain minimum coverages under a federal statute. *Id.* at 325-326. Thus, although it is true that the federal trial court upheld an antistacking clause that contains some elements of the antistacking provisions in the Owners policy, neither the trial court's order nor the Seventh Circuit decision in *Munroe* actually discussed the particular language of the Owners policy or addressed the interpretive issues confronting this court in the instant case. For these reasons, this court finds nothing helpful to its analysis in either of these two *Munroe* opinions.

As noted in Section I(D)(6) of this order above, the court identified a reviewing court

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Memo., at 7. The court has determined that the public-domain format citation available through Westlaw, cited with this footnote in the text of the instant order, is more readily accessible.

opinion handed down after the parties had briefed and argued their summary judgment cross-motions, and the court invited further limited briefing on the significance, if any, of that case. In *West Bend Mutual Insurance Co. v. Vaughan's Fetch, Inc.*, 2022 IL App (5th) 210168-U, the Fifth District issued a judgment order under Supreme Court Rule 23 that warrants discussion. Beyond some striking factual similarities related to the underlying automobile accident, the Rule 23 order also construed an insurance policy that is most similar in structure to the Owners policy under review when compared to the policies described in all other opinions cited in this order's stacking analysis. Just over two months prior to the collision underlying the case at bar, a serious accident occurred when a truck owned by Vaughan's Fetch, Inc. collided with another vehicle, causing significant property damage and injuring several people. *Id.*, ¶ 4. A commercial automobile policy issued by the West Bend Mutual Insurance Company covered a fleet of other vehicles and trailers owned by Vaughan's Fetch, including a truck involved in the accident. *Id.*, ¶¶ 5, 11. West Bend was unable to determine relative fault between and among those claiming personal injury or property damage, so it filed an interpleader action seeking to deposit with the court the sum of $1 million—the amount West Bend believed it would owe under the policy—so that the various claimants could litigate the apportionment of the funds. *Id.*, ¶ 6. Partial settlements removed some claimants from the suit, and West Bend and a claimant named Cambron ultimately entered into a high-low settlement agreement conditioned upon the outcome of the litigation about whether stacking of policy limits would be permitted. *Id.*, ¶¶ 7-9. West Bend and Cambron eventually filed cross-motions for summary judgment. *Id.*, ¶ 10.

As reported by the opinion, the antistacking clause in West Bend's policy read in pertinent part as follows:

> "Regardless of the number of covered autos, insureds, premiums paid, claims made, or vehicles involved in the accident, the most we will pay for the total of all damages and covered pollution cost of expense combined resulting from any one accident is the Limit of Insurance for Covered Autos Liability Coverage shown in the Declarations."

Id., ¶ 11 (internal quotation marks and modifications omitted). Although structured slightly differently, the West Bend policy's antistacking provision is similar to subsection (C)(5) of the Owners policy here. The West Bend policy's declarations were, so far as can be determined by the opinion, broken down into an "Item Two" and "Item Three" structure very similar to the one contained in the Owners policy. *Id.*, ¶¶ 11-13. Unfortunately, the *Vaughan's Fetch* opinion does not provide the complete set of its policy's declarations, which would have been helpful to this court in evaluating the reasoning underlying the decision in that case.

The injured party (Cambron) argued that the antistacking provision in West Bend's policy unhelpfully pointed the reader to the policy's declarations for a description of what the "Limit of Insurance" term meant, rather than listing the coverage limits in the antistacking provision itself. *Id.*, ¶ 14. This cross-reference, together with the inclusion of seven copies of the "Motor Carrier Coverage Declarations" pages in the policy and the per-vehicle separate listing of a $1 million liability limit, made the West Bend policy ambiguous in Cambron's view. *Id.* West Bend argued that the antistacking clause effectively defined its term "Limit of Insurance" by using a very specific eight-word term that was reproduced verbatim in the declarations—namely, the "Limit of Insurance for Covered Autos Liability Coverage." *Id.*, ¶ 15. Thus, the insurer argued, the fact that the policy covered 34 separate vehicles and trailers was immaterial in the face of such a clear antistacking provision. *Id.* The trial court disagreed, found the policy ambiguous, and granted summary judgment in Cambron's favor. *Id.*, ¶¶ 1, 16.

In its Rule 23 order, the Fifth District found no significance to the inclusion of multiple

identical reproductions of the "Motor Carrier Coverage Declarations" pages in the policy. *Id.*, ¶ 26. Inclusion of the duplicate declarations was sufficiently explained by the addition of a new copy with each modification made to the policy, such as when a new covered vehicle was added. *Id.* More significantly, the court found that the antistacking provision's internal cross-reference to the West Bend policy's declarations, together with the specific and detailed term "Limit of Insurance for Covered Autos Liability Coverage" reflected in both places in the policy, was sufficiently clear to ward off attack by claims of ambiguity. *Id.*, ¶ 27. The *Vaughan's Fetch* court reversed the trial court and prohibited stacking of limits. *Id.*, ¶¶ 30-31.

The *Vaughan's Fetch* opinion initially seems a useful source upon which this court could draw in resolving the summary-judgment cross-motions involving the Owners policy. Both cases began with a disastrous automobile collision affecting many injured parties, and both appear to involve a similarly structured commercial automobile policy covering several fleet vehicles. In fact, some of the arguments made by the similarly situated parties strongly resemble one another.

A more searching analysis of the *Vaughan's Fetch* opinion, however, uncovers some significant limitations to the extent to which it assists this court in construing the Owners policy. First, the *Vaughan's Fetch* reviewing court's reversal of the trial court is partially premised upon the trial court's determination that inclusion of seven identical copies of a certain declarations page created ambiguity about whether the policy authorized stacking of the limits on those pages. *Id.*, ¶¶ 14, 23, 26. That factual distinction is entirely dissimilar from the Owners policy, as there was only a single set of declarations in the Owners policy. As a result, a central tenet of the *Vaughan's Fetch* court's reversal of its trial court is inapposite here. Furthermore, the *Vaughan's Fetch* court expressly noted that its injured litigant (Cambron) "does not claim that

the language in the Limit of Insurance provision is ambiguous," and the opinion never addressed the issue. *Id.*, ¶ 23. In contrast, Plaintiffs here did argue that the antistacking provision is ambiguous. Pls.' 4/21/2021 Memo., at 20-23. As explained in detail in this order above, this court also has found that the antistacking provision in the Owners policy is itself ambiguous and internally inconsistent. See Section II(B)(4)(a), *supra*. To some extent, therefore, a key policy-interpretation issue that this court must confront was never addressed in *Vaughan's Fetch*.

In addition, a key basis upon which the Fifth District concluded that West Bend's antistacking provision was not ambiguous when read together with the declarations page was, importantly, the use of the lengthy and more precise term "Limit of Insurance for Covered Autos Liability Coverage" in both the antistacking clause and the "Item Two" chart in the West Bend declarations. *Id.*, ¶¶ 15, 26-27. Although admittedly similar to the Owners policy's use of the term "Limit of Insurance" in its own subsection (C)(5) and the "Item Two" chart in the Policy's declarations, the cross-referenced term in the West Bend policy described in the *Vaughan's Fetch* opinion is five words longer and much more precise. *Id.*, ¶ 15. In fact, the Owners policy's use of "Limit of Insurance" in the Policy's antistacking clause is actually far more similar to the use of the word "Limit" in the "Item Three" schedule of the Owners declarations—which would augment Plaintiffs' claim of ambiguity via the antistacking-declarations cross-linking—than the term "Limit of Insurance" is to the longer term "Limit of Insurance for Covered Autos Liability Coverage" used in the *Vaughan's Fetch* policy. Compare Policy, at 4, 21-22, with *Vaughan's Fetch*, 2022 IL App (5th) 210168-U, ¶ 15.

Beyond these case-specific factual distinctions, there are other limitations to the persuasiveness of the *Vaughan's Fetch* opinion. Chief among them is the relative dearth of authority upon which the *Vaughan's Fetch* opinion relies. Rather than focusing its analysis on

Bruder like most other stacking-related opinions discussed in this order, the *Vaughan's Fetch* opinion cites *Bruder* only once. *Id.*, ¶ 22. This singular citation of *Bruder* is not to its judicial *dicta*, but instead only for an uncontroverted point of law. *Id.*, ¶ 22 (citing *Bruder* solely for the proposition that, when interpreting an insurance policy, "[t]he touchstone is whether the policy revision is subject to more than one reasonable interpretation, not whether creative possibilities can be suggested"). The Fifth District's opinion also appears to cite, discuss, and rely primarily only on the Illinois Supreme Court's *Hobbs* and *Hess* decisions. *Id.*, ¶¶ 20-21, 24-25, 28 (citing *Hobbs* and *Hess*). Although the opinion cites a small handful of other cases, none of them is discussed in detail. This court found most instructive that the *Vaughan's Fetch* decision makes no effort to cite, discuss, or reconcile itself with any of the number of cases comprising the progeny of the *Bruder dicta*, even including any of the Fifth District's own prior opinions that would seem to contradict the reasoning of the *Vaughan's Fetch* decision issued by the same district of the appellate court. By way of illustration, *Vaughan's Fetch* fails to discuss, or even cite, the Fifth District opinions of *Goben*, *Yates*, *Skidmore*, *Johnson*, *Kocher*, or *Cherry* (which are all cases upon which this court relies). Finally, *Vaughan's Fetch* is a Rule 23 order. In issuing the decision as a Rule 23 order, the Fifth District effectively disclosed its own view that the order would not merit much in the way of serious precedential consideration. Ill. S. Ct. R. 23(b), (e) (West 2022).

Taken together, all of these distinctions and limitations give this court considerable pause when deliberating upon whether to, and the extent to which it should, rely upon the reasoning of *Vaughan's Fetch* in deciding the case before it. Given the number and significance of the problems underlying the *Vaughan's Fetch* decision, this court has elected not to rely upon the opinion since, notwithstanding the few factual similarities between that case and this one, there

appear to be many more reasons not to view the decision as either persuasive or controlling here.

Whether viewed alone or in conjunction with one another, the declarations and the antistacking clause of the Owners policy are unclear and subject to more than one reasonable interpretation. In light of all of the interpretive issues discussed above in this order, this court concludes that the Policy is ambiguous on whether it prohibits intrapolicy-limits stacking. Based upon the weight of the caselaw authorities discussed in this opinion, "[i]t would be more reasonable to assume that the parties intended that" stacking of policy limits was permitted. *Bruder*, 156 Ill. 2d at 192.

Since the Policy here is ambiguous, the court is compelled to interpret the policy favorably for Plaintiff, and "most strongly against the insurer." *Squire*, 69 Ill. 2d at 179 (citing *Barnes v. Powell*, 49 Ill. 2d 449, 454, 275 N.E.2d 377 (1971)). Accordingly, after thorough examination of the Owners policy, consideration of the parties' arguments, and review of applicable authorities, this court concludes that the Policy must be construed broadly in favor of more expansive coverage for the benefit of the insured (and, derivatively, the injured parties).

In determining in this order that the Owners policy is ambiguous and that intrapolicy-limits stacking should therefore be permitted as a matter of public policy in this particular case, the court acknowledges that this determination creates a stark outcome here. Specifically, this ruling sanctions aggregation of limits in the Policy to the very large sum of a total of $7 million in coverage to be provided by Owners. The court is aware that the result of this legal determination is effectively to hold the insurer responsible for a total "stacked" coverage responsibility greater—and in some cases, many times so—than the total liability imposed upon an insurer in any of the cases cited by the parties or in this order where stacking was approved. In reasoning through this thorny issue, however, the court could find nothing in any of the

authorities cited that would suggest the court ought to consider the amount of liability that an insurer subject to a stacking-authorized ruling may incur, or that the outcome of this case should be affected in any way by such a calculus. Accordingly, although aware that this ruling puts Owners potentially on the hook for a very great sum, there appears to be no applicable legal principle that should cause this court to deviate from its ruling on that basis.

C. Summary of Findings

The court hereby finds as follows:

(1) There are no genuine issues of material fact on the questions presented by the parties' cross-motions for summary judgment.

(2) The Owners policy is ambiguous as to whether it prohibits intrapolicy-limits stacking.

(3) Under applicable law, the Policy should be construed in favor of expanded coverage, and strongly against the insurer, on the issue of intrapolicy-limits stacking.

(4) Plaintiffs are entitled to the aggregation or stacking of the $1 million liability limits for each of the seven enumerated vehicles in the Policy's declarations.

(5) Under the Policy, Owners is obligated to provide a total of $7 million in coverage for losses stemming from the collision that is the subject of the underlying litigation.

D. Judgment as a Matter of Law

Based upon the absence of a genuine issue of any material fact and the application of law as set forth in the foregoing legal analysis and conclusions, Plaintiffs are entitled to judgment as a matter of law on the issues raised in their amended complaint for declaratory judgment.

Consequently, Owners is not entitled to judgment as a matter of law on the same issues.

E. Declaratory Judgment

As noted above, the parties agreed that the Policy is fairly subject to interpretation under Illinois law. Under Section 2-701 of the Code of Civil Procedure, the court may declare the rights of parties after construing written instruments such as the Policy in this case. 735 ILCS 5/2-107 (West 2022). Plaintiffs (and Price and Crabtree) have specific legal interests in the interpretation of the Policy. Owners is an adverse party with an interest contrary to those of Plaintiffs. There exists an actual dispute between parties whose interests are oppositely aligned about the proper interpretation of the Policy. There is no apparent reason why the court should not give liberal effect to its statutory power to adjudicate the parties' rights in this case.

After construing the Owners policy as requested by the parties, and upon reaching the conclusions delineated above about how the Policy should be interpreted properly under applicable law, the court finds that it is able to make a declaratory judgment and fashion appropriate relief based upon the construction and interpretation of the Policy. Under and with authority from Section 2-701 of the Code of Civil Procedure, 735 ILCS 5/2-701 (West 2022), the court hereby declares that the Policy is properly interpreted, and the rights of the parties are and should be adjudicated, as follows:

(1) The combined-liability coverages for the seven covered vehicles under the Policy are subject to aggregation or stacking; and

(2) The Policy requires that Owners is legally obligated to provide a maximum of $7 million in combined-liability coverage for claims arising out of the collision.

III. CONCLUSION

A. Order

Based upon the foregoing findings of fact and conclusions of law, the court hereby ORDERS, ADJUDGES, and DECREES as follows:

(1) Plaintiffs' Motion for Summary Judgment filed April 21, 2021, is granted.

(2) Owners' Motion for Summary Judgment filed April 26, 2021, is denied.

(3) Judgment is entered in favor of Plaintiffs (and of Crabtree and Price) and against Defendant on the question whether the Policy is vague or ambiguous.

(4) The interpretation of the Policy, and the corresponding rights of the parties, are declared and adjudicated as set forth above in this Opinion and Order.

B. Finality and Appealability of Judgment

This court's ruling was orally announced, but not yet final, on June 8, 2022. This Opinion and Order on Cross-Motions for Summary Judgment is now a final and appealable judgment order.

C. Closing Comments

The summary-judgment phase of this case has been quite lengthy. In drawing this portion of the litigation to a close, the court deems it appropriate to conclude with some final thoughts.

1. *Commendation of Counsel*

The four attorneys actively representing Plaintiffs, Owners, Crabtree, and Price in the

hearing of these summary judgment matters did an exemplary job in presenting their clients' positions through this process. Plaintiffs' counsel (Attorney Lindsay K. Rakers) and Owners' counsel (Attorney Krysta Gumbiner), despite representing parties with sharply contrasting legal positions, worked together cooperatively to frame the issues, reach agreements on briefing schedules, and achieve stipulations helpful to limit the disputes left for the court to resolve only to those matters truly of consequence. Other than the ultimate outcome of the summary-judgment issues, the court noted that these lawyers achieved agreement on all other material issues leading up to the summary-judgment hearing. They were consummate professionals.

Those two lawyers were joined by Crabtree's counsel (Attorney Chase T. Molchin) and Price's counsel (Attorney Terence B. Kelly) in innovatively presenting their clients' positions and arguments in a way that was instructive, zealous on behalf of their clients, and respectful as officers of the court. Although their arguments collided vigorously on the disputed summary judgment issues, the conduct of all four of these attorneys in the lead-up to and conduct of the summary-judgment hearing was, in the court's view, at all times professional, collegial, and a testament to their thorough preparedness and skillful advocacy as attorneys and counselors at law.

Simply put, the performance of these four attorneys was excellent. The court therefore commends Attorneys Rakers, Gumbiner, Molchin, and Kelly for their good work in this case, and for the civility they demonstrated in representing their clients and doing their jobs. Their work thus far in this case has been a credit to their profession.

2. *Appreciation of Patience Shown by Parties and Counsel*

As outlined above, the issues raised by the summary judgment motions and briefs filed

and argued in this case were complex for, and new to, the undersigned judge, who did not have any meaningful prior experience with issues of limits stacking in automobile insurance policies prior to hearing the cross-motions addressed by this order. After taking the cross-motions under advisement, the court endeavored to study the issues, examine thoroughly the cited authorities, and consider the parties' presentations and arguments in a careful and deliberate way. Given the very significant stakes for the parties—including a disputed differential of at least $6 million in potential insurance coverage that might have been in play depending on the motions' outcome—the court took its time to reason through the questions presented.

In addition to its desire to give the pending summary-judgment motions the attention appropriately due to them, the court also experienced multiple significant delays in its ability to resolve the issues more expeditiously due to the press of emergency and other matters, a major change in judicial assignment and accompanying scheduling difficulties, and the like. The long wait between the summary judgment hearing on August 27, 2021, and the issuance of this Opinion and Order more than 11 months later no doubt created understandable frustration. The time that the court required to complete its work admittedly was substantial, and certainly far greater than either the court anticipated or anyone would have preferred. The court thanks the parties and counsel for their patience in awaiting this decision.

IT IS SO ORDERED.

Entered: August 15, 2022

Scott Kording
Associate Circuit Judge
Circuit Court for the Eleventh Judicial Circuit

APPEAL TO THE ILLINOIS APPELLATE COURT
FOURTH JUDICIAL DISTRICT

FROM THE CIRCUIT COURT FOR THE ELEVENTH JUDICIAL CIRCUIT OF ILLINOIS
BLOOMINGTON, MCLEAN COUNTY, ILLINOIS

FILED
9/14/2022 10:56 AM
DONALD R. EVERHART, JR.
CLERK OF THE CIRCUIT COURT
MCLEAN COUNTY, ILLINOIS

MARK KUHN and KAREN KUHN, Plaintiffs, v. OWNERS INSURANCE COMPANY, B. MCLEAN ARNOLD, Special Representative of RYAN HUTE, deceased; JASON FARRELL, Individually; JASON FARRELL, d/b/a JASON FARRELL TRUCKING; and 3 GUYS AND A BUS, INC., Defendants.	)	Case No. 2019 MR 000643 Judge Scott Kording, Presiding

NOTICE OF APPEAL

Defendant-Appellant, Owners Insurance Company, pursuant to Illinois Supreme Court Rules 301 and 303, hereby appeals to the Illinois Appellate Court, Fourth Judicial District, from the final order and judgment of the Circuit Court for the Eleventh Judicial Circuit, Bloomington, McLean County, Illinois, entered on August 15, 2022, and on all orders included in said judgment, including but not limited to:

a) the denial of Defendant-Appellant Owner Insurance Company's motion for summary judgment;

b) the grant of Plaintiffs' motion for summary judgment;

c) the interpretation of the commercial automobile liability insurance policy issued by Defendant-Appellant Owners Insurance Company bearing number 51-829-065-00 (the "Policy"), including that the Policy is vague and/or ambiguous;

d) the interpretation of the Policy that the combined-liability coverages for the seven covered vehicles under the Policy are subject to aggregation and/or stacking; and

e) the interpretation of the Policy that requires Owners to provide a maximum of $7 million in combined liability coverage for claims arising out of the one accident involving one insured vehicle.

In this appeal, Defendant-Appellant Owners Insurance Company seeks to:

a) vacate the Final Order and Judgment entered on August 15, 2022;

b) reverse the August 15, 2022 order denying Owners Insurance Company's motion for summary judgment and granting Plaintiffs' motion for summary judgment; and

c) obtain an order from this Court remanding the case to the Circuit Court, and directing the Circuit Court to enter an order (i) granting summary judgment in favor of Owners Insurance Company; (ii) denying Plaintiffs' motion for summary judgment; (iii) finding that the Policy is not vague and/or ambiguous; (iv) finding that the Policy is not subject to aggregation and/or stacking; (v) finding that Defendant-Appellant Owners Insurance Company is legally obligated to provide a maximum of $1 million in combined liability coverage for claims arising out of the collision; and (vi) granting all other just and proper relief.

Owners Insurance Company

By: /s/ Krysta K. Gumbiner
One of Its Attorneys

Krysta K. Gumbiner
Dinsmore & Shohl LLP
222 West Adams Street
Suite 3400
Chicago, Illinois 60606
312-372-6060
krysta.gumbiner@dinsmore.com
Attorney No. 6322557

CERTIFICATE OF SERVICE

The undersigned on oath states that I served the foregoing document by electronic mail to the parties to whom it is directed on or before the hour of 5:00 p.m. on September 14, 2022. Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the information set forth in this Certificate of Service is true and correct.

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/s/ Krysta K. Gumbiner

59511 (7-15)

07-0677-00
PRINS INSURANCE INC
PO BOX 220
SANBORN IA 51248

Auto-Owners INSURANCE
LIFE • HOME • CAR • BUSINESS
P.O. BOX 30660 • LANSING, MICHIGAN 48909-8160
OWNERS INSURANCE COMPANY

12-06-2018

JASON FARRELL
JASON FARRELL TRUCKING
3717 210TH ST
CLINTON IA 52732-8920

Remember, you can view your policy, pay your bill or change your paperless options any time online, at **www.auto-owners.com**. If you have not already enrolled your policy, you may do so using policy number **51-829-065-00** and Personal ID Code (PID) **7K5 R61 V1K**.

Your agency's phone number is (712) 729-3252.

RE: Policy 51-829-065-00

Thank you for selecting Auto-Owners Insurance Group to serve your insurance needs! Feel free to contact your independent Auto-Owners agent with questions you may have.

Auto-Owners and its affiliate companies offer a variety of programs, each of which has its own eligibility requirements, coverages and rates. In addition, Auto-Owners also offers many billing options. Please take this opportunity to review your insurance needs with your Auto-Owners agent, and discuss which company, program, and billing option may be most appropriate for you.

Auto-Owners Insurance Company was formed in 1916. The Auto-Owners Insurance Group is comprised of five property and casualty companies and a life insurance company. Our A++ (Superior) rating by A.M. Best Company signifies that we have the financial strength to provide the insurance protection you need.

~ Serving Our Policyholders and Agents Since 1916 ~

Agency Code 07-0677-00 Policy Number 51-829-065-00

59482 (8-10)

POLICYHOLDER NOTICE - ACTUAL CASH VALUE

Dear Policyholder,
If your policy's provisions require payment for loss of or damage to covered property on an actual cash value basis, Iowa law may allow us to take into consideration factors including, but not limited to:

1. the market value of the property at the time of loss;
2. replacement cost of the property at the time of the loss less depreciation; and
3. any other relevant evidence or information to determine actual cash value.

This notice is for informational purposes only. Your policy contains the specific terms and conditions of coverage.
If you have any questions regarding your policy or this notice, please contact your Auto-Owners agency.

Owners

Issued 12-06-2018

INSURANCE COMPANY
6101 ANACAPRI BLVD., LANSING, MI 48917-3999

AGENCY PRINS INSURANCE INC
07-0677-00 MKT TERR 038 (712) 729-3252

Endorsement Effective 11-27-2018
POLICY NUMBER 51-829-065-00
Company Use 39-04-IA-1806

NAMED INSURED JASON FARRELL
JASON FARRELL TRUCKING

ADDRESS 3717 210TH ST

CLINTON IA 52732-8920

Company Bill

POLICY TERM		
12:01 a.m. 06-22-2018	to	12:01 a.m. 06-22-2019

COMMERCIAL AUTO POLICY
DESCRIPTION OF CHANGES EFFECTIVE 11-27-2018
(See Declarations Attached)

CHANGED ITEM 0006 2000 NON OWNED TRAILER VIN:NON OWNED
Lienholder added - XTRA LEASE LLC

	TERM	ALL ITEMS
ESTIMATED TOTAL PREMIUM	**$14,333.58**	No Charge

Owners

58979 (10-16)
Issued 12-06-2018

INSURANCE COMPANY
6101 ANACAPRI BLVD., LANSING, MI 48917-3999

AGENCY PRINS INSURANCE INC
07-0677-00 MKT TERR 038 (712) 729-3252

COMMERCIAL AUTO POLICY DECLARATIONS
PREFERRED PROGRAM

Endorsement Effective 11-27-2018

POLICY NUMBER **51-829-065-00**

Company Use 39-04-IA-1806

ITEM ONE

NAMED INSURED JASON FARRELL
JASON FARRELL TRUCKING

ADDRESS 3717 210TH ST

CLINTON IA 52732-8920

Company Bill

POLICY TERM
12:01 a.m. 06-22-2018 to 12:01 a.m. 06-22-2019

Entity: Individual

IN RETURN FOR THE PAYMENT OF THE PREMIUM, AND SUBJECT TO ALL THE TERMS OF THIS POLICY, WE AGREE WITH YOU TO PROVIDE THE INSURANCE AS STATED IN THIS POLICY.

ITEM TWO - SCHEDULE OF COVERED AUTOS AND COVERAGES

This policy provides only those coverages where a charge is shown in the premium column below. Each of these coverages will apply only to those **autos** shown as covered **autos**. **Autos** are shown as covered **autos** for a particular coverage by the entry of one or more of the symbols from the COVERED AUTOS section of the Commercial Auto Policy next to the name of the coverage.

COVERAGES		COVERED AUTOS SYMBOLS	LIMIT OF INSURANCE FOR ANY ONE ACCIDENT OR LOSS	PREMIUM
Combined Liability		7, 8, 9, 19	$1Million each accident	$6,311.69
Uninsured/Underinsured Motorist Coverage		7	Uninsured Motorist - $100,000 each person/ $100,000 each accident	$27.72
		7	Underinsured Motorist - $100,000 each person/ $100,000 each accident	$53.31
Medical Payments		7	$5,000 each person	$39.27
Physical Damage	Comprehensive	7	$250 deductible applies for each covered auto unless a deductible appears in ITEM THREE.	$2,120.34
	Collision	7	$500 deductible applies for each covered auto unless a deductible appears in ITEM THREE.	$5,579.75
	Road Trouble Service			No Coverage
	Additional Expense			No Coverage
			Premium for Endorsements and Terrorism Coverage	$201.50
			ESTIMATED TOTAL PREMIUM*	$14,333.58

* This policy may be subject to final audit.

I certify that this policy was assembled from available records as a representation of coverage that was in effect for the policy period shown.

Christine Haggerty

Date 5/3/19

OWNERS INS. CO. Issued 12-06-2018

AGENCY PRINS INSURANCE INC Company Bill **POLICY NUMBER** **51-829-065-00**
07-0677-00 MKT TERR 038 Company Use 39-04-IA-1806

NAMED INSURED JASON FARRELL Term 06-22-2018 to 06-22-2019

ITEM TWO (Continued)

Endorsements That Apply To All Items: 58001 (01-15) 58802 (10-16) 58500 (01-15) 58709 (10-16) 58000 (01-15) 58557 (03-16) 58009 (01-15) 58200 (01-15) 58524 (01-15) 58555 (01-16) MCS-90 FORM-F (04-07) 58504 (01-15)

QUICK REFERENCE FOR COVERED AUTO DESIGNATION SYMBOLS

Refer to the Commercial Auto Policy 58001 Section I for a complete description of COVERED AUTOS and policy provisions that may apply.

1 = Any Auto

2 = Owned Autos Only

3 = Owned Private Passenger Autos Only

4 = Owned Autos Other Than Private Passenger Autos Only

5 = Owned Autos Subject to No-fault

6 = Owned Autos Subject To A Compulsory Uninsured Motorists Law

7 = Scheduled Autos Only

8 = Hired Autos Only

9 = Non-owned Autos Only

19 = Mobile Equipment Subject To Compulsory Or Financial Responsibility Or Other Motor Vehicle Insurance Law Only

Owners

58979 (10-16)
Issued 12-06-2018

INSURANCE COMPANY
6101 ANACAPRI BLVD., LANSING, MI 48917-3999

COMMERCIAL AUTO POLICY DECLARATIONS
PREFERRED PROGRAM

AGENCY PRINS INSURANCE INC
07-0677-00 MKT TERR 038 (712) 729-3252

Endorsement Effective 11-27-2018

POLICY NUMBER **51-829-065-00**

Company Use 39-04-IA-1806

NAMED INSURED JASON FARRELL
JASON FARRELL TRUCKING

ADDRESS 3717 210TH ST

CLINTON IA 52732-8920

Company Bill

POLICY TERM
12:01 a.m. 06-22-2018 to 12:01 a.m. 06-22-2019

This policy is amended in consideration of the additional or return premium shown below. This Declarations voids and replaces all previously issued Declarations bearing the same policy number and premium term.

ITEM THREE - SCHEDULE OF COVERED AUTOS, ADDITIONAL COVERAGES AND ENDORSEMENTS

		TERRITORY	CLASS
Hired Autos		048 Clinton County, IA	SPL

COVERAGES	LIMITS	PREMIUM	CHANGE
Combined Liability	$1Million each accident	$72.91	
Terrorism Coverage		.36	
	TOTAL	$73.27	
			No Charge

ITEM DETAILS: Estimated cost of hire - liability $ If Any (Subject to audit)

160 1184

		TERRITORY	CLASS
Non-Owned Autos Liability		048 Clinton County, IA	SPL

COVERAGES	LIMITS	PREMIUM	CHANGE
Combined Liability	$1Million each accident	$56.33	
Terrorism Coverage		.28	
	TOTAL	$56.61	
			No Charge

160 1184

OWNERS INS. CO. Issued 12-06-2018

AGENCY PRINS INSURANCE INC Company **POLICY NUMBER** **51-829-065-00**
07-0677-00 MKT TERR 038 Bill Company Use 39-04-IA-1806

NAMED INSURED JASON FARRELL Term 06-22-2018 to 06-22-2019

	TERRITORY	CLASS
1. 2000 KW W900 VIN: 1XKWDB9X9YR861487	048 Clinton County, IA	

COVERAGES	LIMITS	PREMIUM	CHANGE
Combined Liability	$1Million each accident	$1,805.81	
Uninsured Motorist	$ 100,000 each person/$ 100,000 each accident	9.24	
Underinsured Motorist	$ 100,000 each person/$ 100,000 each accident	17.77	
Medical Payments	$ 5,000 each person	13.09	
Comprehensive	ACV - $2,500 deductible	440.60	
Collision	ACV - $2,500 deductible	1,644.17	
Terrorism Coverage		19.65	
	TOTAL	$3,950.33	
			No Charge

Interested Parties:
Lienholder: MAQUOKETA STATE BANK, 203 N MAIN ST, MAQUOKETA, IA 52060-2204

Additional Endorsements For This Item: 58329 (10-16) 58330 (10-16) 58402 (05-16)

ITEM DETAILS: Extra heavy truck-tractor operated within a 300 mile radius.
USE CLASS (00753): Truckers - Miscellaneous.
Commercial Auto Plus Coverage Package applies.
Vehicle Count Factor Applies.
A 5% seat belt credit has been applied to BI and/or Med Pay premium.
Diminished Value Coverage applies.

160 0103278 A 1184

	TERRITORY	CLASS
2. 1999 PTRB 379 VIN: 1XP5D69X0XN466052	048 Clinton County, IA	

COVERAGES	LIMITS	PREMIUM	CHANGE
Combined Liability	$1Million each accident	$1,805.81	
Uninsured Motorist	$ 100,000 each person/$ 100,000 each accident	9.24	
Underinsured Motorist	$ 100,000 each person/$ 100,000 each accident	17.77	
Medical Payments	$ 5,000 each person	13.09	
Terrorism Coverage		9.23	
	TOTAL	$1,855.14	
			No Charge

Interested Parties: None

Additional Endorsements For This Item: 58329 (10-16) 58330 (10-16) 58402 (05-16)

ITEM DETAILS: Extra heavy truck-tractor operated within a 300 mile radius.
USE CLASS (00753): Truckers - Miscellaneous.
Vehicle Count Factor Applies.
A 5% seat belt credit has been applied to BI and/or Med Pay premium.

160 0104995 A 1184

OWNERS INS. CO. Issued 12-06-2018

AGENCY PRINS INSURANCE INC Company **POLICY NUMBER** **51-829-065-00**
07-0677-00 MKT TERR 038 Bill Company Use 39-04-IA-1806

NAMED INSURED JASON FARRELL Term 06-22-2018 to 06-22-2019

		TERRITORY	CLASS
3. 2003 LIVESTOCK (WILSON) VIN: 1W1UCS2K53D526789		048 Clinton County, IA	
COVERAGES	**LIMITS**	**PREMIUM**	**CHANGE**
Combined Liability	$1Million each accident	$62.28	
Comprehensive	ACV - $2,500 deductible	71.23	
Collision	ACV - $2,500 deductible	106.83	
Terrorism Coverage		1.20	
	TOTAL	$241.54	
			No Charge

Interested Parties:
Lienholder: MAQUOKETA STATE BANK, 203 N MAIN ST, MAQUOKETA, IA 52060-2204

ITEM DETAILS: Livestock trailer operated within a 300 mile radius.
USE CLASS (00753): Truckers - Miscellaneous.
Vehicle Count Factor Applies.
Diminished Value Coverage applies.

160 0030000 1184

		TERRITORY	CLASS
4. 2009 STEP DECK (WILSON) VIN: 4WWFGAOB49N613637		048 Clinton County, IA	
COVERAGES	**LIMITS**	**PREMIUM**	**CHANGE**
Combined Liability	$1Million each accident	$75.53	
Comprehensive	ACV - $2,500 deductible	100.80	
Collision	ACV - $2,500 deductible	118.19	
Terrorism Coverage		1.47	
	TOTAL	$295.99	
			No Charge

Interested Parties:
Lienholder: MAQUOKETA STATE BANK, 203 N MAIN ST, MAQUOKETA, IA 52060-2204

ITEM DETAILS: Flatbed trailer operated within a 300 mile radius.
USE CLASS (00753): Truckers - Miscellaneous.
Vehicle Count Factor Applies.
Diminished Value Coverage applies.

160 0026000 1184

OWNERS INS. CO. Issued 12-06-2018

AGENCY PRINS INSURANCE INC Company **POLICY NUMBER** **51-829-065-00**
07-0677-00 MKT TERR 038 Bill Company Use 39-04-IA-1806

NAMED INSURED JASON FARRELL Term 06-22-2018 to 06-22-2019

	TERRITORY	CLASS
5. 2010 KW T660 VIN: 1XKAD49X1AJ270127	048 Clinton County, IA	

COVERAGES	LIMITS	PREMIUM	CHANGE
Combined Liability	$1Million each accident	$2,265.28	
Uninsured Motorist	$ 100,000 each person/$ 100,000 each accident	9.24	
Underinsured Motorist	$ 100,000 each person/$ 100,000 each accident	17.77	
Medical Payments	$ 5,000 each person	13.09	
Comprehensive	ACV - $2,500 deductible	1,117.83	
Collision	ACV - $2,500 deductible	2,848.38	
Terrorism Coverage		31.36	
	TOTAL	$6,302.95	
			No Charge

Interested Parties:
Lienholder: MAQUOKETA STATE BANK, 203 N MAIN ST, MAQUOKETA, IA 52060-2204

Additional Endorsements For This Item: 58329 (10-16) 58330 (10-16) 58402 (05-16)

ITEM DETAILS: Extra heavy truck-tractor operated within a 300 mile radius.
USE CLASS (00753): Truckers - Miscellaneous.
Commercial Auto Plus Coverage Package applies.
Vehicle Count Factor Applies.
A 5% seat belt credit has been applied to BI and/or Med Pay premium.
Diminished Value Coverage applies.

160 0143665 A 1184

	TERRITORY	CLASS
6. 2000 NON OWNED TRAILER VIN: NON OWNED Secured Interested Party Changed	048 Clinton County, IA	

COVERAGES	LIMITS	PREMIUM	CHANGE
Combined Liability	$1Million each accident	$78.66	
Comprehensive	ACV - $2,500 deductible	133.85	
Collision	ACV - $2,500 deductible	327.49	
Terrorism Coverage		2.70	
	TOTAL	$542.70	
			No Charge

Interested Parties:
Lienholder: XTRA LEASE LLC, 850 66TH AVE SW, CEDAR RAPIDS, IA 52404-4709

ITEM DETAILS: Livestock trailer operated within a 300 mile radius.
USE CLASS (00753): Truckers - Miscellaneous.
Vehicle Count Factor Applies.
Diminished Value Coverage applies.

160 0080000 1184

OWNERS INS. CO. Issued 12-06-2018

AGENCY PRINS INSURANCE INC Company **POLICY NUMBER** **51-829-065-00**
07-0677-00 MKT TERR 038 Bill Company Use 39-04-IA-1806

NAMED INSURED JASON FARRELL Term 06-22-2018 to 06-22-2019

		TERRITORY	CLASS
7. 2019 PRESTIGE STEP DECK VIN: 2LDSD5322KG066819		048 Clinton County, IA	
COVERAGES	**LIMITS**	**PREMIUM**	**CHANGE**
Combined Liability	$1Million each accident	$89.08	
Comprehensive	ACV - $2,500 deductible	256.03	
Collision	ACV - $2,500 deductible	534.69	
Terrorism Coverage		4.40	
	TOTAL	$884.20	
			No Charge

Interested Parties:
Lienholder: MAQUOKETA STATE BANK, 203 N MAIN ST, MAQUOKETA, IA 52060-2204

ITEM DETAILS: Semi trailer operated within a 300 mile radius.
USE CLASS (00753): Truckers - Miscellaneous.
Vehicle Count Factor Applies.
Diminished Value Coverage applies.
This vehicle is rated for truckmen use.

160 0049000 1184

Endorsements That Apply To This Policy

Additional Endorsements

		PREMIUM	CHANGE
Designated Insured - Blanket	Flat Charge	$50.00	
Motor Carrier Endorsement (MCS-90)	Flat Charge	35.00	
Terrorism Coverage		.43	
	TOTAL	$85.43	
			No Charge

Commercial Auto Plus Coverage Package

048
Clinton County, IA

COVERAGES	**PREMIUM**	**CHANGE**
See form	$45.19	
Terrorism Coverage	.23	
TOTAL	$45.42	
		No Charge

Additional Endorsements For This Item: 58514 (06-17)

ITEM DETAILS: 2 qualified item(s).
Physical damage coverages apply under the Commercial Auto Plus Coverage Package to qualified items that have the applicable comprehensive and/or collision coverage(s). Liability coverages provided by this endorsement apply to covered autos insured for liability.

160 1184

58979 (10-16)

OWNERS INS. CO.

Issued 12-06-2018

AGENCY PRINS INSURANCE INC
07-0677-00 MKT TERR 038

Company Bill

POLICY NUMBER 51-829-065-00
Company Use 39-04-IA-1806

NAMED INSURED JASON FARRELL

Term 06-22-2018 to 06-22-2019

	TERRITORY	CLASS
	TERM	ALL ITEMS
ESTIMATED TOTAL PREMIUM	$14,333.58	
		No Charge

Policy Rate Code 0000
A 14% Cumulative Multi-Policy Discount applies. Supporting policies are marked with an (X): Comm Umb(X) Comm Prop/Comm Liab(X) WC( ) Life( ) Personal( ) Farm( ).
Experience Rating Factor of 0.88 Applies.

01184
01230

Owners

58979 (10-16)
Issued 12-06-2018

INSURANCE COMPANY
6101 ANACAPRI BLVD., LANSING, MI 48917-3999

COMMERCIAL AUTO POLICY DECLARATIONS
PREFERRED PROGRAM

AGENCY PRINS INSURANCE INC
07-0677-00 MKT TERR 038 (712) 729-3252

Endorsement Effective 11-27-2018
POLICY NUMBER **51-829-065-00**
Company Use 39-04-IA-1806

NAMED INSURED JASON FARRELL
JASON FARRELL TRUCKING

ADDRESS 3717 210TH ST

CLINTON IA 52732-8920

Company Bill

POLICY TERM		
12:01 a.m. 06-22-2018	to	12:01 a.m. 06-22-2019

This policy is amended in consideration of the additional or return premium shown below. This Declarations voids and replaces all previously issued Declarations bearing the same policy number and premium term.

000100 / 000095

Scheduled Drivers List

Listed below are drivers currently scheduled on this policy. Please compare the list with your current records and contact your agent with any changes that need to be made. We will update the list accordingly for the next renewal.

Name: Last	First	Age	Date of Birth MM-DD-CCYY	State
FARRELL	JASON	43	02-13-1975	IA
MICHELS	AARON	37	11-21-1980	IA
HUTE	RYAN	33	11-09-1984	IA

Commercial Auto Policy

Owners Insurance Company

In witness whereof, we, the Owners Insurance Company, have caused this policy to be issued and to be duly signed by our President and Secretary.

William T Woodbury

Secretary

Daniel J. Thelen

President

58026 (1-15)

Agency Code 07-0677-00 Policy Number 51-829-065-00

58000 (1-15)

QUICK REFERENCE

THE DECLARATIONS PAGE SHOWS THE:
NAMED INSURED
SCHEDULE OF COVERED AUTOS AND COVERAGES
LIMIT OF INSURANCE
ENDORSEMENTS THAT APPLY TO THIS POLICY
PREMIUM

COMMERCIAL AUTO POLICY

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered. Throughout this policy, words and phrases that appear in **bold face type** have special meaning. Refer to SECTION VI - DEFINITIONS. The descriptions in the headings of this policy and all applicable endorsements are solely for convenience and are not part of the terms and conditions of coverage.

SECTION I - COVERED AUTOS

A. COVERED AUTO DESIGNATION SYMBOLS
The following symbols describe the **autos** for which coverage may be provided. Symbols shown next to the various coverages in the Declarations designate only those **autos** which shall be considered covered **autos** for each such coverage.

Symbol	Description Of Covered Auto Designation Symbols	
1	Any **Auto**	
2	Owned **Autos** Only	Only those **autos you** own (and for Covered Autos Liability Coverage any **trailer you** do not own while connected to or accidentally disconnected from a power unit **you** own). This includes those **autos you** acquire ownership of after the policy begins.
3	Owned **Private Passenger Autos** Only	Only **private passenger autos you** own (and for Covered Autos Liability Coverage any **trailer** while connected to or accidentally disconnected from a **private passenger auto you** own). This includes those **private passenger autos you** acquire ownership of after the policy begins.
4	Owned **Autos** Other Than **Private Passenger Autos** Only	Only those **autos you** own that are not **private passenger autos** (and for Covered Autos Liability Coverage any **trailer** while connected to or accidentally disconnected from a power unit, other than a **private passenger auto**, **you** own). This includes those **autos** that are not **private passenger autos you** acquire ownership of after the policy begins.
5	Owned **Autos** Subject To No-fault	Only those **autos you** own that are required by law to have no-fault benefits in the state in which they are licensed or principally garaged. This includes those **autos you** acquire ownership of after the policy begins provided they are required to have no-fault benefits in the state where they are licensed or principally garaged.
6	Owned **Autos** Subject To A Compulsory Uninsured Motorist Law	Only those **autos you** own that are required by law of the state in which they are licensed or principally garaged to have and cannot reject Uninsured Motorist Coverage. This includes those **autos you** acquire ownership of after the policy begins provided they are subject to the same state uninsured motorist requirement.
7	Scheduled **Autos** Only	Only those **autos** scheduled in the Declarations for which a premium charge is shown (and for Covered Autos Liability Coverage any **trailer** while connected to or accidentally disconnected from a power unit scheduled in the Declarations).
8	Hired **Autos** Only	Only those **autos you** lease, hire, rent or borrow. This does not include any **auto you** lease, hire, rent or borrow from any of **your employees**, partners (if **you** are a partnership), members (if **you** are a limited liability company), **executive officers** (if **you** are a corporation), or members of their households.
9	Non-owned **Autos** Only	Only those **autos you** do not own, lease, hire, rent or borrow that are used in connection with **your** business. This includes **autos** owned by **your employees**, partners (if **you** are a partnership), members (if **you** are a limited liability company), **executive officers** (if **you** are a corporation), or members of their households, but only while used in **your** business or **your** personal affairs.

Symbol	Description Of Covered Auto Designation Symbols	
19	Mobile Equipment Subject To Compulsory Or Financial Responsibility Or Other Motor Vehicle Insurance Law Only	Only those **autos** that are land vehicles and that would qualify under the definition of **mobile equipment** under this policy if they were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law where they are licensed or principally garaged.

B. NEWLY ACQUIRED AUTOS

If Symbol 7 is entered next to a coverage in Item Two of the Declarations, then:

1. **Coverage**
   a. An **auto you** acquire ownership of shall be a covered **auto** provided:
      (1) The date **you** acquire ownership of the **auto** is during the policy term shown in the Declarations;
      (2) No other insurance policy provides coverage for the **auto**; and
      (3) **We** already cover all other **autos you** own, that are licensed for use on public roadways, except any that are out of service because of mechanical breakdown or damage sustained in an **accident**; and
   b. If such **auto you** acquire ownership of:
      (1) Replaces an **auto you** previously owned, it shall be provided only those coverages which applied to the replaced **auto**.
      (2) Is an additional **auto** (that is not a **trailer**), it shall be provided the following coverages:
         (a) For other than physical damage coverage, it shall be provided the broadest coverages applicable to any one covered **auto** (that is not a **trailer**).
         (b) For physical damage coverage, it shall be provided only those coverages (regardless of deductible) common to all of **your** other covered **autos**. The deductible shown in Item Two of the Declarations shall apply.
      (3) Is an additional **auto** (that is a **trailer**), it shall be provided only those physical damage coverages (regardless of deductible) common to all of **your** other covered **autos**. The deductible shown in Item Two of the Declarations shall apply.
2. **Duration of Coverage**
   Coverage for an **auto you** acquire ownership of shall apply for the remainder of the policy term or 30 days from the date **you** acquired ownership of the **auto** if this policy is renewed, whichever is longer.
3. **Reporting**
   You must report all **autos you** acquire ownership of to **us** by the expiration of the policy term during which the **auto** was acquired or 30 days from the date **you** acquired the **auto** if this policy is renewed, whichever is longer.
4. **Premium**
   You will be charged the premium for all **autos you** acquire ownership of that are provided coverage under this extension from the date **you** acquired the **autos**.
5. **Option to Purchase Physical Damage Coverage**
   You may at any time during the first 30 days after **you** acquire ownership of the **auto**, purchase the broadest physical damage coverages applicable to any one **auto** already scheduled in the Declarations.

C. TRAILERS AND MOBILE EQUIPMENT

The Covered Autos Liability Coverage provided by this policy for an **auto** extends to:

1. A **trailer** that is not connected to an **auto**, provided such **trailer**:
   a. Has a load capacity of 2,000 pounds or less; and
   b. Is owned by or is in the care, custody or control of:
      (1) **You**;
      (2) A **family member**, if **you** are an individual, who owns an **auto** (that is not a **trailer**) scheduled in the Declarations for Covered Autos Liability Coverage or who only owns a **trailer**; or
      (3) Any other individual or organization who owns an **auto** (that is not a **trailer**) scheduled in the Declarations for Covered Autos Liability Coverage.

   Coverage only applies for the ownership or use of the **trailer** by the individuals or organizations described in **(1)**, **(2)** and **(3)** immediately above.
2. A **trailer** that is connected to an **auto** (that is not a **trailer**) to which Covered Autos Liability Coverage provided by this policy does not apply, provided such **trailer**:
   a. Has a load capacity of 2,000 pounds or less; and

b. Is owned by:
- **(1) You**;
- **(2)** A **family member**, if **you** are an individual, who owns an **auto** (that is not a **trailer**) scheduled in the Declarations for Covered Autos Liability Coverage or who only owns a **trailer**; or
- **(3)** Any other individual or organization who owns an **auto** (that is not a **trailer**) scheduled in the Declarations for Covered Autos Liability Coverage.

Coverage only applies for the ownership of the **trailer** arising from the use of the **trailer** by an individual or organization other than the **trailer** owner. No coverage applies to the owner or operator of the **auto** (that is not a **trailer**) to which the **trailer** is connected.

3. **Mobile equipment** while being carried or towed by a covered **auto**.

4. Non-motorized farm machinery or farm wagons while connected to or accidentally disconnected from such covered **auto**.

D. TEMPORARY SUBSTITUTE AUTOS

Any **auto you** do not own while used with the permission of its owner as a temporary substitute for a covered **auto you** own that is out of service because of its:

1. Breakdown;
2. Repair;
3. Servicing;
4. **Loss**; or
5. Destruction

shall be provided only those coverages which apply to such covered **auto** that is out of service.

E. HIRED AUTOS

Any leased, hired, rented or borrowed **auto** scheduled in the Declarations will be considered a covered **auto you** own and not a covered **auto you** lease, hire, rent or borrow.

SECTION II - COVERED AUTOS LIABILITY COVERAGE

A. COVERAGE

We will pay all sums an **insured** legally must pay as damages because of **bodily injury** or **property damage** to which this insurance applies, caused by an **accident** and resulting from the ownership, maintenance or use of a covered **auto** as an **auto**.

We will also pay all sums an **insured** legally must pay as a **covered pollution cost or expense** to which this insurance applies, caused by an **accident** and resulting from the ownership, maintenance or use of a covered **auto** as an **auto**. However, **we** will only pay for the **covered pollution cost or expense** if there is either **bodily injury** or **property damage** to which this insurance applies that is caused by the same **accident**.

We will investigate, settle or defend, as **we** consider appropriate, any claim or **suit** for damages or a **covered pollution cost or expense**, covered by this policy. **We** will do this at **our** expense, using attorneys of **our** choice. **Our** duty to defend or settle ends when the Limit of Insurance for Covered Autos Liability Coverage has been exhausted by payment of judgments or settlements.

1. Who Is An Insured

The following are **insureds**:

a. **You** for any covered **auto**.

b. Anyone else while using, with **your** permission, a covered **auto** (that is not a **trailer**) **you** own, lease, hire, rent or borrow except:
- **(1) (a)** The owner or anyone else, from whom such covered **auto** is leased, hired, rented or borrowed; or
- **(b)** Any **employee**, agent or driver of the owner or anyone else, from whom such covered **auto** is leased, hired, rented or borrowed.
- **(2)** Your **employee**, partner (if **you** are a partnership), member (if **you** are a limited liability company) or **executive officer** (if **you** are a corporation), if such covered **auto** is owned by him or her or a member of his or her household.
- **(3)** A person using such covered **auto** while working in a business of selling, leasing, servicing, repairing, parking, storing, delivering or testing **autos**, unless that business is **yours**.
- **(4)** A person, other than an **employee**, partner (if **you** are a partnership), member (if **you** are a limited liability company) or **executive officer** (if **you** are a corporation), or a lessee or borrower or any of their **employees**, while moving property to or from such covered **auto**.

c. The owner of a **trailer**, non-motorized farm machinery or farm wagon only when connected to or accidentally disconnected from a covered **auto**.

d. A partner (if **you** are a partnership), a member (if **you** are a limited liability company) or an **executive officer** (if **you** are a corporation) while someone, other than **you**, is using with **your** permission a covered **auto**

you do not own, lease, hire, rent or borrow, in connection with **your** business.

e. If **you** are an individual:
- **(1)** A **family member** who does not own an **auto** (that is not a **trailer**); and
- **(2)** A **family member** who owns an **auto** scheduled in the Declarations

while using a covered **auto**; and
- **(3)** Anyone else while using, with the permission of a **family member**, a scheduled **auto**.

f. Anyone liable for the conduct of an **insured** described in **1.a.** through **1.e.** immediately above, only to the extent of that liability.

g. Any other individual or organization who owns an **auto** (that is not a **trailer**) scheduled in the Declarations while using a scheduled **auto**.

h. Those individuals or organizations described in **1.e.** and **1.g.** immediately above for liability associated with ownership or use of a **trailer** not scheduled in the Declarations which is owned by such individual or organization only when such **trailer**:
- **(1)** Has a load capacity of 2,000 pounds or less; and
- **(2)** Is not connected to an **auto**; or
- **(3)** Is connected to an **auto** (that is not a **trailer**) to which Covered Autos Liability Coverage is not provided by this policy while such **trailer** is being used by an individual or organization other than the **trailer** owner.

i. While any covered **auto** scheduled in the Declarations is rented or leased to **you** and is being used by or for **you**, its owner or anyone else from whom **you** rent or lease it is an **insured** but only for that covered **auto**.

2. Coverage Extensions

a. Supplementary Payments

In addition to **our** Limit of Insurance for Covered Autos Liability Coverage, **we** will also pay:
- **(1)** Premiums on appeal bonds in any **suit we** defend. **We** will not apply for or furnish such bonds.
- **(2)** Premiums on bonds to release attachments in any **suit** against an **insured we** defend, but only for bond amounts that do not exceed the applicable Limit of Insurance. **We** will not apply for or furnish such bonds.
- **(3)** Up to $2,000 for the cost of bail bonds (including bonds for related traffic law violations) required because of an **accident we** cover. **We** will not apply for or furnish such bonds.
- **(4)** Interest on damages owed by an **insured** because of a judgment in a **suit we** defend and accruing:
  - **(a)** After the judgment, and until **we** pay, offer or deposit in court, the amount for which **we** are liable under this policy; or
  - **(b)** Before the judgment, where owed by law, but only on that part of the judgment **we** pay.
- **(5)** Expenses an **insured** incurs for first aid to others at the time of an **accident** covered by this policy.
- **(6)** All court costs taxed against an **insured** in any **suit** against that **insured** which **we** defend.
- **(7)** All reasonable expenses incurred by an **insured** at **our** request, including actual loss of earnings up to $250 per day.

b. Out-of-state Coverage Extensions

While a covered **auto** is away from the state where it is licensed, **we** will:
- **(1)** Increase the Limit of Insurance for Covered Autos Liability Coverage to meet the limits specified by a compulsory or financial responsibility law of the jurisdiction where the covered **auto** is being used. This extension does not apply to the limit or limits specified by any law governing motor carriers of passengers or property.
- **(2)** Provide the minimum amounts and types of other coverages, such as no-fault, required of out-of-state vehicles by the jurisdiction where the covered **auto** is being used.

We will not duplicate payments available under this or any other insurance for the same elements of **loss**.

B. EXCLUSIONS

This insurance does not apply to any of the following:

1. Care, Custody or Control

Property damage to or **covered pollution cost or expense** involving property owned or transported by the **insured** or in the **insured's** care, custody or control. This exclusion does not apply to:
- **a.** Liability assumed under a sidetrack agreement; or
- **b. Property damage** to a residence or private garage, caused by a covered **private passenger auto**, when the residence or private garage is in the care, custody or control of the **insured**.

2. **Contractual**
Liability for **bodily injury** or **property damage** assumed under any contract or agreement.
This exclusion does not apply to liability for damages:
   a. Assumed in a contract or agreement that is an **insured contract** provided that the **bodily injury** or **property damage** occurs subsequent to the execution of such contract or agreement;
   b. That the **insured** would have in the absence of the contract or agreement; or
   c. Assumed in a **private passenger auto** lease or rental agreement, provided **you** are an individual and a party to the contract.
3. **Employee Indemnification and Employer's Liability**
Bodily injury to:
   a. An **employee** of the **insured** arising out of and in the course of:
      (1) Employment by the **insured**; or
      (2) Performing the duties related to the conduct of the **insured's** business; or
   b. The spouse, child, parent, brother or sister of that **employee** as a consequence of Paragraph **3.a.** above.
This exclusion applies:
   a. Whether the **insured** may be liable as an employer or in any other capacity; and
   b. To any obligation to share damages with or repay someone else who must pay damages because of the injury.
This exclusion does not apply to **bodily injury** to **domestic employees** not entitled to workers compensation benefits or to liability assumed by the **insured** under an **insured contract**.
4. **Fellow Employee**
Bodily injury to:
   a. Any fellow **employee** of any **insured** arising out of and in the course of the fellow **employee's** employment or while performing duties related to the conduct of **your** business; or
   b. The spouse, child, parent, brother or sister of the fellow **employee** as a consequence of Paragraph **4.a.** above.
5. **Expected or Intended Injury**
Bodily injury or **property damage** expected or intended from the standpoint of the **insured**.
6. **Handling of Property**
Bodily injury or **property damage** resulting from the handling of property:
   a. Before it is moved from the place where it is accepted by the **insured** for movement into or onto the covered **auto**;
   b. After it is moved from the covered **auto** to the place where it is finally delivered by the **insured**; or
   c. To or from any non-motorized farm machinery or farm wagon.
7. **Operations**
Bodily injury or **property damage** arising out of the operation of:
   a. Any equipment listed in Paragraphs **6.b.** and **6.c.** of the definition of **mobile equipment**.
   b. Machinery or equipment that is in, upon or attached to a land vehicle that would qualify under the definition of **mobile equipment** if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged.
   c. Machinery or equipment that is in, upon or attached to a **trailer**, non-motorized farm machinery or farm wagon.
8. **Completed Operations**
Bodily injury or **property damage** arising out of **your** work after that work has been completed or abandoned.
In this exclusion, **your** work means:
   a. Work or operations performed by **you** or on **your** behalf; and
   b. Materials, parts or equipment furnished in connection with such work or operations.
Your work includes warranties or representations made at any time with respect to the fitness, quality, durability or performance of any of the items included in Paragraph **8.a.** or **8.b.** above.
Your work will be deemed completed at the earliest of the following times:
   a. When all of the work called for in **your** contract has been completed;
   b. When all the work to be done at the site has been completed if **your** contract calls for work at more than one site; or
   c. When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.
Work that may need service maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.
9. **Pollution**
   a. **Bodily injury** or **property damage** arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of **pollutants**:
      (1) That are, or that are contained in any property that is:

(a) Being transported or towed by, handled or handled for movement into, onto or from the covered **auto**;
(b) Otherwise in the course of transit by or on behalf of the **insured**; or
(c) Being stored, disposed of, treated or processed in or upon the covered **auto**;

(2) Before the **pollutants** or any property in which the **pollutants** are contained are moved from the place where they are accepted by the **insured** for movement into or onto the covered **auto**; or

(3) After the **pollutants** or any property in which the **pollutants** are contained are moved from the covered **auto** to the place where they are finally delivered, disposed of or abandoned by the **insured**.

b. Paragraph **9.a.(1)** above does not apply to fuels, lubricants, fluids, exhaust gases or other similar **pollutants** that are needed for or result from the normal electrical, hydraulic or mechanical functioning of the covered **auto** or its parts, if:
(1) The **pollutants** escape, seep, migrate, or are discharged, dispersed or released directly from an **auto** part designed by its manufacturer to hold, store, receive or dispose of such **pollutants**; and
(2) The **bodily injury**, **property damage** or **covered pollution cost or expense** does not arise out of the operation of any equipment listed in Paragraphs **6.b.** and **6.c.** of the definition of **mobile equipment**.

c. Paragraphs **9.a.(2)** and **9.a.(3)** above do not apply to **accidents** that occur away from premises owned by or rented to an **insured** with respect to **pollutants** not in or upon a covered **auto** if:
(1) The **pollutants** or any property in which the **pollutants** are contained are upset, overturned or damaged as a result of the maintenance or use of a covered **auto**; and
(2) The discharge, dispersal, seepage, migration, release or escape of the **pollutants** is caused directly by such upset, overturn or damage.

10. **Public or Livery Conveyance**
Bodily injury or **property damage** arising out of the use of any covered **auto** as a public mode of transportation of people. This exclusion does not apply to car pooling on a share the expense basis.

11. **Racing**
Bodily injury or **property damage** arising out of the use of any covered **auto** while participating in any prearranged racing, prearranged high speed driving, prearranged competitive driving or prearranged demolition event. This exclusion also applies while any covered **auto** is preparing for or practicing for any of the previously mentioned events.

12. **War or Military Action**
Bodily injury or **property damage** arising directly or indirectly out of:
a. War, including undeclared or civil war;
b. Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
c. Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

13. **Workers Compensation**
Any obligation for which the **insured** or the **insured's** insurer may be held liable under any workers compensation, disability benefits or unemployment compensation law or any similar law.

14. **Autos Leased Under Hold Harmless Agreements**
Bodily injury or **property damage** arising out of the use of any covered **auto** (that is not a **trailer**) while:
a. Leased to **you** in writing in accordance with a written agreement in which the lessor holds **you** harmless; and
b. Used pursuant to operating rights (permits) granted to **you** by a public authority.

C. **LIMIT OF INSURANCE**
We will pay damages for **bodily injury**, **property damage** and **covered pollution cost or expense** up to the Limit of Insurance shown in the Declarations for this coverage. Such damages shall be paid as follows:

1. When combined liability limits are shown in the Declarations, the limit shown for each **accident** is the total amount of coverage and the most **we** will pay for damages because of or arising out of **bodily injury**, **property damage** and **covered pollution cost or expense** in any one **accident**.
2. When separate **bodily injury** and **property damage** limits are shown in the Declarations:
a. For **bodily injury**:
(1) The limit shown for "each person" is the amount of coverage and the most **we**

will pay for all damages because of or arising out of **bodily injury** to one person in any one **accident**.

(2) The limit shown for "each accident" is the total amount of coverage and the most **we** will pay, subject to **2.a.(1)** above, for all damages because of or arising out of **bodily injury** to two or more persons in any one **accident**.

b. For **property damage**, the limit shown is the amount of coverage and the most **we** will pay for all **property damage** in any one **accident**.

3. The Limit of Insurance applicable to a **trailer**, non-motorized farm machinery or farm wagon which is connected to an **auto** covered by this policy shall be the limit of insurance applicable to such **auto**. The **auto** and connected **trailer**, non-motorized farm machinery or farm wagon are considered one **auto** and do not increase the Limit of Insurance.

4. The Limit of Insurance applicable to a **trailer** covered by this policy but not scheduled in the Declarations:

a. Which is not connected to an **auto**; or

b. Which is connected to an **auto** not covered for Covered Autos Liability Coverage by this policy

shall be the Limit of Insurance applicable to any covered **auto**.

5. The Limit of Insurance for this coverage may not be added to the limits for the same or similar coverage applying to other **autos** insured by this policy to determine the amount of coverage available for any one **accident** or **covered pollution cost or expense**, regardless of the number of:

a. Covered **autos**;

b. **Insureds**;

c. Premiums paid;

d. Claims made or **suits** brought;

e. Persons injured; or

f. Vehicles involved in the **accident**.

All **bodily injury**, **property damage** and **covered pollution cost or expense** resulting from continuous or repeated exposure to substantially the same conditions will be considered as resulting from one **accident**.

SECTION III - PHYSICAL DAMAGE COVERAGE

A. COVERAGE

1. **We** will pay for **loss** to a covered **auto** or its **equipment or custom furnishings** under:

a. **Comprehensive Coverage**

From any cause except:

(1) The covered **auto's** collision with another object; or

(2) The covered **auto's** overturn.

However, **we** will pay for:

(1) Glass breakage from any cause including upset or collision;

(2) Damage caused by missiles or falling objects; and

(3) Damage caused by collision with an animal or bird.

When a deductible is shown in the Declarations for this coverage, **we** will reduce **our** payment by that amount. The deductible shall not apply to the repair of safety or laminated glass contained within the windshield, rear window, a door window or any other side window of a covered **auto** that is a **private passenger auto**, provided both **you** and **we** agree to the repair. However, the deductible will still apply to:

(1) Any light or any component of any light to such covered **auto**;

(2) Any glass contained in the roof;

(3) Removable roof panels of any type;

(4) Mirrors of any type; or

(5) Replacement of any safety or laminated glass.

b. **Collision Coverage**

Caused by:

(1) The covered **auto's** collision with another object; or

(2) The covered **auto's** overturn.

When a deductible is shown in the Declarations for this coverage, **we** will reduce **our** payment by that amount. The deductible shall not apply when a covered **auto** that is a **private passenger auto** is:

(1) In a collision with another **auto**:

(a) **We** insure and which **you** do not own, rent or have in **your** care, custody or control; or

(b) Whose owner or operator has been identified; and

1) Is legally responsible for the entire amount of the damage; and

2) Is covered by a **property damage** liability policy or bond

but only if the damage exceeds the deductible amount.

(2) Legally parked and is accidentally struck by another of **your private passenger autos**, provided Collision Coverage applies to both **autos**.

2. **Road Trouble Service**
We will pay up to the amount shown in the Declarations for this coverage each time a covered **auto** that is a **private passenger auto** is disabled:
   a. For towing to the nearest available garage; and
   b. For the cost of labor performed at the place of disablement.
3. **Coverage Extensions**
   a. **Trailers**
   The Comprehensive Coverage and Collision Coverage provided to a covered **auto** will extend to certain **trailers you** do not own. The trailer must:
      (1) Have a load capacity of 2,000 pounds or less;
      (2) Be used with **your private passenger auto**; and
      (3) Be other than a **trailer** of the home, office, store, display or passenger type.
   Our limit of insurance under this coverage extension is $500 in any one **loss**. No deductible applies.
   b. **Transportation Expenses Following Theft**
   If Comprehensive Coverage is shown in the Declarations for a **private passenger auto** scheduled in the Declarations, **we** will pay up to $30 per day but not more than $900 in any one **loss** for transportation expenses incurred if such **auto** is stolen. **We** will pay such expenses incurred during the period beginning 48 hours after an **insured** reports the theft to **us** and to the police and ending when such **auto** is returned to use or **we** pay for its **loss**.
   c. **Personal Property**
   The Comprehensive Coverage and Collision Coverage provided to a covered **auto** that is a **private passenger auto** will extend to **loss** to personal property contained in or on such **auto** as follows:
      (1) Comprehensive Coverage because of:
         (a) Fire;
         (b) Lightning; or
         (c) Theft or attempted theft if there are visible signs of someone breaking into such **auto** or the entire **auto** is stolen; or
      (2) Collision Coverage.
   The personal property must be owned by **you**, a **family member** or **your employee**.
   This coverage extension does not apply to:
      (1) Property used in a business, trade or profession.
      (2) Money or jewelry.
      (3) Property specifically insured.
      (4) Anything that is otherwise excluded by this policy.
   Our limit of insurance under this coverage extension is $300 in any one **loss**. No deductible applies.
   d. **Air Bag Replacement**
   The Comprehensive Coverage provided to a **private passenger auto** scheduled in the Declarations will extend to replacement of an air bag that inflates without such **auto** having been involved in a Comprehensive or Collision **loss**. No deductible applies.
   e. **Loss of Use - Rental Fee Reimbursement**
      (1) **We** shall provide the following extension of coverage when **you** become legally responsible to pay for loss of use of:
         (a) A **private passenger auto** rented or hired without a driver under a written rental contract or agreement and a covered **auto** under this policy is a **private passenger auto** with Comprehensive and Collision Coverages which extend to such rented or hired **private passenger auto**; or
         (b) An **auto** (that is not a **private passenger auto**) rented or hired without a driver under a written rental contract or agreement and such **auto** is provided Hired Auto Physical Damage coverage under this policy.
      (2) **We** shall reimburse **you** or pay on **your** behalf:
         (a) The rental fee that would have been paid if such **auto** (that is a **private passenger auto**); or
         (b) Up to $30 per day but not more than $900 in any one **loss**, of the rental fee that would have been paid, if such **auto** (that is not a **private passenger auto**)
      had not sustained **loss**.
      (3) This coverage begins the day following the **loss** and ends, regardless of the policy expiration date, at the earliest of the following:
         (a) The day repairs to the rental **auto** are completed, not to exceed a period longer than required to repair such **auto**, exercising due diligence and dispatch;
         (b) The day **we** make payment for replacement of the rental **auto**; or
         (c) Thirty (30) days after the date coverage begins.
      (4) **You** or the rental agency must submit proper receipts to **us** for all expenses claimed under this coverage extension.

f. Diminished Value
When Diminished Value Coverage is shown in the Declarations for an **auto**, **we** shall pay:
(1) An additional 15% of the settlement amount if the model year of such **auto** is no older than the model year of the date of the **loss** and the two prior model years; or
(2) An additional 10% of the settlement amount for prior model years
for damage to such **auto** because of **diminished value**, only if such **auto** is repaired. This provision does not apply to damage to glass.

B. EXCLUSIONS
Comprehensive and Collision Coverages do not apply to:

1. Audio, Visual or Data Electronic Equipment
Loss to any of the following:
a. Any electronic equipment that reproduces, receives or transmits audio, visual, global positioning or data signals. However, such equipment is covered if:
(1) Standard or optional equipment for the manufacturer of a covered **auto** for that make, model and model year;
(2) Permanently installed in a covered **auto** and was not standard or optional equipment for the manufacturer of such covered **auto** for that make, model and model year; or
(3) Scheduled in the Declarations and a premium charged.
Our limit under **a.(2)** above shall not exceed $1,000 in any one **loss**. No deductible applies to the coverage extension in **a.(2)** above.
b. Tapes, discs or other similar media designed for use with equipment described in **a.** above.
c. Any accessories used with the media or equipment described in **a.** or **b.** above.

2. Diminished Value
Loss to a covered **auto** because of or arising out of **diminished value**. This exclusion does not apply to the extent that coverage is provided when Diminished Value Coverage is shown in the Declarations.

3. Expected or Intentional Act
Loss to a covered **auto** because of or arising out of **your** intentional act or an intentional act committed at **your** direction or with **your** knowledge.

4. Conversion, Embezzlement or Secretion
Loss to a covered **auto** because of or arising out of conversion, embezzlement or secretion by any person lawfully having a covered **auto** under a sale, lease or similar agreement.

5. Illegal Activities
Loss to a covered **auto** because of confiscation or destruction by any civil or governmental authorities because of illegal activities engaged in by **you** or a **family member**.

6. Loss of Use
Loss of use of a covered **auto**, except as provided in Coverage Extensions.

7. Nuclear Hazard
Loss caused by or resulting from:
a. The explosion of any weapon employing atomic fission or fusion; or
b. Nuclear reaction or radiation, or radioactive contamination, however caused.

8. Racing
Loss to any covered **auto** while participating in any prearranged racing, prearranged high speed driving, prearranged competitive driving or prearranged demolition event. This exclusion also applies while any covered **auto** is preparing for or practicing for any of the previously mentioned events.

9. Radar Detectors
Loss to any device designed or used to:
a. Detect speed-measuring equipment such as radar or laser detectors; or
b. Elude or disrupt speed-measuring equipment such as a jamming apparatus.

10. Tires
Loss to tires, unless the **loss** is caused by:
a. Fire;
b. Theft; or
c. Malicious mischief; or
is part of other **loss** covered by this policy.

11. Truck Campers
Loss to:
a. A truck camper; or
b. A pickup cover with built-in cooking and sleeping equipment
unless scheduled in the Declarations and a premium charged.

12. War or Military Action
Loss caused by or resulting from:
a. War, including undeclared or civil war;
b. Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
c. Insurrection, rebellion, revolution, usurped power or action taken by governmental

authority in hindering or defending against any of these.

13. **Wear and Tear**
Loss to a covered **auto** because of and confined to:
a. Wear and tear;
b. Freezing; or
c. Mechanical or electrical breakdown, other than burning of wiring.
This exclusion does not apply to such **loss** following and resulting from other **loss** covered by this policy.

C. LIMIT OF INSURANCE

1. The most **we** will pay for **loss** to any one covered **auto** is the lesser of:
a. The actual cash value of damaged or stolen property at the time of the **loss**;
b. The cost, at local prices, to repair or replace damaged or stolen property with other property of like kind and quality; or
c. The Limit of Insurance shown in the Declarations.
2. **We** will, at **our** option, replace an **auto** scheduled in the Declarations with a new one of equal value or pay **you your** original purchase price if:
a. Such **auto** is a **private passenger auto**;
b. **You** purchased it new;
c. **We** determine the **loss** cannot be repaired; and
d. The **loss** occurs within 90 days of the purchase date.
3. If a **loss** to an **auto** scheduled in the Declarations can be paid under either Comprehensive Coverage or Collision Coverage, payment will be made under the coverage that pays the most.
4. **Coinsurance**
If a scheduled **auto** has been altered, remodeled, converted or modified so that its value is substantially increased over that of a standard **auto** of the same make and model, and such modifications affect the amount of the **loss**, **we** will pay only the proportion that the value of a standard **auto** bears to the value of the scheduled **auto**. This does not apply when an additional premium is charged based on the increased value.
5. **Deductible - Hired Auto Physical Damage Coverage**
If other insurance is available to **you** or the owner of a covered **auto** (that is a hired **auto**) and such insurance is subject to a deductible greater than the deductible which applies to this coverage, **we** shall pay the difference between the two deductibles.

SECTION IV - INDIVIDUAL NAMED INSURED

If a Named Insured shown in the Declarations is an individual and any **auto** scheduled in the Declarations is a **private passenger auto**, the following extensions of coverage apply:

A. The Covered Autos Liability Coverage provided for any scheduled **auto** (that is not a **trailer**) also applies to an **auto** (that is not a **trailer**):
1. Not owned by **you** or anyone living with **you**.
2. Not furnished or available for regular use to **you** or anyone living with **you**. However, **we** will afford **you** Covered Autos Liability Coverage for **your** use of an **auto** (that is not a **trailer**) owned by or furnished for the regular use of a **family member**.
3. Not used in a business **you** own or operate selling, servicing, repairing, parking or storing **autos**.
4. Not used by **you**, a **family member** or the chauffeur or **domestic employee** of either while working in **your** business or occupation or that of a **family member**, unless the **auto** is a **private passenger auto**.
5. Not used by **you** or a **family member** without a reasonable belief of permission to do so.

We only extend this coverage to and while used by:
1. **You**, if an individual; and
2. **Family members**:
a. Who do not own an **auto** (that is not a **trailer**); or
b. Who own an **auto** (that is not a **trailer**) if scheduled in the Declarations.

We also extend this coverage to anyone legally responsible for the use of the **auto** (that is not a **trailer**) by the persons described in **1.** and **2.** immediately above.

B. The Physical Damage Coverage provided for any scheduled **auto** (that is not a **trailer**) also applies to an **auto** (that is not a **trailer**):
1. Not owned by **you** or anyone living with **you**.

2. Not furnished or available for regular use to **you** or anyone living with **you**.
3. Not used in a business **you** own or operate selling, servicing, repairing, parking or storing **autos**.
4. Not used by **you**, a **family member** or the chauffeur or **domestic employee** of either while working in **your** business or occupation or that of a **family member**, unless the **auto** is a **private passenger auto**.
5. Not used by **you** or a **family member** without a reasonable belief of permission to do so.

We only extend this coverage to and while used by:

1. **You**, if an individual; and
2. **Family members**:
   a. Who do not own an **auto** (that is not a **trailer**); or
   b. Who own an **auto** (that is not a **trailer**) scheduled in the Declarations.

These extensions do not apply when there is other insurance covering **your** interest or the interest of the owner. However, they do apply if **you** are legally liable.

SECTION V - CONDITIONS

A. LOSS CONDITIONS

1. **Duties in the Event of Accident, Claim, Suit or Loss**

   We have no duty to provide coverage under this policy unless there has been full compliance with the following duties:

   a. In the event of **accident**, claim, **suit** or **loss**, an **insured** must give **us** or **our** authorized representative prompt notice of the **accident** or **loss**, including:
      (1) How, when and where the **accident** or **loss** occurred;
      (2) The **insured's** name and address; and
      (3) To the extent possible, the names and addresses of any injured persons and witnesses.

   b. Additionally, the **insured** and any other involved **insured** must:
      (1) Immediately send **us** copies of any request, demand, order, notice, summons or legal paper received concerning the claim or **suit**.
      (2) Cooperate with **us** in the investigation or settlement of the claim or defense against the **suit**.
      (3) Authorize **us** to obtain medical records or other pertinent information.
      (4) Submit to examination, at **our** expense, by physicians of **our** choice, as often as **we** reasonably require.
      (5) Assume no obligation, make no payment or incur no expense without **our** consent, except at the **insured's** own cost.
      (6) Agree to examinations under oath at **our** request and give **us** a signed statement of such answers.

   c. If there is **loss** to a covered **auto** or its **equipment or custom furnishings**, an **insured** must also do the following:
      (1) Promptly notify the police if the covered **auto** or any of its **equipment or custom furnishings** is stolen.
      (2) Take all reasonable steps to protect the covered **auto** from further damage. Also keep a record of expenses for consideration in the settlement of the claim.
      (3) Permit **us** to inspect the covered **auto** and records proving the **loss** before its repair or disposition.

2. **Legal Action Against Us**

   No legal action may be brought against **us** until there has been full compliance with all the terms of this policy. Further, under the Covered Autos Liability Coverage, no legal action may be brought until **we** agree a person entitled to coverage has an obligation to pay or until the amount of that obligation has been determined by judgment after trial. No one has any right under this policy to bring **us** into any action to determine the liability of any person **we** have agreed to protect.

3. **Appraisal for Physical Damage Loss**

   If **you** and **we** disagree on the amount of **loss**, either may demand an appraisal of the **loss**. In this event, each party will select a competent and impartial appraiser. The two appraisers will select a competent and impartial umpire. The appraisers will state separately the actual cash value and amount of **loss**. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

   a. Pay its chosen appraiser; and
   b. Bear the other expenses of the appraisal and umpire equally.

   If **we** submit to an appraisal, **we** will still retain **our** right to deny the claim.

4. **Loss Payment - Physical Damage Coverage**
At **our** option, **we** may:
   a. Pay for, repair or replace damaged or stolen property;
   b. Return stolen property at **our** expense. **We** will pay for any damage that results to the **auto** from the theft; or
   c. Take all or any part of damaged or stolen property at an agreed or appraised value.

   If **we** pay for the **loss**, **our** payment will include, where required by law, the applicable sales tax for damaged or stolen property. **We** may adjust the **loss** for an **auto you** lease, hire, rent or borrow with either **you** or the owner of such **auto**, whomever **we** choose.
5. **Our Right to Recover Payments**
If **we** make a payment under this policy and the person or organization to or for whom payment is made has a right to recover damages from another, **we** will be entitled to that right. That person or organization shall do everything necessary to transfer that right to **us** and do nothing to prejudice it.
6. **Motor Carriers**
   a. When this policy is amended by an endorsement prescribed in compliance with any law for the regulation of:
      (1) Common carriers;
      (2) Contract carriers; or
      (3) Private carriers

      of passengers or property, all amended policy terms and conditions remain in full force and are binding between **you** and **us**.
   b. If as a result of that endorsement, **we** are obligated to make a payment that **we** would not make except for that endorsement, **you** agree to reimburse **us** for any payment, including payment for defense costs, **we** must make as a result of that endorsement.

B. GENERAL CONDITIONS

1. **Policy Term and Territory**
Under this policy, **we** cover **accidents** and **losses** occurring:
   a. During the policy term shown in the Declarations; and
   b. Within the coverage territory.
      The coverage territory is:
      (1) The United States of America;
      (2) The territories and possessions of the United States of America;
      (3) Canada; and
      (4) Anywhere in the world if a covered **auto** that is a **private passenger auto** is leased, hired, rented or borrowed without a driver for a period of 30 days or less, provided that the **insured's** responsibility to pay damages is determined in a **suit** on the merits in any of the coverage territories described in **b.(1)**, **b.(2)** or **b.(3)** above or in a settlement to which **we** agree.

      We also cover **loss** to, or **accidents** involving, a covered **auto** while being transported between any of these places.
2. **Other Insurance**
   a. For any covered **auto** that is scheduled in the Declarations, this policy provides primary insurance. For any covered **auto** which is not scheduled in the Declarations, the insurance provided by this policy is excess over any other collectible insurance. However, this coverage shall be primary when any covered **auto** (that is a **trailer**) is connected to an **auto** that is scheduled in the Declarations and this coverage shall be excess when any covered **auto** (that is a **trailer**) is connected to an **auto** that is not scheduled in the Declarations.
   b. Regardless of the provisions of Paragraph **a.** above, the Covered Autos Liability Coverage of this policy is primary for any liability assumed under an **insured contract.**
   c. When this policy and any other coverage form or policy covers on the same basis, either excess or primary, **we** will pay only **our** share. **Our** share is the proportion that the Limit of Insurance of **our** policy bears to the total of the limits of all the coverage forms and policies covering on the same basis.
3. **Assignment**
No interest in this policy may be assigned without **our** written consent. However, if **you** are an individual and **you** die within the policy term, the policy will cover as though named in the Declarations:
   a. **Your** spouse;
   b. **Your** legal representative, but only with respect to his or her legal responsibility for the maintenance or use of a covered **auto**; and
   c. Any person having proper temporary custody of a covered **auto** until a legal representative is appointed

   provided **we** are given written notice of **your** death within 60 days of the date of **your** death or by the expiration of the policy term in which **you** die, whichever is greater. This requirement does not apply with regard to **your** spouse.

4. **Bankruptcy**
Bankruptcy or insolvency of an **insured** or an **insured's** estate will not relieve **us** of any obligation under the terms of this policy.
5. **Changes**
   a. This policy contains all the agreements between **you** and **us** or any of **our** agents, concerning the insurance afforded. The terms of this policy can be amended or waived only by endorsement issued by **us** and made part of this policy.
   b. The first Named Insured shown in the Declarations is authorized to make changes in the terms of this policy with **our** consent. **We** may adjust **your** policy premium because of changes made to the policy.
   c. **We** may adjust **your** premium during the policy term because of changes in the factors that were used to determine such premium. These factors include but are not limited to:
      (1) The principal place of garaging a covered **auto**;
      (2) Coverages, limits of insurance and deductibles;
      (3) The type, make and model of a covered **auto** and its use; and
      (4) The operators of a covered **auto**.
      Premium adjustments will be made at the time of such changes or when **we** become aware of the changes, if later. **We** will use the governing rules and rates in effect on the inception date of the policy term.
6. **Concealment, Misrepresentation or Fraud**
This policy is void in any case of fraud by **you** at any time as it relates to this policy. It is also void if **you** or any other **insured**, at any time, intentionally conceals or misrepresents a material fact concerning:
   a. This policy;
   b. The covered **auto**;
   c. **Your** interest in the covered **auto**; or
   d. A claim under this policy.
7. **Duplication of Coverage**
   a. If this policy and any other policy or coverage form provided by **us** or a company affiliated with **us**, provides coverage for the same **accident** or **loss**, **our** maximum limit of insurance under all the policies or coverage forms shall not exceed the highest limit of insurance under any single policy or coverage form applicable to the **accident** or **loss**.
   b. This condition does not apply to any policy or coverage form issued by **us** or a company affiliated with **us** to specifically provide excess insurance over this policy.
8. **Examination of Your Books and Records**
We may examine and audit **your** books and records as they relate to this policy at any time during the policy term and up to one year afterward.
9. **Inspections**
   a. **We** have the right to:
      (1) Make inspections at any time;
      (2) Give **you** reports on the conditions **we** find; and
      (3) Recommend changes.
   b. **We** are not obligated to make any inspections, reports or recommendations and any such actions **we** do undertake relate only to insurability and the premiums to be charged. **We** do not make safety inspections. **We** do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. **We** do not warrant that conditions:
      (1) Are safe or healthful; or
      (2) Comply with laws, regulations, codes or standards.
   c. Paragraphs **9.a.** and **9.b.** of this condition apply not only to **us**, but also to any rating, advisory, rate service or similar organization which makes insurance inspections, reports or recommendations.
10. **Liberalization**
If **we** revise this policy to provide more coverage without additional premium charge, **your** policy will automatically provide the additional coverage as of the day the revision is effective in **your** state.
11. **No Benefit to Bailee - Physical Damage Coverage**
We will not recognize any assignment or grant any coverage for the benefit of any person or organization holding, storing or transporting property for a fee regardless of any other provision of this policy.
12. **Premiums**
The first Named Insured shown in the Declarations:
   a. Is responsible for the payment of all premiums; and
   b. Will be the payee for any return premiums **we** pay.
13. **Premium Audit**
The estimated premium for this policy is based on the exposures **you** told **us** **you** would have when this policy began. **We** will compute the final premium due when **we** determine **your**

actual exposures. The estimated total premium will be credited against the final premium due, and the first Named Insured will be billed for the balance, if any. The due date for the final premium is the date shown as the due date on the bill. If the estimated total premium exceeds the final premium due, a return premium will be paid. Failure to pay any premium, including the final premium, by the due date shown on the bill will be considered to be non payment of premium.

14. **Severability**
Except as to the Limit of Insurance, the coverage provided by this policy applies separately to each person against whom claim is made or **suit** is brought.

SECTION VI - DEFINITIONS

A. **Accident** includes continuous or repeated exposure to the same conditions resulting in **bodily injury** or **property damage**.

B. **Auto** means:
1. A land motor vehicle, designed for travel on public roads;
2. A **trailer**; or
3. Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged.

However, **auto** does not include **mobile equipment**.

C. **Bodily injury** means physical injury, sickness or disease sustained by a person, including resulting death of that person.

D. 1. **Covered pollution cost or expense** means any cost or expense arising out of:
a. Any request, demand, order or statutory or regulatory requirement that an **insured** or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, **pollutants**; or
b. Any claim or **suit** by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, **pollutants**.

2. **Covered pollution cost or expense** does not include any cost or expense arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of **pollutants**:
a. That are, or that are contained in any property that is:
(1) Being transported or towed by, handled or handled for movement into, onto or from the covered **auto**;
(2) Otherwise in the course of transit by or on behalf of an **insured**; or
(3) Being stored, disposed of, treated or processed in or upon the covered **auto**;
b. Before the **pollutants** or any property in which the **pollutants** are contained are moved from the place where they are accepted by an **insured** for movement into or onto the covered **auto**; or
c. After the **pollutants** or any property in which the **pollutants** are contained are moved from the covered **auto** to the place where they are finally delivered, disposed of or abandoned by an **insured**.

Paragraph **2.a.** above does not apply to fuels, lubricants, fluids, exhaust gases or other similar **pollutants** that are needed for or result from the normal electrical, hydraulic or mechanical functioning of the covered **auto** or its parts, if:
(1) The **pollutants** escape, seep, migrate or are discharged, dispersed or released directly from an **auto** part designed by its manufacturer to hold, store, receive or dispose of such **pollutants**; and
(2) The **bodily injury**, **property damage** or **covered pollution cost or expense** does not arise out of the operation of any equipment listed in Paragraph **6.b.** or **6.c.** of the definition of **mobile equipment**.

Paragraphs **2.b.** and **2.c.** above do not apply to **accidents** that occur away from premises owned by or rented to an **insured** with respect to **pollutants** not in or upon a covered **auto** if:
(1) The **pollutants** or any property in which the **pollutants** are contained are upset, overturned or damaged as a result of the maintenance or use of a covered **auto**; and
(2) The discharge, dispersal, seepage, migration, release or escape of the **pollutants** is caused directly by such upset, overturn or damage.

E. **Diminished value** means the actual or perceived reduction in market value or resale value of a covered **auto** as the result of a covered **loss**.

F. **Domestic employee** means a person engaged in household or domestic work performed principally in connection with a residence premises.

G. **Employee** includes a **leased worker**. **Employee** does not include a **temporary worker**.

H. **Equipment or custom furnishings** means:
   1. An apparatus or device (that is not a **trailer**):
      a. Permanently attached to or installed in or upon a covered **auto**; or
      b. Designed for use with, but detached from, a covered **auto**.
   2. Keys and key fobs designed for a covered **auto**.
   3. Custom paint, decals, wraps or other interior or exterior modifications to a covered **auto**.

   Equipment or custom furnishings does not include:
   1. Anything attached to real estate; or
   2. Removable child seats.

I. **Executive officer** means a person holding any of the officer positions created by **your** charter, constitution, by-laws or any other similar governing document.

J. **Family member** means a person who resides with **you** and who is related to **you** by blood, marriage or adoption. **Family member** includes a ward or foster child who resides with **you**.

K. **Insured** means any person or organization qualifying as an insured in the Who Is An Insured provision of the applicable coverage.

L. **Insured contract** means:
   1. A lease of premises;
   2. A sidetrack agreement;
   3. Any easement or license agreement, except in connection with:
      a. Construction; or
      b. Demolition operations

      on or within 50 feet of a railroad;
   4. An indemnification of a municipality as required by ordinance, except in connection with work for a municipality;
   5. That part of any other contract or agreement pertaining to **your** business (including an indemnification of a municipality in connection with work performed for a municipality) under which **you** assume the tort liability of another to pay damages because of **bodily injury** or **property damage** to a third person or organization. Tort liability means liability that would be imposed by law in the absence of any contract or agreement; or
   6. That part of any contract or agreement entered into, as part of **your** business, pertaining to the rental or lease, by **you** or any of **your employees**, of any **auto**. However, such contract or agreement shall not be considered an **insured contract** to the extent that it obligates **you** or any of **your employees** to pay for **property damage** to any **auto** rented or leased by **you** or any of **your employees**.

   An **insured contract** does not include that part of any contract or agreement that:
   1. Indemnifies a railroad for **bodily injury** or **property damage** arising out of:
      a. Construction; or
      b. Demolition operations

      on or within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, roadbeds, tunnel, underpass or crossing;
   2. Pertains to the loan, lease or rental of an **auto** to **you** or any of **your employees**, if the **auto** is loaned, leased or rented with a driver; or
   3. Holds a person or organization engaged in the business of transporting property by **auto** for hire harmless for **your** use of a covered **auto** over a route or territory that person or organization is authorized to serve by public authority.

M. **Leased worker** means a person leased to **you** by a labor leasing firm under an agreement between **you** and the labor leasing firm to perform duties related to the conduct of **your** business. **Leased worker** does not include a **temporary worker**.

N. **Loss** means direct and accidental loss or damage.

O. **Mobile equipment** means any of the following types of land vehicles, including any attached machinery or equipment:
   1. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
   2. Vehicles maintained for use solely on or next to premises **you** own or rent;
   3. Vehicles that travel on crawler treads;
   4. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
      a. Power cranes, shovels, loaders, diggers or drills; or
      b. Road construction or resurfacing equipment such as graders, scrapers or rollers;
   5. Vehicles not described in Paragraph **1.**, **2.**, **3.** or **4.** above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
      a. Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well-servicing equipment; or
      b. Cherry pickers and similar devices used to raise or lower workers; or
   6. Vehicles not described in Paragraph **1.**, **2.**, **3.** or **4.** above maintained primarily for purposes other than the transportation of persons or cargo. However, self-propelled vehicles with the following types of permanently attached equipment are not **mobile equipment** but will be considered **autos**:
      a. Equipment designed primarily for:

(1) Snow removal;
(2) Road maintenance, but not construction or resurfacing; or
(3) Street cleaning;

b. Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and

c. Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting or well-servicing equipment.

However, **mobile equipment** does not include land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law are considered **autos**.

P. **Pollutants** means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

Q. **Private passenger auto** means:
1. A passenger or station wagon type **auto** with four or more wheels;
2. A pickup or van type **auto** with a gross weight of 15,000 pounds or less which is not used in the business of carrying passengers for hire; or
3. A motorhome.

R. **Property damage** means damage to or destruction of tangible property including resulting loss of use of that property.

S. **Suit** means a civil proceeding in which:
1. Damages because of **bodily injury** or **property damage**; or
2. A **covered pollution cost or expense**

to which this insurance applies, are alleged. **Suit** includes:
1. An arbitration proceeding in which such damages or **covered pollution costs or expenses** are claimed and to which the **insured** must submit or does submit with **our** consent; or
2. Any other alternative dispute resolution proceeding in which such damages or **covered pollution costs or expenses** are claimed and to which the **insured** submits with **our** consent.

T. **Temporary worker** means a person who is furnished to **you** to substitute for a permanent **employee** on leave or to meet seasonal or short-term workload conditions.

U. **Trailer** means a vehicle which is designed:
1. For travel on public roads; and
2. To be connected to and towed by a power unit.

Trailer does not include non-motorized farm machinery or farm wagons. A **trailer** is not **equipment or custom furnishings**.

V. **Volunteer worker** means a person who is not **your employee**, and who donates his or her work and acts at the direction of and within the scope of duties determined by **you**, and is not paid a fee, salary or other compensation by **you** or anyone else for their work performed for **you**.

W. **We**, **us** or **our** means the Company providing this insurance.

X. **You** or **your** means the Named Insured shown in the Declarations and if an individual, **your** spouse who resides in the same household.

Agency Code 07-0677-00 Policy Number 51-829-065-00

58504 (1-15)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DESIGNATED INSURED FOR COVERED AUTOS LIABILITY COVERAGE - BLANKET COVERAGE

This endorsement modifies insurance provided under the following:

COMMERCIAL AUTO POLICY

SECTION II - COVERED AUTOS LIABILITY COVERAGE is amended. The following provision is added. Any person or organization is an **insured** for Covered Autos Liability Coverage, but only to the extent that person or organization qualifies as an **insured** under **SECTION II - COVERED AUTOS LIABILITY COVERAGE, A. COVERAGE, 1. Who Is An Insured.**

All other policy terms and conditions apply.

Agency Code 07-0677-00 Policy Number 51-829-065-00

58009 (1-15)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION OF NUCLEAR, BIOLOGICAL OR CHEMICAL TERRORISM

This endorsement modifies insurance provided under the following:

COMMERCIAL AUTO POLICY

A. SECTION II - COVERED AUTOS LIABILITY COVERAGE, B. EXCLUSIONS is amended. The following exclusion is added.

Exclusion of Terrorism

Liability Coverage does not apply to any person or organization for **bodily injury** or **property damage** caused directly or indirectly by **terrorism**, including action in hindering or defending against an actual or expected incident of **terrorism**. All **bodily injury** or **property damage** is excluded regardless of any other cause or event that contributes concurrently or in any sequence to such injury or damage. This exclusion applies only when one or more of the following are attributed to an incident of **terrorism**:

1. The **terrorism** is carried out by means of the dispersal or application of radioactive material, or through the use of a nuclear weapon or device that involves or produces a nuclear reaction, nuclear radiation or radioactive contamination;
2. Radioactive material is released, and it appears that one purpose of the **terrorism** was to release such material;
3. The **terrorism** is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or
4. Pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the **terrorism** was to release such materials.

B. SECTION III - PHYSICAL DAMAGE COVERAGE, B. EXCLUSIONS is amended. The following exclusion is added.

Exclusion of Terrorism

Loss to any **auto** caused directly or indirectly by **terrorism**, including action in hindering or defending against an actual or expected incident of **terrorism**. Such **loss** is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the **loss**. This exclusion applies only when one or more of the following are attributed to an incident of **terrorism**:

1. The **terrorism** is carried out by means of the dispersal or application of radioactive material, or through the use of a nuclear weapon or device that involves or produces a nuclear reaction, nuclear radiation or radioactive contamination;
2. Radioactive material is released, and it appears that one purpose of the **terrorism** was to release such material;
3. The **terrorism** is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or
4. Pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the **terrorism** was to release such materials.

C. Multiple incidents of **terrorism** which occur within a 72-hour period and appear to be carried out in concert or to have a related purpose or common leadership will be deemed to be one incident, regardless of whether this endorsement was in effect during the entirety of that time period or not.

D. SECTION VI - DEFINITIONS is amended. The following definition is added.

Terrorism means activities against persons, organizations or property of any nature:

1. That involve the following or preparation for the following:
   a. Use or threat of force or violence; or
   b. Commission or threat of a dangerous act; or

c. Commission or threat of an act that interferes with or disrupts an electronic, communication, information, or mechanical system; and

2. When one or both of the following applies:
   a. The effect is to intimidate or coerce a government or the civilian population or any segments thereof, or to disrupt any segment of the economy; or
   b. It appears that the intent is to intimidate or coerce a government or the civilian population, or to further political, ideological, religious, social or economic objectives or to express (or express opposition to) a philosophy or ideology.

All other policy terms and conditions apply.

Agency Code 07-0677-00 Policy Number 51-829-065-00

58200 (1-15)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT

(Broad Form)

This endorsement modifies insurance provided under the following:

COMMERCIAL AUTO POLICY

1. The insurance does not apply:
   a. Under Covered Autos Liability Coverage, to **bodily injury** or **property damage**:
      (1) With respect to which an **insured** under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada or any of their successors, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or
      (2) Resulting from the **hazardous properties** of **nuclear material** and with respect to which:
         (a) Any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof; or
         (b) The **insured** is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.
   b. Under any Medical Payments coverage, to expenses incurred with respect to **bodily injury** resulting from the **hazardous properties** of **nuclear material** and arising out of the operation of a **nuclear facility** by any person or organization.
   c. Under Covered Autos Liability Coverage, to **bodily injury** or **property damage** resulting from **hazardous properties** of **nuclear material**, if:
      (1) The **nuclear material**:
         (a) Is at any **nuclear facility** owned by, or operated by or on behalf of, an **insured**; or
         (b) Has been discharged or dispersed therefrom;
      (2) The **nuclear material** is contained in **spent fuel** or **waste** at any time possessed, handled, used, processed, stored, transported or disposed of, by or on behalf of an **insured**; or
      (3) The **bodily injury** or **property damage** arises out of the furnishing by an **insured** of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any **nuclear facility**, but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion **(3)** applies only to **property damage** to such **nuclear facility** and any property thereat.
2. As used in this endorsement:
   Hazardous properties includes radioactive, toxic or explosive properties.
   Nuclear material means **source material**, **special nuclear material** or **by-product material**.
   Source material, **special nuclear material**, and **by-product material** have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof.
   Spent fuel means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a **nuclear reactor**.
   Waste means any waste material:

(a) Containing **by-product material** other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its **source material** content; and

(b) Resulting from the operation by any person or organization of any **nuclear facility** included under paragraphs **(a)** and **(b)** of the definition of **nuclear facility**.

Nuclear facility means:

(a) Any nuclear reactor;

(b) Any equipment or device designed or used for:

(1) Separating the isotopes of uranium or plutonium;

(2) Processing or utilizing **spent fuel**; or

(3) Handling, processing or packaging **waste**;

(c) Any equipment or device used for the processing, fabricating or alloying of **special nuclear material** if at any time the total amount of such material in the custody of the **insured** at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;

(d) Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of **waste**

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations.

Nuclear reactor means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material.

Property damage includes all forms of radioactive contamination of property.

All other policy terms and conditions apply.

Agency Code 07-0677-00 Policy Number 51-829-065-00

58329 (10-16)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

IOWA - UNINSURED MOTORIST COVERAGE

For a covered **auto** licensed or principally garaged in Iowa, this endorsement modifies insurance provided under the following:

COMMERCIAL AUTO POLICY

A. COVERAGE

1. **We** will pay all sums the **insured** is legally entitled to recover as compensatory damages from the owner or driver of an **uninsured motor vehicle**. The damages must result from **bodily injury** caused by an **accident**. The owner's or driver's liability for these damages must result from the ownership, maintenance or use of the **uninsured motor vehicle**. This includes loss of consortium any person is legally entitled to recover because of:
   a. **Bodily injury** sustained by the **insured**; and
   b. Caused by an **accident**.

B. WHO IS AN INSURED

If the Named Insured is designated in the Declarations as:

1. An individual, then the following are **insureds**:
   a. The Named Insured and any **family members**.
   b. Anyone else **occupying**:
      (1) A covered **auto**; or
      (2) A temporary substitute for a covered **auto**. The covered **auto** must be out of service because of its breakdown, repair, servicing, **loss** or destruction.
2. A partnership, limited liability company, corporation or any other form of organization, then anyone **occupying**:
   a. A covered **auto** is an **insured**; or
   b. A temporary substitute for a covered **auto** is an **insured**. The covered **auto** must be out of service because of its breakdown, repair, servicing, **loss** or destruction.

C. EXCLUSIONS

This insurance does not apply to any of the following:

1. Any claim settled without **our** consent.
2. The direct or indirect benefit of any insurer or self-insurer under any workers compensation, disability benefits or similar law.
3. Anyone using a vehicle without a reasonable belief that the person is entitled to do so.
4. **Bodily injury** sustained by an individual Named Insured while **occupying** or struck by any vehicle owned by that Named Insured which is not a covered **auto**.
5. Punitive or exemplary damages.
6. **Bodily injury** arising directly or indirectly out of:
   a. War, including undeclared or civil war;
   b. Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
   c. Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.
7. **Bodily injury** sustained by any **insured** while **occupying** or when struck by any vehicle that is a covered **auto** for Uninsured Motorist Coverage while such **auto** is:
   a. Enrolled in an electronic or written **auto** sharing program agreement; and
   b. Being used in connection with such **auto** sharing program.

   If **you** are an individual, this exclusion does not apply to **you** or any **family member** while using such **auto**.
8. **Bodily injury** sustained by any **insured** while **occupying** or when struck by any vehicle that is a covered **auto** for Uninsured Motorist Coverage while such **auto** is being used as a public mode of transportation of people. This exclusion does not apply to car pooling on a share the expense basis.

D. LIMIT OF INSURANCE

1. Regardless of the number of covered **autos**, **insureds**, premiums paid, claims made or **suits** brought, persons injured or vehicles involved in the **accident**, the limit of insurance, including

but not limited to loss of consortium, is as follows:

a. The most **we** will pay for all damages resulting from **bodily injury** to any one person caused by any one **accident**, including all damages claimed by any person or organization for care, loss of services or death resulting from the **bodily injury**, is the limit of Uninsured Motorist shown in the Declarations for each person.

b. Subject to the limit for each person, the most **we** will pay for all damages resulting from **bodily injury** caused by any one **accident** is the limit of Uninsured Motorist shown in the Declarations for each **accident**.

2. With respect to damages resulting from an **accident** with an **uninsured motor vehicle**, the Limit of Insurance will be reduced by:
   a. All sums paid or payable under any workers compensation, disability benefits or similar law; and
   b. All sums paid by or for anyone who is legally responsible, including all sums paid under **SECTION II - COVERED AUTOS LIABILITY COVERAGE** of this policy.
3. No one will be entitled to receive duplicate payments for the same elements of **loss** under this coverage and any Liability Coverage Form.
   We will not make a duplicate payment under this coverage for any element of **loss** for which payment has been made by or for anyone who is legally responsible.
   We will not pay for any element of **loss** if a person is entitled to receive payment for the same element of **loss** under any workers compensation, disability benefits or similar law.

E. CHANGES IN CONDITIONS

SECTION V - CONDITIONS is amended for the purposes of this endorsement only.

1. The **Other Insurance** provision in the policy is deleted and replaced by the following:
   Other Insurance
   If there is other applicable insurance available under one or more policies or provisions of coverage:
   a. The maximum recovery under all Coverage Forms or policies combined may equal but not exceed the highest applicable limit for any one vehicle under any Coverage Form or policy providing coverage on either a primary or excess basis.
   b. Any insurance **we** provide with respect to a vehicle the Named Insured does not own will be excess over any other collectible uninsured motorist insurance providing coverage on a primary basis.
   c. If the coverage under this policy is provided:
      (1) On a primary basis, **we** will pay only **our** share of the loss that must be paid under insurance providing coverage on a primary basis. **Our** share is the proportion that **our** limit of liability bears to the total of all applicable limits of liability for coverage on a primary basis.
      (2) On an excess basis, **we** will pay only **our** share of the loss that must be paid under insurance providing coverage on an excess basis. **Our** share is the proportion that **our** limit of liability bears to the total of all applicable limits of liability for coverage on an excess basis.
2. The **Duties in the Event of Accident, Claim, Suit or Loss** provision in the policy is changed by adding the following:
   a. Promptly notify the police if a hit-and-run driver is involved; and
   b. Promptly send **us** copies of the legal papers if a **suit** is brought.
3. The **Legal Action Against Us** provision in the policy is deleted and replaced by the following:
   Legal Action Against Us
   a. No one may bring a legal action against **us** under this policy until there has been full compliance with all the terms of this policy; and
   b. Any legal action against **us** under this policy must be brought within two years after the date of the **accident**.
   In the event that the two-year time limitation identified in this condition does not apply, the applicable state statute of limitations will govern legal action against **us** under this policy.

F. ADDITIONAL DEFINITIONS

SECTION VI - DEFINITIONS is amended. As used in this endorsement only:

1. **Occupying** means in, upon, getting in, on, out or off.
2. a. **Uninsured motor vehicle** means a land motor vehicle or **trailer**:
      (1) For which no liability bond or policy at the time of an **accident** provides at least the amounts required by the Iowa Motor Vehicle and Safety Responsibility Act; or
      (2) For which an insuring or bonding company denies coverage or is or becomes insolvent; or
      (3) That is a hit-and-run vehicle and neither the driver nor owner can be identified. The vehicle must hit an **insured**, a

covered **auto** or a vehicle an **insured** is **occupying**.

b. However, **uninsured motor vehicle** does not include any vehicle:

(1) Owned or operated by a self-insurer under any applicable motor vehicle law, except a self-insurer who is or becomes insolvent and cannot provide the amounts required by that motor vehicle law;

(2) Owned by a governmental unit or agency;

(3) Designed for use mainly off public roads while not on public roads; or

(4) Located for use as a residence or premises.

All other policy terms and conditions apply.

58330 (10-16)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

IOWA - UNDERINSURED MOTORIST COVERAGE

For a covered **auto** licensed or principally garaged in Iowa, this endorsement modifies insurance provided under the following:

COMMERCIAL AUTO POLICY

A. COVERAGE

1. **We** will pay all sums the **insured** is legally entitled to recover as compensatory damages from the owner or driver of an **underinsured motor vehicle**. The damages must result from **bodily injury** caused by an **accident**. The owner's or driver's liability for these damages must result from the ownership, maintenance or use of the **underinsured motor vehicle**. This includes loss of consortium any person is legally entitled to recover because of:
   a. **Bodily injury** sustained by the **insured**; and
   b. Caused by an **accident**.
2. With respect to damages resulting from an **accident** with an **underinsured motor vehicle**, **we** will pay under the coverage selected under this endorsement only if Paragraph **a.** or **b.** below applies:
   a. The limit of any applicable liability bonds or policies have been exhausted by payment of judgments or settlements; or
   b. A tentative settlement has been made between an **insured** and the insurer of the **underinsured motor vehicle** and **we**:
      (1) Have been given prompt written notice of such tentative settlement; and
      (2) Advance payment to the **insured** in an amount equal to the tentative settlement within 30 days after receipt of notification.

B. WHO IS AN INSURED

If the Named Insured is designated in the Declarations as:

1. An individual, then the following are **insureds**:
   a. The Named Insured and any **family members**.
   b. Anyone else **occupying**:
      (1) A covered **auto**; or
      (2) A temporary substitute for a covered **auto**. The covered **auto** must be out of service because of its breakdown, repair, servicing, **loss** or destruction.
2. A partnership, limited liability company, corporation or any other form of organization, then anyone **occupying**:
   a. A covered **auto** is an **insured**; or
   b. A temporary substitute for a covered **auto** is an **insured**. The covered **auto** must be out of service because of its breakdown, repair, servicing, **loss** or destruction.

C. EXCLUSIONS

This insurance does not apply to any of the following:

1. Any claim settled without **our** consent. However, this exclusion does not apply to a settlement made with the insurer of an **underinsured motor vehicle**, in accordance with the procedure described in Paragraph **A.2.b.**
2. The direct or indirect benefit of any insurer or self-insurer under any workers compensation, disability benefits or similar law.
3. Anyone using a vehicle without a reasonable belief that the person is entitled to do so.
4. **Bodily injury** sustained by an individual Named Insured while **occupying** or struck by any vehicle owned by that Named Insured which is not a covered **auto**.
5. Punitive or exemplary damages.
6. **Bodily injury** arising directly or indirectly out of:
   a. War, including undeclared or civil war;
   b. Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
   c. Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

7. **Bodily injury** sustained by any **insured** while **occupying** or when struck by any vehicle that is a covered **auto** for Underinsured Motorist Coverage while such **auto** is:
   a. Enrolled in an electronic or written **auto** sharing program agreement; and
   b. Being used in connection with such **auto** sharing program.

   If **you** are an individual, this exclusion does not apply to **you** or any **family member** while using such **auto**.
8. **Bodily injury** sustained by any **insured** while **occupying** or when struck by any vehicle that is a covered **auto** for Underinsured Motorist Coverage while such **auto** is being used as a public mode of transportation of people. This exclusion does not apply to car pooling on a share the expense basis.

D. LIMIT OF INSURANCE

1. Regardless of the number of covered **autos**, **insureds**, premiums paid, claims made or **suits** brought, persons injured or vehicles involved in the **accident**, the limit of insurance, including but not limited to loss of consortium, is as follows:
   a. The most **we** will pay for all damages resulting from **bodily injury** to any one person caused by any one **accident**, including all damages claimed by any person or organization for care, loss of services or death resulting from the **bodily injury**, is the limit of Underinsured Motorist shown in the Declarations for each person.
   b. Subject to the limit for each person, the most **we** will pay for all damages resulting from **bodily injury** caused by any one **accident** is the limit of Underinsured Motorist shown in the Declarations for each **accident**.
2. No one will be entitled to receive duplicate payments for the same elements of **loss** under this coverage and any Liability Coverage Form.
   We will not make a duplicate payment under this coverage for any element of **loss** for which payment has been made by or for anyone who is legally responsible.
   We will not pay for any element of **loss** if a person is entitled to receive payment for the same element of **loss** under any workers compensation, disability benefits or similar law.

E. CHANGES IN CONDITIONS

SECTION V - CONDITIONS is amended for the purposes of this endorsement only.

1. The **Other Insurance** provision is deleted and replaced by the following:
   Other Insurance
   If there is other applicable insurance available under one or more policies or provisions of coverage:
   a. The maximum recovery under all Coverage Forms or policies combined may equal but not exceed the highest applicable limit for any one vehicle under any Coverage Form or policy providing coverage on either a primary or excess basis.
   b. Any insurance **we** provide with respect to a vehicle the Named Insured does not own will be excess over any other collectible underinsured motorist insurance providing coverage on a primary basis.
   c. If the coverage under this policy is provided:
      (1) On a primary basis, **we** will pay only **our** share of the loss that must be paid under insurance providing coverage on a primary basis. **Our** share is the proportion that **our** limit of liability bears to the total of all applicable limits of liability for coverage on a primary basis.
      (2) On an excess basis, **we** will pay only **our** share of the loss that must be paid under insurance providing coverage on an excess basis. **Our** share is the proportion that **our** limit of liability bears to the total of all applicable limits of liability for coverage on an excess basis.
2. The **Duties in the Event of Accident, Claim, Suit or Loss** provision in the policy is changed by adding the following:
   A person seeking coverage from an insurer, owner or operator of an **underinsured motor vehicle** must also promptly notify **us** in writing of a tentative settlement between the **insured** and the insurer and allow **us** to advance payment to that **insured** in an amount equal to the tentative settlement within 30 days after receipt of notification to preserve **our** rights against the insurer, owner or operator of such vehicle.
3. The **Legal Action Against Us** provision in the policy is deleted and replaced by the following:
   Legal Action Against Us
   a. No one may bring a legal action against **us** under this policy until there has been full compliance with all the terms of this policy; and
   b. Any legal action against **us** under this coverage must be brought within two years after the date of the **accident**. However, this Paragraph **3.b.** does not apply if, within two years after the date of the **accident**, the

insured has filed an action for **bodily injury** against the owner or operator of an **underinsured motor vehicle**, and such action is:

(1) Filed in a court of competent jurisdiction; and

(2) Not barred by the applicable state statute of limitations.

In the event that the two-year time limitation identified in this condition does not apply, the applicable state statute of limitations will govern legal action against **us** under this coverage.

4. The **Our Right to Recover Payments** provision in the policy is deleted and replaced by the following:

Our Right to Recover Payments

a. If any person or organization to or for whom **we** make payment under this coverage has rights to recover damages from another, those rights are transferred to **us**. That person or organization must do everything necessary to secure **our** rights and must do nothing after **accident** or **loss** to prejudice them.

b. **(1)** If **we** make any payment and the **insured** recovers from another party, the **insured** will hold the proceeds in trust for **us** and pay **us** back the amount **we** have paid, less **our** pro rata share of expenses incurred in recovering those damages. However, **we** will be entitled to recovery only after the **insured** has been fully compensated for damages.

(2) **Our** rights do not apply under this provision with respect to damages caused by an **accident** with an **underinsured motor vehicle** if **we**:

(a) Have been given prompt written notice of a tentative settlement between an **insured** and the insurer of an **underinsured motor vehicle**; and

(b) Fail to advance payment to the **insured** in an amount equal to the tentative settlement within 30 days after receipt of notification.

(3) If **we** advance payment to the **insured** in an amount equal to the tentative settlement within 30 days after receipt of notification:

(a) That payment will be separate from any amount the **insured** is entitled to recover under the provisions of Underinsured Motorist Coverage; and

(b) **We** also have a right to recover the advance payment.

F. ADDITIONAL DEFINITIONS

SECTION VI - DEFINITIONS is amended. As used in this endorsement only:

1. **Occupying** means in, upon, getting in, on, out or off.

2. **a.** **Underinsured motor vehicle** means a land motor vehicle or **trailer** for which the sum of all liability bonds or policies at the time of the **accident** do not provide at least the amount an **insured** is legally entitled to recover as damages resulting from **bodily injury** caused by the **accident**.

b. However, **underinsured motor vehicle** does not include any vehicle:

(1) Owned or operated by a self-insurer under any applicable motor vehicle law, except a self-insurer who is or becomes insolvent and cannot provide the amounts required by that motor vehicle law;

(2) Owned by a governmental unit or agency;

(3) Designed for use mainly off public roads while not on public roads; or

(4) Located for use as a residence or premises.

All other policy terms and conditions apply.

58402 (5-16)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AUTO MEDICAL PAYMENTS COVERAGE

This endorsement modifies insurance provided under the following:

COMMERCIAL AUTO POLICY

A. COVERAGE

1. **We** will pay reasonable expenses incurred for necessary medical and funeral services to or for an **insured** who sustains **bodily injury** caused by an **accident**.
2. Medical expenses include:
   a. Medical, surgical, x-ray, dental and Christian Science practitioner services;
   b. Prosthetic devices, eyeglasses and drugs; and
   c. Ambulance, hospital and professional nursing services.
3. **We** will pay only those expenses for medical and funeral services incurred within three years of the **accident**. However, the **bodily injury** must be discovered, treated and reported to **us** within one year of the **accident**.

B. WHO IS AN INSURED

1. Anyone **occupying** a covered **auto**; and
2. If **you** are an individual and a covered **auto** is a **private passenger auto** to which Auto Medical Payments applies:
   a. **You**; and
   b. Any **family member**, who does not own an **auto** (that is not a **trailer**) unless shown in the Declarations

   when struck by or while **occupying** an **auto** not owned by, furnished or available for regular use by **you** or anyone living with **you**.

C. EXCLUSIONS

This endorsement does not apply to:

1. **Bodily injury** expected or intended from the standpoint of the **insured**.
2. **Bodily injury** to an **insured** while working in a business of selling, leasing, servicing, repairing, parking, storing, delivering or testing **autos**, unless that business is **yours**.
3. **Bodily injury** arising out of the use of any covered **auto** as a public mode of transportation of people. This exclusion does not apply to car pooling on a share the expense basis.
4. **Bodily injury** arising out of the use of any covered **auto** while participating in any prearranged racing, prearranged high speed driving, prearranged competitive driving or prearranged demolition event. This exclusion also applies while any covered **auto** is preparing for or practicing for any of the previously mentioned events.
5. **Bodily injury** to any person **occupying** a covered **auto** without a reasonable belief of **your** permission to do so.
6. **Bodily injury** arising directly or indirectly out of:
   a. War, including undeclared or civil war;
   b. Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
   c. Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.
7. Any obligation for which the **insured** or the **insured's** insurer may be held liable under any workers compensation, disability benefits or unemployment compensation law or any similar law.
8. **Bodily injury** to an **insured occupying** or struck by a covered **auto** located for use as a residence or premises.
9. **Bodily injury** sustained by an **insured** while **occupying** or when struck by any vehicle that is a covered **auto** while such **auto** is:
   a. Enrolled in an electronic or written **auto** sharing program agreement; and
   b. Being used in connection with such **auto** sharing program.

   If **you** are an individual, this exclusion does not apply to **you** or any **family member** while using such **auto**.

D. LIMIT OF INSURANCE

1. The Limit of Insurance shown in the Declarations for each person is the most **we** will pay to or for any person in one **accident** for medical and funeral services.
2. Subject to **D.1.** above, the most **we** will pay for funeral services is $5,000 per person.
3. The Limit of Insurance is not increased because of the number of:
   - **a.** Covered **autos**;
   - **b.** **Insureds**;
   - **c.** Premiums paid;
   - **d.** Claims made or **suits** brought;
   - **e.** Persons injured; or
   - **f.** Vehicles involved in the **accident**.
4. **We** will not pay any amount for medical or funeral services that duplicates amounts paid or payable by other insurance of any type.
5. If **you**, or a **family member** who does not own an **auto**, sustain **bodily injury** while not **occupying** an **auto**, the maximum amount of coverage available for such **bodily injury** is the highest single limit of insurance for this coverage applying to any **auto** with respect to which the injured person is an **insured**.

E. SECTION VI - DEFINITIONS is amended.
The following definition is added.
Occupying means being in or on an **auto** as a passenger or operator, or being engaged in the immediate acts of entering, boarding or alighting from an **auto**.

All other policy terms and conditions apply.

58514 (6-17)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

COMMERCIAL AUTO PLUS COVERAGE PACKAGE

This endorsement modifies insurance provided under the following:

COMMERCIAL AUTO POLICY

1. **Supplementary Payments**
SECTION II - COVERED AUTOS LIABILITY COVERAGE, 2. Coverage Extensions is amended.
Paragraphs **(3)** and **(7)** of **a. Supplementary Payments** are deleted and replaced by the following:
(3) Up to $5,000 for the cost of bail bonds (including bonds for related traffic law violations) required because of an **accident we** cover. **We** will not apply for or furnish such bonds.
(7) All reasonable expenses incurred by an **insured** at **our** request, including actual loss of earnings up to $500 per day.
2. **Waiver of Collision Deductible For Collision With Another Auto-Owners Insured**
SECTION III - PHYSICAL DAMAGE COVERAGE, A. COVERAGE is amended.
Under paragraph **1., b. Collision Coverage** is deleted and replaced by the following.
We will pay for **loss** to a covered **auto** or its **equipment or custom furnishings** under:
b. Collision Coverage
Caused by:
(1) The covered **auto's** collision with another object; or
(2) The covered **auto's** overturn.
When a deductible is shown in the Declarations for this coverage, **we** will reduce **our** payment by that amount. The deductible shall not apply when a covered **auto** is:
(1) In a collision with another **auto**:
(a) **We** insure and which **you** do not own, rent or have in **your** care, custody or control; or
(b) Whose owner or operator has been identified; and
1) Is legally responsible for the entire amount of the damage; and
2) Is covered by a **property damage** liability policy or bond
but only if the damage exceeds the deductible amount.
(2) Legally parked and is accidentally struck by another covered **auto**, provided Collision Coverage applies to both **autos**.
3. **Deductible**
SECTION III - PHYSICAL DAMAGE COVERAGE, A. COVERAGE is amended.
a. Paragraph **1.a. Comprehensive Coverage** is amended. The following provision is added.
When more than one covered **auto** is involved in the same **loss**, only one deductible shall apply. If the deductibles differ, **we** shall only apply the highest deductible.
b. Paragraph **1.b. Collision Coverage** is amended. The following provisions are added.
When more than one covered **auto** is involved in a collision with another covered **auto**, no deductible shall apply.
When both the covered **auto** and attached **trailer** are in a collision with an **auto we** do not insure and that is not owned by **you** or a **family member**, only one deductible applies to:
(1) The covered **auto**; and
(2) Attached covered **trailer**.
If the deductibles differ, **we** shall only apply the highest deductible.
4. **Non-Owned Trailer Physical Damage**
SECTION III - PHYSICAL DAMAGE COVERAGE, A. COVERAGE is amended.
Under **3. Coverage Extensions**, paragraph **a. Trailers** is deleted and replaced by the following.
a. Trailers
The Comprehensive Coverage and Collision Coverage provided to a covered **auto** extend to certain **trailers you** do not own. The **trailer** must:
(1) Be designed for use with the covered **auto**;
(2) Be used with the covered **auto**; and
(3) Be other than a **trailer** of the home, office, store, display, or passenger type.
Our limit of insurance shall not exceed $1,000 in any one **loss**.

5. **Personal Property**
SECTION III - PHYSICAL DAMAGE COVERAGE, A. COVERAGE is amended.
Under **3. Coverage Extensions**, paragraph **c. Personal Property** is deleted and replaced by the following.
c. Personal Property
The Comprehensive Coverage and the Collision Coverage provided to a covered **auto** will extend to **loss** to personal property contained in or on such **auto** as follows:
(1) Comprehensive Coverage because of:
(a) Fire;
(b) Lightning; or
(c) Theft or attempted theft if there are visible signs of someone breaking into such **auto** or the entire **auto** is stolen; or
(2) Collision Coverage.
The personal property must be owned by **you**, a **family member** or **your employee**.
This coverage extension does not apply to:
(1) Any electronic equipment that reproduces, receives or transmits audio, visual, global positioning or data signals.
(2) Tapes, discs, or other similar media designed for use with equipment described in **(1)** immediately above.
(3) Any accessories used with the media or equipment described in **(1)** or **(2)** immediately above.
(4) Money or jewelry.
(5) Any device designed or used to:
(a) Detect speed-measuring equipment such as radar or laser detectors; or
(b) Elude or disrupt speed-measuring equipment such as a jamming apparatus.
(6) Property specifically insured.
(7) Any property covered under any other coverage extension within this endorsement.
Our limit of insurance under this coverage extension is $600 in any one **loss**.

6. **Audio, Visual or Data Electronic Equipment**
SECTION III - PHYSICAL DAMAGE COVERAGE, A. COVERAGE is amended.
The following coverage extension is added.
a. **We** will extend the Comprehensive Coverage and the Collision Coverage that apply to a covered **auto** to **loss** to:
(1) Any electronic equipment that reproduces, receives or transmits audio, visual, global positioning or data signals that is designed for use with a covered **auto** and was not standard or optional equipment for the manufacturer of such covered **auto** for that make, model and model year.
(2) Tapes, discs or other similar media designed for use with electronic equipment described in **a.(1)** above.
(3) Any accessories used with the media or equipment described in **a.(1)** or **a.(2)** above.
b. **Our** limit under **a.(1)** above will not exceed $2,500 in any one **loss** and supercedes any other limit for such coverage provided elsewhere within this policy. **Our** limit under **a.(2)** and **a.(3)** above combined will not exceed $200 in any one **loss**. No deductible applies to this coverage extension.
c. This coverage extension does not apply to any property covered under any other coverage extension within this endorsement.
d. **B. EXCLUSIONS** is amended. Exclusion **1.** is deleted only as it applies to the coverage provided by this extension.

7. **Business Personal Property**
SECTION III - PHYSICAL DAMAGE COVERAGE, A. COVERAGE is amended.
The following coverage extension is added.
We will extend the Comprehensive Coverage and the Collision Coverage that apply to a covered **auto** to **loss** to business personal property contained in or on such **auto**. This coverage extension is subject to the following:
a. The business personal property must be owned by **you**, a **family member** or **your employee**.
b. Comprehensive Coverage is extended only for **loss** because of:
(1) Fire;
(2) Lightning; or
(3) Theft or attempted theft.
Unless the entire **auto** is stolen, there must be visible signs of someone breaking into the **auto** for **b.(3)** above to apply.
c. This coverage extension does not apply to:
(1) Any electronic equipment that reproduces, receives or transmits audio, visual, global positioning or data signals.
(2) Tapes, discs, or other similar media designed for use with equipment described in **(1)** immediately above.
(3) Any accessories used with the media or equipment described in **(1)** or **(2)** immediately above.
(4) Money or jewelry.
(5) Any device designed or used to:
(a) Detect speed-measuring equipment such as radar or laser detectors; or
(b) Elude or disrupt speed-measuring equipment such as a jamming apparatus.
(6) Property specifically insured.

(7) Any property covered under any other coverage extension within this endorsement.

d. **Our** limit of insurance for any one **loss** under this coverage extension shall not exceed $500. A $50 deductible applies to this coverage extension. **We** will reduce **our** payment by such deductible amount.

8. **Hired Auto Physical Damage**
SECTION III - PHYSICAL DAMAGE COVERAGE, A. COVERAGE is amended.
The following coverage extension is added.
a. If Hired Auto Liability Coverage is provided to **you** by this policy, or any other policy or coverage form provided by **us** or a company affiliated with **us**, then **SECTION III - PHYSICAL DAMAGE COVERAGE, A. COVERAGE, 1. a. Comprehensive Coverage** and **b. Collision Coverage** extend to an **auto you** lease, hire, rent or borrow.
b. The most **we** will pay for **loss** to any one covered **auto** is the lesser of:
(1) The actual cash value of stolen or damaged property at the time of **loss**;
(2) The cost, at local prices, to repair or replace damaged or stolen property with other property of like kind and quality; or
(3) $50,000.
A $100 Comprehensive Coverage deductible and a $250 Collision Coverage deductible apply separately to each **auto** covered by this coverage extension.

9. **Transportation Costs**
SECTION III - PHYSICAL DAMAGE COVERAGE, A. COVERAGE is amended.
The following coverage extension is added.
We will reimburse **you** for expenses **you** incur for transportation from where a covered **auto** was disabled, to **your** home, place of business or intended destination. **Our** maximum payment shall not exceed $100. No deductible applies to this coverage extension.

10. **Transportation Expenses Following Theft**
SECTION III - PHYSICAL DAMAGE COVERAGE, A. COVERAGE is amended.
The following coverage extension is added.
Under **3. Coverage Extensions, b. Transportation Expenses Following Theft** is deleted and replaced by:
b. **Transportation Expenses Following Theft**
If Comprehensive Coverage is shown for an **auto** scheduled in the Declarations, **we** will pay up to $50 per day but not more than $1,500 in any one **loss** for transportation expenses incurred if such **auto** is stolen. **We** will pay such expenses incurred beginning 48 hours after **you** report the theft to **us** and to the police and ending when such **auto** is returned to use or **we** pay for its **loss**. No deductible applies to this coverage extension. This coverage extension is excess of any other insurance.

11. **Motor Cargo**
SECTION III - PHYSICAL DAMAGE COVERAGE A. COVERAGE is amended.
The following coverage extension is added.
We will extend the Comprehensive Coverage and the Collision Coverage that apply to a covered **auto** to **loss** to:
a. **Your** property owned, sold or serviced by **you** and in the course of delivery;
b. Property of others for which **you** are legally liable as a truckman under a:
(1) Tariff;
(2) Bill of lading; or
(3) Shipping receipt.
This coverage extension is subject to the following:
a. This coverage extension does not apply to:
(1) Accounts, bills, currency, deeds, evidences of debt, notes, money, securities, jewelry, or other similar valuables.
(2) Damage to live animals, except for death or death made immediately necessary because of injury caused by:
(a) Fire;
(b) Lightning;
(c) Flood;
(d) Explosion;
(e) Collision;
(f) Derailment;
(g) Overturn; or
(h) Stranding, burning or sinking of a ferry or lighter.
(3) Painting, statuary or other works of art, or articles that are antique or curious in nature unless such **loss** is an absolute total **loss** caused by a peril **we** insure against.
(4) **Loss** by pilferage.
(5) Insect, rodents, vermin, birds, animals or inherent vice.
(6) Loss from profit, loss of use or loss of market.
(7) Leakage, evaporation, shrinkage, breakage, heat or cold, or by being scented, molded, rusted, rotted, soured or changed in flavor or by bending, denting, chipping, marring or scratching unless caused by any of the following:
(a) Fire;
(b) Lightning;
(c) Wind;
(d) Flood;
(e) Explosion;
(f) Collision;
(g) Derailment;
(h) Overturn; or

(i) Stranding, burning or sinking of a ferry or lighter.

(8) Riots and civil commotion.

(9) Strikers, lock-out workers, or persons taking part in labor disturbances.

(10) Any property covered under any other coverage extension within this endorsement.

b. All shipments shall be valued at the actual invoice cost, including:
   (1) Prepaid freight; and
   (2) Cost and charges which have accrued and become legally due on such shipments.

c. If there is no invoice, the valuation of the property coverage shall be the cash market value of the article(s) covered on the date and at the place of shipment.

d. With respect to **loss** to any part of covered property made up of several parts, when complete for sale or use, **we** shall only pay for the part lost or damaged. With respect to damage to labels, capsules or wrappers, **we** shall only pay the cost of:
   (1) New labels, capsules or wrappers; and
   (2) Reconditioning the goods.

e. With respect to **loss** by breakage of eggs, **we** will pay only when such **loss** exceeds 50% of the value of each shipping package, but **we** will pay no more than $250 for any one **loss**.

f. **Our** limit of insurance for all **loss** under this coverage extension shall not exceed $1,000. A $50 deductible applies to this coverage extension. **We** will reduce **our** payment by such deductible amount.

g. This coverage extension shall apply as excess insurance over any other specific insurance.

12. **Air Bag Replacement (Other Than a Private Passenger Auto)**
SECTION III - PHYSICAL DAMAGE COVERAGE, A. COVERAGE is amended.
The following coverage extension is added.
   a. **We** will extend the Comprehensive Coverage that applies to a covered **auto**, other than a **private passenger auto**, for the replacement of the air bag when it inflates without such **auto** having been involved in a Comprehensive or Collision **loss**.
   b. A $50 deductible applies to this coverage extension. **We** will reduce **our** payment by such deductible amount.

13. **Replacement Cost On New Vehicles**
SECTION III - PHYSICAL DAMAGE COVERAGE, C. LIMIT OF INSURANCE is amended.
Paragraph **2.** is deleted and replaced by the following.
   2. **We** will, at **our** option, replace an **auto** scheduled in the Declarations with a new one of equal value or pay **you your** original purchase price if:
      a. Such **auto** is not a motorcycle;
      b. **You** purchased it new;
      c. **We** determine the **loss** cannot be repaired; and
      d. The **loss** occurs within 90 days of the purchase date.
   As it applies to this coverage only, a motorcycle means a vehicle having a saddle or seat for the use of the rider, designed to travel on not more than three wheels in contact with the ground, which is equipped with a motor that exceeds fifty cubic centimeters piston displacement. The wheels on any attachment to the vehicle shall not be considered as wheels in contact with the ground.

14. **Rental Auto Gap**
SECTION III - PHYSICAL DAMAGE COVERAGE, C. LIMIT OF INSURANCE is amended.
The following provision is added.
   a. If the first Named **Insured** is:
      (1) An individual; or
      (2) Other than an individual with the Broadened Coverage for Named Individuals - Drive Other Cars endorsement attached to a **private passenger auto** with Comprehensive and Collision Coverages; and
   b. If the **auto** is:
      (1) A rented **private passenger auto**;
      (2) Not a total **loss**; and
      (3) Sold in its damaged condition rather than repaired, as decided by the rental company from which **you** rented the **auto**, **we** will pay the amount for which:
         (a) **You**, if an individual; or
         (b) The individual listed on the Broadened Coverage for Named Individuals - Drive Other Cars endorsement, if **you** is other than an individual
      are liable under the terms of the rental agreement; or
   c. If the **auto** is:
      (1) A rented **private passenger auto**;
      (2) Not a total **loss**; and
      (3) Repaired
      we will pay for damages to the rented **private passenger auto** because of or resulting from the **diminished value**.

All other policy terms and conditions apply.

58500 (1-15)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION OF CERTAIN TRUCKING OPERATIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL AUTO POLICY

SECTION II - COVERED AUTOS LIABILITY COVERAGE, B. EXCLUSIONS is amended. The following exclusion is added.

Exclusion of Certain Trucking Operations
Bodily injury or **property damage** to any **auto** when such **auto** is used pursuant to operating rights (permits) granted by a public authority to any person or organization other than **you**.

All other policy terms and conditions apply.

58555 (1-16)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CHANGES - OUR RIGHT TO RECOVER PAYMENTS

This endorsement modifies insurance provided under the following:

COMMERCIAL AUTO POLICY

SECTION V – CONDITIONS, A. LOSS CONDITIONS, 5. Our Right to Recover Payments is amended. With respect to **SECTION III - PHYSICAL DAMAGE COVERAGE** only, the following condition is added.
If the claim paid is less than the agreed **loss** because of any deductible or other limiting terms, the recovery is prorated between **you** and **us** based on the interest of each in the **loss**. This condition only applies if **we** pay for a **loss** and then payment is made by those responsible for the **loss**.

All other policy terms and conditions apply.

58802 (10-16)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

IOWA CHANGES

This endorsement modifies insurance provided under the following:

COMMERCIAL AUTO POLICY

SECTION V – CONDITIONS, A. LOSS CONDITIONS is amended. The following is added to **2. Legal Action Against Us**.

However, a judgment creditor shall have a right to sue **us** to recover an execution on a judgment returned unsatisfied against an **insured** to the same extent that such **insured** could have enforced the **insured's** claim against **us** had the **insured** paid such judgment, but **we** will not be liable for damages that are in excess of the applicable limit of insurance.

All other policy terms and conditions apply.

58524 (1-15)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AMENDMENT OF DEFINITIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL AUTO POLICY

SECTION VI - DEFINITIONS is amended.

1. **B.** is deleted and replaced by the following definition.
   B. Auto means:
   1. A land motor vehicle;
   2. A **trailer**; or
   3. Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged.

   However, **auto** does not include **mobile equipment**. As it applies to this endorsement only, **mobile equipment** does not include a snowmobile.
2. **U.** is deleted and replaced by the following definition.
   U. Trailer means a vehicle which is designed to be connected to and towed by a power unit. **Trailer** does not include non-motorized farm machinery or farm wagons. A **trailer** is not **equipment or custom furnishings**.

All other policy terms and conditions apply.

58557 (3-16)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AUTO SHARING PROGRAM EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL AUTO POLICY

A. **SECTION II – COVERED AUTOS LIABILITY COVERAGE, B. EXCLUSIONS** is amended. The following exclusion is added:
Auto Sharing Program
Bodily injury, property damage or **covered pollution cost or expense** for the ownership, maintenance or use of a covered **auto** while:
1. Enrolled in an electronic or written **auto** sharing program agreement; and
2. Being used in connection with such **auto** sharing program.

If **you** are an individual, this exclusion does not apply to **you** or any **family member** while using such **auto**.

B. **SECTION III – PHYSICAL DAMAGE COVERAGE, B. EXCLUSIONS** is amended. The following exclusion is added:
Auto Sharing Program
Loss to a covered **auto** which occurs while:
1. Enrolled in an electronic or written **auto** sharing program agreement; and
2. Being used in connection with such **auto** sharing program.

If **you** are an individual, this exclusion does not apply to **you** or any **family member** while using such **auto**.

C. **SECTION IV - INDIVIDUAL NAMED INSURED** is amended. The following provision is added to Paragraph **B**.
This extension does not apply to **loss** to, or loss of use, of an **auto** in connection with an **auto** sharing program if the provisions of such **auto** sharing program preclude the recovery of such **loss** or loss of use, from **you** or such **family member**, or if otherwise precluded by any state law.

All other policy terms and conditions apply.

58709 (10-16)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

IOWA - POLICY CANCELLATION AND NONRENEWAL

This endorsement modifies insurance provided under the following:

COMMERCIAL AUTO POLICY

SECTION V - CONDITIONS, B. GENERAL CONDITIONS is amended. The following conditions are added.

1. Cancellation

a. The first Named Insured shown in the Declarations may cancel this policy by returning it to **us** or by notifying **us** of the date on which cancellation is to take effect.

b. **(1)** If any Named Insured is:
- **(a)** A single individual; or
- **(b)** One or more related individuals residing in the same household; and
- **(c)** This policy insures only four or less **private passenger autos**

we may cancel this policy by mailing or delivering written notice stating the reason for cancellation to **you** at the address shown in the Declarations.

(2) This notice shall be mailed or delivered at least:
- **(a)** 10 days prior to the effective date when the reason for cancellation is nonpayment of premium; or
- **(b)** 30 days prior to the effective date when the reason for cancellation is other than nonpayment of premium.

c. When paragraph **1.b.** above does not apply, **we** may cancel this policy by mailing or delivering written notice stating the reason for cancellation to **you** at the address shown in the Declarations and any loss payee. This notice shall be mailed or delivered at least 10 days prior to the effective date.

2. Nonrenewal

a. If paragraph **1.b.** applies and **we** decide not to renew this policy, **we** will mail or deliver written notice stating the reason for nonrenewal to **you** at the address shown in the Declarations. This notice shall be mailed or delivered at least 30 days prior to the expiration of this policy.

b. If paragraph **1.b.** does not apply and **we** decide not to renew this policy, **we** will mail or deliver written notice stating the reason for nonrenewal to **you** at the address shown in the Declarations and any loss payee. This notice shall be mailed or delivered at least 45 days prior to the expiration of this policy.

All other policy terms and conditions apply.

FORM F
UNIFORM MOTOR CARRIER BODILY INJURY AND PROPERTY DAMAGE LIABILITY INSURANCE ENDORSEMENT

It is agreed that:

1. The certification of the policy, as proof of financial responsibility under the provisions of any State motor carrier law or regulations promulgated by any State Commission having jurisdiction with respect thereto, amends the policy to provide insurance for automobile bodily injury and property damage liability in accordance with the provisions of such law or regulations to the extent of the coverage and limits of liability required thereby; provided only that the insured agrees to reimburse the company for any payment made by the company which it would not have been obligated to make under the terms of this policy except by reason of the obligation assumed in making such certification.
2. The Uniform Motor Carrier Bodily Injury and Property Damage Liability Certificate of Insurance has been filed with the State Commissions indicated on the reverse side hereof.
3. This endorsement may not be canceled without cancellation of the policy to which it is attached. Such cancellation may be effected by the company or the insured giving thirty (30) days' notice in writing to the State Commission with which such certificate has been filed, such thirty (30) days' notice to commence to run from the date the notice is actually received in the office of such Commission.

Attached to and forming part of policy No. 51-829065-00

issued by AUTO-OWNERS INSURANCE, herein called

Company, of PO BOX 30660, LANSING, MI 48909

to Jason Farrell DBA Jason Farrell Trucking of 3717 210th St Clinton, IA 52732

Dated at 1621 WLAKES PKWY, WDM, IA 50265 this 22 day of June 20 18

Countersigned by *Travis Vincent*
Authorized Representative

89079 (4/07) IRB 3538A

X = INDICATES STATE COMMISSIONS WITH WHOM UNIFORM MOTOR CARRIER BODILY INJURY AND PROPERTY DAMAGE LIABILITY CERTIFICATE OF INSURANCE HAS BEEN FILED							
ALABAMA		ILLINOIS		MONTANA		RHODE ISLAND	
ALASKA		INDIANA		NEBRASKA		SOUTH CAROLINA	
ARIZONA		IOWA	✓	NEVADA		SOUTH DAKOTA	
ARKANSAS		KANSAS		NEW HAMPSHIRE		TENNESSEE	
CALIFORNIA		KENTUCKY		NEW JERSEY		TEXAS	
COLORADO		LOUISIANA		NEW MEXICO		UTAH	
CONNECTICUT		MAINE		NEW YORK		VERMONT	
DELAWARE		MARYLAND		NORTH CAROLINA		VIRGINIA	
DIST. OF COLUMBIA		MASSACHUSETTS		NORTH DAKOTA		WASHINGTON	
FLORIDA		MICHIGAN		OHIO		WEST VIRGINIA	
GEORGIA		MINNESOTA		OKLAHOMA		WISCONSIN	
HAWAII		MISSISSIPPI		OREGON		WYOMING	
IDAHO		MISSOURI		PENNSYLVANIA			

USDOT Number: _____ Date Received: _____

United States Department of Transportation
Federal Motor Carrier Safety Administration

Endorsement for Motor Carrier Policies of Insurance for Public Liability under Sections 29 and 30 of the Motor Carrier Act of 1980

FORM MCS-90

Issued to Jason Farrell DBA Jason Farrell Trucking *(Motor Carrier name)* **of** Iowa *(Motor Carrier state or province)*

Dated at 12:00 noon **on this** 22nd **day of** June, 2018

Amending Policy Number: 51-829065-00 **Effective Date:** 06/22/2018

Name of Insurance Company: Auto-Owners Insurance Company

Countersigned by: Rebecca L Haase *(authorized company representative)*

The policy to which this endorsement is attached provides primary or excess insurance, as indicated for the limits shown *(check only one)*:

- (●) *This insurance is primary and the company shall not be liable for amounts in excess of* $ 750,000.00 *for each accident.*
- ( ) *This insurance is excess and the company shall not be liable for amounts in excess of* $ _____ *for each accident in excess of the underlying limit of* $ _____ *for each accident.*

Whenever required by the Federal Motor Carrier Safety Administration (FMCSA), the company agrees to furnish the FMCSA a duplicate of said policy and all its endorsements. The company also agrees, upon telephone request by an authorized representative of the FMCSA, to verify that the policy is in force as of a particular date. The telephone number to call is: 515-225-7060.

Cancellation of this endorsement may be effected by the company of the insured by giving (1) thirty-five (35) days notice in writing to the other party (said 35 days notice to commence from the date the notice is mailed, proof of mailing shall be sufficient proof of notice), and (2) if the insured is subject to the FMCSA's registration requirements under 49 U.S.C. 13901, by providing thirty (30) days notice to the FMCSA (said 30 days notice to commence from the date the notice is received by the FMCSA at its office in Washington, DC).

Filings must be transmitted online via the Internet at http://www.fmcsa.dot.gov/urs.

(continued on next page)

DEFINITIONS AS USED IN THIS ENDORSEMENT

Accident includes continuous or repeated exposure to conditions or which results in bodily injury, property damage, or environmental damage which the insured neither expected nor intended.

Motor Vehicle means a land vehicle, machine, truck, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used on a highway for transporting property, or any combination thereof.

Bodily Injury means injury to the body, sickness, or disease to any person, including death resulting from any of these.

Property Damage means damage to or loss of use of tangible property.

Environmental Restoration means restitution for the loss, damage, or destruction of natural resources arising out of the accidental discharge, dispersal, release or escape into or upon the land, atmosphere, watercourse, or body of water, of any commodity transported by a motor carrier. This shall include the cost of removal and the cost of necessary measures taken to minimize or mitigate damage to human health, the natural environment, fish, shellfish, and wildlife.

Public Liability means liability for bodily injury, property damage, and environmental restoration.

The insurance policy to which this endorsement is attached provides automobile liability insurance and is amended to assure compliance by the insured, within the limits stated herein, as a motor carrier of property, with Sections 29 and 30 of the Motor Carrier Act of 1980 and the rules and regulations of the Federal Motor Carrier Safety Administration (FMCSA).

In consideration of the premium stated in the policy to which this endorsement is attached, the insurer (the company) agrees to pay, within the limits of liability described herein, any final judgment recovered against the insured for public liability resulting from negligence in the operation, maintenance or use of motor vehicles subject to the financial responsibility requirements of Sections 29 and 30 of the Motor Carrier Act of 1980 regardless of whether or not each motor vehicle is specifically described in the policy and whether or not such negligence occurs on any route or in any territory authorized to be served by the insured or elsewhere. Such insurance as is afforded, for public liability, does not apply to injury to or death of the insured's employees while engaged in the course of their employment, or property transported by the insured, designated as cargo. It is understood and agreed that no condition, provision, stipulation, or limitation contained in the policy, this endorsement, or any other endorsement thereon, or violation thereof, shall relieve the company from liability or from the payment of any final judgment, within the limits of liability herein described, irrespective of the financial condition, insolvency or bankruptcy of the insured. However, all terms, conditions, and limitations in the policy to which the endorsement is attached shall remain in full force and effect as binding between the insured and the company. The insured agrees to reimburse the company for any payment made by the company on account of any accident, claim, or suit involving a breach of the terms of the policy, and for any payment that the company would not have been obligated to make under the provisions of the policy except for the agreement contained in this endorsement.

It is further understood and agreed that, upon failure of the company to pay any final judgment recovered against the insured as provided herein, the judgment creditor may maintain an action in any court of competent jurisdiction against the company to compel such payment.

The limits of the company's liability for the amounts prescribed in this endorsement apply separately to each accident and any payment under the policy because of anyone accident shall not operate to reduce the liability of the company for the payment of final judgments resulting from any other accident.

(continued on next page)

SCHEDULE OF LIMITS — PUBLIC LIABILITY

Type of carriage	Commodity transported	January 1, 1985
(1) For-hire (in interstate or foreign commerce, with a gross vehicle weight rating of 10,000 or more pounds).	Property (nonhazardous)	$750,000
(2) For-hire and Private (in interstate, foreign, or intrastate commerce, with a gross vehicle weight rating of 10,000 or more pounds).	Hazardous substances, as defined in 49 CFR 171.8, transported in cargo tanks, portable tanks, or hopper-type vehicles with capacities in excess of 3,500 water gallons; or in bulk Division 1.1, 1.2, and 1.3 materials, Division 2.3, Hazard Zone A, or Division 6.1, Packing Group I, Hazard Zone A material; in bulk Division 2.1 or 2.2; or highway route controlled quantities of a Class 7 material, as defined in 49 CFR 173.403.	$5,000,000
(3) For-hire and Private (in interstate or foreign commerce, in any quantity; or in intrastate commerce, in bulk only; with a gross vehicle weight rating of 10,000 or more pounds).	Oil listed in 49 CFR 172.101; hazardous waste, hazardous materials, and hazardous substances defined in 49 CFR 171.8 and listed in 49 CFR 172.101, but not mentioned in (2) above or (4) below.	$1,000,000
(4) For-hire and Private (In interstate or foreign commerce, with a gross vehicle weight rating of less than 10,000 pounds).	Any quantity of Division 1.1, 1.2, or 1.3 material; any quantity of a Division 2.3, Hazard Zone A, or Division 6.1, Packing Group I, Hazard Zone A material; or highway route controlled quantities of a Class 7 material as defined in 49 CFR 173.403.	$5,000,000

*The schedule of limits shown does not provide coverage. The limits shown in the schedule are for information purposes only.

Table of Contents

APPEAL TO THE APPELLATE COURT OF ILLINOIS
FOURTH JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
MCLEAN COUNTY, ILLINOIS

MARK KUHN ET AL.
Plaintiff/Petitioner

v.

OWNERS INSURANCE COMPANY
Defendant/Respondent

Reviewing Court No: 4-22-0827
Circuit Court/Agency No: 2019MR000643
Trial Judge/Hearing Officer: SCOTT KORDING

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APPEAL TO THE APPELLATE COURT OF ILLINOIS
FOURTH JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
MCLEAN COUNTY, ILLINOIS

MARK KUHN ET AL.
Plaintiff/Petitioner

v.

OWNERS INSURANCE COMPANY
Defendant/Respondent

Reviewing Court No: 4-22-0827
Circuit Court/Agency No: 2019MR000643
Trial Judge/Hearing Officer: SCOTT KORDING

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E-FILED
Transaction ID: 4-22-0827
File Date: 11/17/2022 4:03 PM
Carla Bender, Clerk of the Court
APPELLATE COURT 4TH DISTRICT

IN THE ILLINOIS APPELLATE COURT
FOURTH JUDICIAL DISTRICT
General No.: 4-22-0827

MARK KUHN and KAREN KUHN, Plaintiffs-Appellees, v. OWNERS INSURANCE COMPANY, Defendant-Appellant, B. MCLEAN ARNOLD, Special Representative of RYAN HUTE, deceased; JASON FARRELL, Individually; JASON FARRELL, d/b/a JASON FARRELL TRUCKING; 3 GUYS AND A BUS, INC., KATHLEEN CRABTREE, Executor of the Estate of Charles C. Crabtree, deceased; STEVEN B. PRICE, JESS O'BRIAN; MONTINIQUE HOWARD; HALEY WILLAN; GRACE STORM, ABBY HOEFT, OLIVIA REED; KIRSTEN LELLELID, and DORIANA BISCHOFF, Defendants.	Appeal from the Circuit Court of the Eleventh Judicial Circuit, McLean County, Illinois Case No. 2019 MR 000643 Judge Scott Kording, Presiding

PLAINTIFFS-APPELLEES, MARK KUHN AND KAREN KUHN'S MOTION TO DISMISS APPEAL FOR FAILURE TO NAME NECESSARY PARTIES

NOW COMES, Plaintiffs-Appellees MARK KUHN and KAREN KUHN, by their attorneys K. LINDSAY RAKERS and THE SUMNER LAW GROUP LLC, and move this Court to enter an order dismissing this appeal for failing to name parties in the underlying case who are necessary and indispensable to the adjudication of the issues on appeal, and in support thereof states as follows:

1. The underlying case on appeal is a declaratory judgment action brought by Mark and Karen Kuhn ("Kuhns") against Owners Insurance Company which sought a judicial

declaration on the stacking of liability policy limits under a business automobile liability policy issued by defendant Owners Insurance which covered a semi-tractor trailer operated by Ryan Hute and owned by Jason Farrell Trucking which collided head-on with a school bus being operated by Mark Kuhn and carrying eight minor students and two adults as passengers - one of whom died and the rest sustaining serious injuries. (Common Law Record, First Amended Complaint for Declaratory Judgment at C288-C370).

2. In their First Amended Complaint filed on May 18th, 2020, Plaintiff-Appellees named all necessary and indispensable parties as Defendants, including Owners Insurance Company, B. McLean Arnold, Special Representative of Ryan Hute, deceased, Jason Farrell, Individually; Jason Farrell, d/b/a Jason Farrell Trucking, 3 Guys and a Bus, Inc., Kathleen Crabtree, Executor of the Estate of Charles C. Crabtree, deceased, Steven B. Price, Jess O'Brian, Montinique Howard, Haley Willan, Grace Storm, Abby Hoeft, Olivia Reed, Kirsten Lellelid, and Doriana Bischoff. (Common Law Record, First Amended Complaint for Declaratory Judgment at C288-C370).

3. All of the above Defendants were listed in the caption of the Amended Complaint, all were served with summons, and all appeared via by separate counsel during the pendency of the case.[1] (Common Law Record, First Amended Complaint for Declaratory Judgment, C288-C370 (Volume 1); Summons at C112-C144, C387-C413; Entries at C152-C153, C191-193, C440-C441, C446-C447, C459, C498-C501, C514-C515; Proofs of Service at C175-C177, C385-386, C523-C525; Agreed Stipulations C1370-1372, C1411-C1413, C1426-C1428, C1445-C1459).

[1] Steven Price and Kathleen Crabtree each appeared by separate counsel. Counsel for Crabtree subsequently entered an appearance for all of the students on the bus, except Kirsten Lellelid, who was defaulted. (Common Law Record, Order for Default Judgment, C1424; Record Sheet, C20).

4. Defendant Steven B. Price filed a cross-claim against Owners Insurance Company seeking the same judicial declaration of the stacking of liability limits as were Plaintiffs. (Common Law Record, Defendant Price's Cross-Claim, C463-C489).

5. After the Kuhns and Defendant Owners Insurance Company brought cross motions for summary judgement on the issue of the applicable liability limits of the subject insurance policy, Steven B. Price and Kathleen Crabtree filed responses which joined in Plaintiffs' motion and opposed Defendant Owners Insurance Company's motion, and said responses were allowed over objection. At the hearing on said cross-motions, counsel for the Kuhns, Crabtree and Price all argued in favor of stacking. (Common Law Record, Kuhns' Motion and Memo for Summary Judgment, C553-C1021 and C1252-C1278; Owners' Motion and Memo for Summary Judgment, C1083-C1248; Kuhns' Response, C1279-C1302; Owners' Response C1303-C1328; Kuhns' Reply, C1329-C1354; Owners' Reply, C1355-C1369; Price's Response in Support of MSJ, C1391-C1392; Crabtree/Reed's Response in Support of MSJ, C1393-C1396; Owners' Mtn to Strike, C1397-C1406; Price's Response to Mtn to Strike, C1408-C1410; Record Sheet C19).

6. While the cross-motions for summary judgment were pending, the Court requested additional briefing on a newly reported appellate decision and counsel for Kuhns, Crabtree and Price all filed separate responses. (Common Law Record, Record Sheet, C22).

7. The trial Court issued its final and appealable Opinion and Order on cross motions for summary judgement on August 15th, 2022, granting Plaintiffs' Motion for Summary Judgment and denying Owners' Motion for Summary Judgment, specifically indicating that "Judgment is entered in favor of Plaintiffs (and of Crabtree and Price) and against Defendant." (Common Law Record, Record Sheet, C23; Opinion and Order on Cross-Motions for SJ, C1504-C1576).

8. On September 14th, 2022, one day before the 30-day appeal deadline, Defendant-Appellant Owners Insurance Company filed its Notice of Appeal with the Circuit Court. (Common Law Record, Notice of Appeal, C1577-1579).

9. Supreme Court Rule 303(b) prescribes the "Form and Contents of a Notice of Appeal," which requires, among other things, that the notice "Shall bare the title of the case, naming and designating the parties in the same manner as in the Circuit Court and adding the further designation of "Appellant" or "Appellee" *e.g.,* "Plaintiff-Appellee."

10. The caption of the Notice of Appeal filed by Owners Insurance did not name or designate the parties in the same manner as the First Amended Complaint in the Circuit Court. Specifically, the notice listed the defendant insureds under the policy (B. McLean Arnold, Special Representative of Ryan Hute, deceased, Jason Farrell, Individually, Jason Farrell d/b/a Jason Farrell Trucking and 3 Guys and a Bus) but did not add "Appellee" to their designation. The notice omitted completely all defendants who are potential claimants to the subject insurance policy, all of whom were named and served as defendants in the underlying case. Specifically, the Notice of Appeal caption omitted Steven B. Price, Kathleen Crabtree, Executor of the Estate of Charles C. Crabtree, deceased, Jess O'Brian, Montinique Howard, Haley Willan, Grace Storm, Abby Hoeft, Olivia Reed, Kirsten Lellelid, and Doriana Bischoff. (Common Law Record, Notice of Appeal, C1577-1579). As these parties were completely omitted from the Notice of Appeal, Appellant Owners obviously did not add the further designation of "Defendant-Appellee" to any of these omitted parties as is required by the rule.

11. Defendant-Appellant's docketing statement only lists Plaintiffs Kuhns as Plaintiff-Appellee and was only served on the Kuhns' attorney; no other party in the lower court was listed

as appellee nor served with the docketing statement. (Exhibit A, Affidavit of K. Lindsay Rakers, attaching Docketing Statement). Further, the Request for Transcript was served on some but not all parties in the underlying circuit court case, omitting defendant Steven Price. (Common Law Record, Request for Preparation of Record on Appeal, C1581).

12. While a party filing a Notice of Appeal may move for an extension of time in which to file an amended notice of appeal to correct defects in the notice, such motion must be filed in the reviewing Court within 30 days after the expiration of the time for filing the Notice of Appeal pursuant to Rule 303(b)(5). After said 30-day period, the Appellate Court loses jurisdiction to allow a motion to correct a defect in the notice. Heller Financial Inc. v. Johns-Byrne Company, 264 Ill. App. 3d 681, 688, 637 N.E.2d 1085, 202 Ill. Dec. 349 (1994).

13. Appellant Owners has not filed a Motion for Leave to Amend its defective Notice of Appeal within the 30-day period allowed under Rule 303(b)(5) and, therefore, the Court has no jurisdiction to allow a motion to correct the defects in the Notice of Appeal.

14. Because Defendant-Appellant Owners Insurance Company failed to include the claimants other than the Kuhns as "Defendant-Appellees" to the appeal, the Appellate Court has no jurisdiction over those parties not named and the judgement in their favor remains valid. Nussbaum v. Kennedy, 267 Ill. App. 3d 325, 327-329, 642 N.E.2d 151, 204 Ill. Dec. 689 (3rd District 1994); Colemon v. Akpakpan, 402 Ill. App. 3d 822, 824, 932 N.E.2d 184, 342 Ill. Dec. 293 (1st District 2010) (where the Notice of Appeal fails to name one of two plaintiffs, the non-named Plaintiff "is not a party to this appeal… and the judgement against [him] will not be affected by its outcome").

15. The court in Nussbaum, supra, set forth the pertinent analysis as follows:

> In the circuit court, plaintiff's pleadings specifically designated Michael Kennedy, Thomas Gutowski and Dave Tkac as defendants. All of the defendants' names were included in the captions of plaintiff's complaint . . . In his notice of appeal, however, plaintiff omitted any references to Gutowski and Tkac. Specifically, the caption of the notice of appeal named the parties as "Jay Nussbaum, Plaintiff-Appellant, vs. Michael P. Kennedy, Defendants-Appellee." (sic) . . . Supreme Court Rule 303(c)(1)(ii) stated that the caption of the notice of appeal shall bear the title of the case, naming and designating the parties in the same manner as in the circuit court and adding the further designation "appellant" or "appellee." (134 Ill.2d R. 303(c)(1)(ii).)
>
> . . .
>
> We conclude that plaintiff's notice of appeal failed to perfect this court's jurisdiction over defendants Tkac and Gutowski. If plaintiff had desired to make Tkac and Gutowski appellees, the notice should have stated this. Here, however, the notice stated that there were "defendants" (plural), but there was an "appellee" (singular). If plaintiff desired for this court to possess jurisdiction over Tkac and Gutowski, the notice of appeal contained substantial defects that prejudiced the unnamed parties. Based upon the designations in plaintiff's notice of appeal, the clerk of this court sent the docketing statement and other documents only to counsel for plaintiff Nussbaum and defendant Kennedy. . . Even after the notice of appeal was filed, either plaintiff-appellant Nussbaum or appellee Kennedy could have requested leave to amend the notice of appeal to name Tkac and Gutowski as appellees (134 Ill.2d R. 303(c)(4)), but neither party did so. Also, neither Tkac or Gutowski acceded in this court's jurisdiction by participating in this case, through the filings of briefs or appearing at oral argument.
>
> . . .
>
> We conclude that our jurisdiction extends only to those persons named in the notice of appeal, plaintiff Nussbaum and defendant Kennedy.

Nussbaum, 267 Ill.App.3d at 328-329. The court went on to note that serving the Notice of Appeal on all counsel of record, even those not properly named in the notice, did not give the Appellate Court jurisdiction over the non-named parties:

> The fact that plaintiff served Tkac and Gutowski with copies of the notice of appeal does not cure the jurisdictional defect. In a civil case, the only jurisdictional step in appealing a final judgment of a circuit court is the filing of the Notice of Appeal. (134 Ill.2d R. 301; Echols v. Olsen (1976), 63 Ill.2d 270, 275, 347 N.E.2d 720.) Whether an appellant properly effectuates service does not affect the jurisdiction of the appellate court. (See Echols, 63 Ill.2d at 274.) Thus, serving a copy of a notice upon an unnamed party does not bring that person within this court's jurisdiction.

267 Ill.App.3d at 329.[2]

[2] Note that failing to properly name all appellants (as opposed to appellees) does not deprive the court of jurisdiction over them. See In Re Estate of Bonjean, 90 Ill. App. 3d 582, 413 N.E.2d 205, 45 Ill. Dec. 872 (3rd Dist. 1980) (listing

16. Illinois law requires that all parties necessary for a complete adjudication of the matter must be joined as parties. Oglesby v. Springfield Marine Bank, (1944), 385 Ill. 414, 423, 52 N.E.2d 1000 (1944). The joinder of necessary parties is contained within the Illinois Code of Civil Procedures. See 735 ILCS 5/2-404 (naming necessary plaintiffs as defendants if they choose not to join), 735 ILCS 5/2-405(a) (naming all defendants as necessary parties for the complete determination or settlement of any question involved) and 735 ILCS 5/2-406(a) (court may sua sponte order necessary parties be joined).

17. A necessary party is one whose participation is required to: (1) protect its interest in the subject matter of the controversy which would be materially affected by a judgment entered in its absence; (2) reach a decision protecting the interests of the parties already before the court; or (3) allow the court to completely resolve the controversy. Zurich Ins. Co. v. Baxter Int'l, 275 Ill. App. 3d 30, 37, 655 N.E.2d 1173, 211 Ill. Dec. 790 (2nd Dist. 1995).

18. Due process requires the joinder of all indispensable parties to an action, and an order entered without jurisdiction over a necessary party is void. Feen v. Ray, 109 Ill. 2d 339, 344, 487 N.E.2d 619, 93 Ill.Dec. 794 (1984)("It is generally accepted that, under fundamental principles of due process, a court is without jurisdiction to enter an order or judgment which affects a right or interest of someone not before the court"); People ex rel. Meyer v. Kerner, 35 Ill. 2d 33, 38 (1966) (an order entered by a court without jurisdiction over a necessary party is null and void). The rule is based on the fundamental fairness of the right of the absent party to be heard:

---

of appealing legatees in a will contest as "et. al." was not advisable but did not deprive the court of jurisdiction over them where all were represented by the same attorney who signed the notice on their behalf); Harry W. Kuhn, Inc. v. County of DuPage 203 Ill. App. 3d 677, 561 N.E.2d 458, 149 Ill. Dec. 180 (1990)(same).

> Such parties, if they have, or might claim, a substantial and present interest, under the issues involved, are entitled to be heard. They are entitled to be present and to participate in the litigation of all questions affecting such interest.

Oglesby, supra, 385 Ill. at 423.

19. Illinois courts recognized two exceptions to the necessary party rule which are inapplicable here. The first is where the issue of non-joinder is not raised until late in the proceeding after a final judgment is entered. Davidson v. Comet Casualty Co., 89 Ill. App. 3d 720, 725 (1980)(where an objection to the nonjoinder of a necessary party is first raised after judgment, it will be rejected unless the absent party was deprived of material rights without being heard or the absent party's interests in the litigation are so interconnected with the named parties' interests that the presence of the absent party is absolutely necessary); see also Crescio v. Crescio, 365 Ill. 393, 6 N.E.2d 628 (1937) (nonjoinder raised for the first time in post-trial motion); Krzeminski v. Krzeminski, 285 Ill. 113, 120 N.E. 560 (1918) (non-joinder raised first time on appeal).

20. The second exception to the non-joinder of necessary party rule is under the "representation doctrine" where the non-party's rights and interests are being adequately represented by a party to the suit, typically in a class action where it is impracticable to join all parties. Feen v. Ray, supra, 109 Ill. 2d at 348. It has been described as follows:

> The exception to this general rule, though not precisely defined by judicial opinion, is the case of a judgment in a "representative" or "class" suit, to which some of the members of the class are parties and by which suit the parties may bind other members of the class on the basis of representation. This class suit is recognized as an invention of equity to enable it to proceed to a decree in suits where the number of those interested in the subject matter of the litigation is so great that it is impracticable to join them as parties. (Christopher v. Brusselback, 302 U.S. 500, 82 L. ed. 388; Supreme Tribe of Ben Hur v. Cauble, 255 U.S. 356, 65 L. ed. 673; Hartford L. Ins. Co. v. Barber, 245 U.S. 146, 62 L. ed. 208.) In such cases, where the interests of those not joined are the same as the interests of those who are, and it is further considered that those joined as parties fairly represent those not joined in the litigation of issues in which all have a common interest, the court will proceed to a decree as in a class suit, and such decree will be binding on all

members of the class. Supreme Tribe of Ben Hur v. Cauble, 255 U.S. 356, 65 L. ed. 673; Smith v. Swormstedt, 16 How. (U.S.) 288, 14 L. ed. 942.

Newberry Library v. Board of Education 387 Ill. 85, 90, 55 N.E.2d 147 (1944).[3]

21. Illinois courts have applied the necessary and indispensable party rule when determining whether to dismiss an appeal where a party to the underlying trial court case was not named in the appeal. Boyd Electric. v. Dee, 356 Ill. App. 3d 851, 826 N.E.2d 493, 292 Ill.Dec. 352 (1st Dist. 2005). In Boyd Electric, the employer appealed the circuit court's affirmance of the Industrial Commission's award in favor of the injured employee. In the circuit court, the employer properly named the Industrial Commission as an appellee as is required by the Workers' Compensation Act. However, in its Notice of Appeal, the employer failed to list the Industrial Commission in the heading or name it as an appellee. The Appellate Court analyzed the issue as follows:

> Before addressing the issues raised by Boyd Electric, we will address the question of our jurisdiction over the instant appeal. Boyd Electric asserts that, due to its inadvertence, the Commission's name, was innocently omitted from the caption in its July 1, 2004, notice of appeal. Again, Boyd Electric asks this Court to grant leave to amend its notice of appeal to correct the omission. . . . Boyd Electric filed its motion to amend its notice of appeal on August 13, 2004, four days after the expiration of the extension of time to amend its notice of appeal. Because we lacked jurisdiction to allow Boyd Electric to amend its notice of appeal to include the Commission as a party appellee, we, denied its motion as untimely.

[3] Illinois courts reference Restatement (Second) of Judgments for the appropriate standard as to when non-parties to an action can be bound to its judgment based on the "representation doctrine." Restatement (Second) of Judgements 40(1) provides that "a person who is not a party to an action but who is represented by a party is bound by and entitled to the benefits of a judgment as though he were a party." Section 41 provides: "A person is represented by a party who is: (a) The trustee of an estate or interest of which the person is a beneficiary; or (b) Invested by the person with authority to represent him in an action; or (c) The executor, administrator, guardian, conservator, or similar fiduciary manager of an interest of which the person is a beneficiary; or (d) An official or agency invested by law with authority to represent the person's interests; or (e) The representative of a class of persons similarly situated, designated as such with the approval of the court, of which the person is a member." See Diversified Financial Systems, Inc. v. Boyd, 286 Ill.App.3d 911, 916, 678 N.E.2d 308, 222 Ill. Dec. 696 (1997). Obviously, the non-named parties here do not fit any of the classes of non-parties listed in the Restatements.

> The question now becomes whether Boyd Electric's failure to name the Commission as a party appellee in its notice of appeal is a defect which requires us to dismiss this cause for lack of jurisdiction.
>
> . . .
>
> Having found no case which addresses the specific issue at hand, we believe that resolution of this question depends on whether the Commission is considered a necessary or nominal party to the action.

356 Ill. App. 3d at 857-858, 859.

22. The court in Boyd Electric went on to conclude that under the facts in that case, the Industrial Commission was only a nominal and not necessary party to the appeal:

> A necessary party is defined as "one who has a legal or beneficial interest in the subject matter of the litigation and will be affected by the action of the court." Holzer v. Motorola Lighting, Inc., 295 Ill. App. 3d 963, 970, 693 N.E.2d 446, 230 Ill. Dec. 317 (1998). A party is considered necessary when its presence in a lawsuit is required for any of the following reasons: (1) to protect an interest which the absentee party has in the subject matter of the controversy which would be materially affected by a judgment entered in its absence; (2) to protect the interests of those who are before the court; or (3) to enable the court to make a complete determination of the controversy. Holzer, 295 Ill. App. 3d at 970.
>
> We believe that, in this case, the Commission is not a necessary party for any of the three reasons stated above. First, the Commission has no rights or interests in the subject matter of the appeal which could be materially affected. Next, no rules are implicated on appeal which the Commission would need to defend. The only issue on appeal concerns the award of benefits to the claimant. As such, the only parties affected by the outcome are the claimant and Boyd Electric. The Commission will not be prejudiced in any way if it is not named as a party, nor will the claimant be prejudiced by the Commission's absence on appeal. Finally, the Commission's presence is certainly not required for this court to make a complete determination of the controversy.

356 Ill. App. 3d at 859.

23. Under the foregoing authority, it is clear that the non-named defendants in this case are necessary and indispensable parties whose absence requires the dismissal of the appeal. Unlike the party who was not included in the notice of appeal in Boyd Electric, the non-named defendants

in this case are not merely "nominal parties" but are either insureds or direct claimants on the liability policy at issue and the determination of the amount of liability limits have a direct impact on their substantial interest in receiving compensation under the subject liability policy. As such, they have direct interest in the subject matter of the appeal and have a right to be heard.

24. Illinois precedent compels this result. Illinois courts have consistently held that both the insureds and the tort claimants in an underlying injury action are necessary parties to a declaratory judgment action brought to determine liability coverage for that claim. M.F.A. Mutual Insurance Co. v. Cheek, 66 Ill. 2d 492, 502, 363 N.E.2d 809, 6 Ill. Dec. 862 (1977)(plaintiffs in underlying action alleging injuries resulting from car accident were necessary parties to declaratory judgment action brought by insurers to determine insurance coverage); Williams v. Madison County Mutual Automobile Insurance Co., (1968), 40 Ill. 2d 404, 407, 240 N.E.2d 602, 604 ("injured claimants are proper parties to such an action and have been held to have been necessary parties to such suit"); Society of Mt. Carmel v. National Ben Franklin Insurance Co., 268 Ill.App.3d 655, 661, 643 N.E.2d 1280, 205 Ill.Dec. 673 (1994); American Country Insurance Co., 339 Ill. App. 3d 835, 841 (2003); Western States Insurance Co. v. Weller, 299 Ill. App. 3d 317, 320, 701 N.E.2d 542, 233 Ill. Dec. 692 (1998); Allied Am. Ins. Co. v. Ayala, 247 Ill. App. 3d 538, 616 N.E.2d 1349, 186 Ill. Dec. 717 (1993); Reagor v. Travelers Insurance Co., 92 Ill. App. 3d 99, 415 N.E.2d 512, 47 Ill. Dec. 507 (1980); General Casualty Co. v. Olsen, 56 Ill. App. 3d 986, 372 N.E.2d 846, 14 Ill. Dec. 567)(1977).

25. The injured party is a necessary party in such declaratory judgment suits because liability insurance is intertwined with public policy considerations, including that such policies should give the public the maximum protection possible when taking into account fairness to the

insurer. Reagor v. Travelers Insurance Co., 92 Ill. App. 3d 99, 102, 415 N.E.2d 512, 47 Ill. Dec. 507 (1980). Injured victims are the beneficiaries of liability insurance policies, giving them rights under the policies that vest at the time of the incident causing the injuries. Id. at 103. Thus, the victim has a substantial right in the insurance policy's viability (Continental Casualty Co. v. Howard Hoffman & Associates, 955 N.E.2d 151, 352 Ill. Dec. 975, 2011 IL App (1st) 100957, ¶ 23), as a declaration of noncoverage would eliminate a source of funds for him or her (Skidmore v. Throgmorton, 323 Ill. App. 3d 417, 421-22, 751 N.E.2d 637, 256 Ill. Dec. 247 (2001)). Accordingly, "Illinois law evinces a recognition that the underlying claimants have a substantial interest in how insurance coverage questions are resolved [and] that this interest is best protected by having the claimants participate directly in the litigation between the insurance carrier and the insured." Zurich Ins. Co v. Baxter Int'l, 173 Ill. 2d 235, 246, 670 N.E.2d 664, 218 Ill.Dec 942 (1996); see also Reagor, supra, 92 Ill. App. 3d at 103 ("The injured person must be given the opportunity to litigate the question of coverage under the liability insurance policy before his interest…may be terminated").

26. Neither of the two exceptions to the indispensable and necessary party rule apply in this case. Appellants have timely raised this issue when it arose, shortly after the Notice of Appeal omitting the necessary parties was filed. The exception under the "representation doctrine" is equally inapplicable. The Kuhns obviously do not represent the interests of the tortfeasor defendants, who they have sued. Moreover, the non-named claimants here are not represented by counsel for the Kuhns but have separate counsel who have represented their interest separately in the underlying case. These absent parties could have been easily joined as additional Appellees. These claimants have an equal right to be heard. Moreover, this is not an action suit where joinder

of numerous claimants is neither practicable nor possible. As the Illinois Supreme Court has stated, the necessary parties rule:

> is inflexible, yielding only when the allegations of the bill disclose a case so extraordinary and exceptional in character as that it is practically impossible to make all parties in interest parties to the suit, and further, that others are made parties who have the same interest as have those not brought in, and are equally certain to bring forward the entire merits of the controversy as would the absent persons.

Oglesby, supra, 385 Ill. at 423-24.

This is not one of the "extraordinary and exceptional" circumstances. Indeed, there are no reported decisions where the doctrine of representation was applied to a situation, as here, involving a declaratory judgment action involving liability insurance coverage with relatively few injured parties to be joined as claimants. Flashner Medical Partnership v. Marketing Management, Inc. 189 Ill. App. 3d 45, 54, 545 N.E.2d 177, 136 Ill. Dec. 653(1989)("Plaintiffs cite no Illinois cases, nor have we found any, applying the [representation] doctrine to tort claimants in a declaratory judgment action to determine liability insurance coverage"); see also Allied Am. Ins. Co. v. Ayala 247 Ill. App. 3d 538, 616 N.E.2d 1349, 186 Ill. Dec. 717 (1993)(in a declaratory judgment action where 6 of the 7 injury claimants were joined, the absence of a minor child injury claimant rendered the judgment void despite the fact that minor was represented by his mother in the action).

27. The conclusion is inescapable that the failure of Appellant to name necessary parties to this appeal deprives this court of jurisdiction to hear the appeal and the appeal must be dismissed.

28. If this Court determines that this appeal may somehow still proceed with the Kuhns as the only Appellees, a position the Appellees argue would be improper for the foregoing reasons,

Appellees would thereby argue that the appeal must still be dismissed in its entirety. Because this appeal cannot possibly apply to the Special Representative of Ryan Hute, deceased, Jason Farrell, Individually; Jason Farrell, d/b/a Jason Farrell Trucking, 3 Guys and a Bus, Inc., Kathleen Crabtree, Executor of the Estate of Charles C. Crabtree, deceased, Steven B. Price, Jess O'Brian, Montinique Howard, Haley Willan, Grace Storm, Abby Hoeft, Olivia Reed, Kirsten Lellelid, and Doriana Bischoff, there exists a final judgment regarding the stacking of the Owners Insurance liability policies as it relates to those individuals. Appellant, Owners Insurance, was a party to that judgment. Those stacking issues are identical to the issues raised in this appeal involving the Kuhns. As such, given the longstanding principles of res judicata, Appellant must be estopped from litigating an issue that is final, ie, whether or not the liability policies should be stacked pursuant to Illinois law. To allow Appellant to do so could lead to inconsistent judgments, which is the very result the doctrine of res judicata was enacted to prevent.

WHEREFORE, Plaintiffs-Appellees MARK KUHN and KAREN KUHN, respectfully request that the Court grant their Motion and enter an order dismissing the appeal for want of jurisdiction, and for whatever further relief this Court deems just and proper.

MARK KUHN and KAREN KUHN,

By: */s/ K. Lindsay Rakers*

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CERTIFICATE OF SERVICE

The undersigned, being first duly sworn on oath, deposes and says that she electronically filed the attached with the Clerk at https://illinois.tylerhost.net/ofsweb e-filing system on the 17th day of November 2022.

To: Attorneys for Owners Insurance
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IN THE ILLINOIS APPELLATE COURT
FOURTH JUDICIAL DISTRICT
General No.: 4-22-0827

MARK KUHN and KAREN KUHN, Plaintiffs-Appellees, v. OWNERS INSURANCE COMPANY, Defendant-Appellant, B. MCLEAN ARNOLD, Special Representative of RYAN HUTE, deceased; JASON FARRELL, Individually; JASON FARRELL, d/b/a JASON FARRELL TRUCKING; 3 GUYS AND A BUS, INC., KATHLEEN CRABTREE, Executor of the Estate of Charles C. Crabtree, deceased; STEVEN B. PRICE, JESS O'BRIAN; MONTINIQUE HOWARD; HALEY WILLAN; GRACE STORM, ABBY HOEFT, OLIVIA REED; KIRSTEN LELLELID, and DORIANA BISCHOFF, Defendants.	Appeal from the Circuit Court of the Eleventh Judicial Circuit, McLean County, Illinois Case No. 2019 MR 000643 Judge Scott Kording, Presiding

AFFIDAVIT OF K. LINDSAY RAKERS

I, K. LINDSAY RAKERS, being first duly sworn and upon my oath, state and swear as follows:

1. I am over eighteen years of age, I am competent to testify and I have personal knowledge of the facts stated in this Affidavit.

2. I am a resident of the State of Missouri and the United States.

3. I am of sound mind.

4. I am not an adjudged disabled person as defined in the law.

5. I represent the interests of Plaintiffs/Appellees Mark and Karen Kuhn in this

matter.

6. I received the attached Docketing Statement (twelve pages), filed by Defendant/Appellant with this Court via e-filing. The same is not included in the certified Common Law Record.

7. I refer to the attached Docketing Statement in Plaintiffs/Appellees' Motion to Dismiss, to which this Affidavit is marked as Exhibit A.

FURTHER AFFIANT SAITH NOT.

K. LINDSAY RAKERS

SUBSCRIBED AND SWORN to before me on this 17th day of November 2022.

Marie Bacott
Notary Public

My Commission Expires: 4/2/2026

MARIE BACOTT
Notary Public - Notary Seal
Jefferson County - State of Missouri
Commission Number 14948806
My Commission Expires Apr 2, 2026

E-FILED
Transaction ID: 4-22-0827
File Date: 9/27/2022 11:21 AM
Carla Bender, Clerk of the Court
APPELLATE COURT 4TH DISTRICT

No. 04-22-0827
ILLINOIS APPELLATE COURT
FOURTH JUDICIAL DISTRICT

FROM THE CIRCUIT COURT FOR THE ELEVENTH JUDICIAL CIRCUIT OF ILLINOIS
BLOOMINGTON, MCLEAN COUNTY, ILLINOIS

MARK AND KAREN KUHN Plaintiff-Appellee, v. **OWNERS INSURANCE COMPANY** Defendant-Appellant.	Appeal from the Circuit Court of McClean County, Illinois Case No. 2019 MR 000643 Honorable Judge Scott Kording (Presiding) Date of Notice of Appeal: September 14, 2022 Date Judgment was Entered: August 15, 2022 Supreme Court Rule: 301, 303

DOCKETING STATEMENT

1. Is this a cross-appeal, separate appeal, joining in a prior appeal, or related to another appeal which is currently pending or which has been disposed of by the court? **No**.

   If so, state the docket number(s) of the other appeal(s): **N/A**.

2. If any party is a corporation or association, identify any affiliate, subsidiary, or parent group: Defendant-Appellant Owners Insurance Company is a wholly owned subsidiary of Auto-Owners Insurance Company.

3. Full name of appellants filing this statement:

   Owners Insurance Company
   c/o Dinsmore & Shohl LLP
   222 W. Adams Street
   Suite 3400
   Chicago, Illinois 60606
   Attn: Krysta K. Gumbiner

And

Dinsmore & Shohl LLP
255 E. Fifth St., Suite 1900
Cincinnati, OH 45202
Attn: Kathryn Bayer

Counsel on appeal for appellants filing this statement:

Name:	Krysta K. Gumbiner (ARDC #6322557)
Address:	Dinsmore & Shohl LLP 222 W. Adams Street Suite 3400 Chicago, Illinois 60606
Telephone:	(312) 775-1743
Fax:	(312) 372-6085
E-Mail:	krysta.gumbiner@dinsmore.com

Name:	Kathryn Bayer (ARDC #6297923)
Address:	Dinsmore & Shohl LLP 255 E. Fifth St. Suite 1900 Cincinnati, OH 45202
Telephone:	(513) 977-8485
Fax:	(513) 977-8141
E-Mail:	kathryn.bayer@dinsmore.com

Trial counsel, if different: **N/A**.

4. Full name of appellees:

Mark and Karen Kuhn

Counsel on appeal for appellees Mark and Karen Kuhn

Name:	K. Lindsay Rakers
Address:	Sumner Law Group 7777 Bonhomme Ave., Suite 2100 St. Louis, MO 63105
Telephone:	(314) 742-3888
E-Mail:	lindsay@sumnerlawgroup.com

5. Court reporter(s) at court proceedings:

August 27, 2021, April 22, 2022 and June 8, 2022: Sandra J. Rynders, 326 Law & Justice Center, 104 W. Front St., Bloomington, IL 61701

6. Is this appeal from a final order in a matter involving child custody or allocation of parental responsibility or relocation or unemancipated minors pursuant to Illinois Supreme Court Rule 311(1), which requires Mandatory Accelerated Disposition of Child Custody, Allocation of Parental Responsibilities, and Relocation of Unemancipated Minors Appeal?

   Yes:_____ No:___X___

   *If yes, this docketing statement, briefs and all other notices, motions and pleadings filed by any party shall include the following statement in bold type on the top of the front page:

   THIS APPEAL INVOLVES A QUESTION OF CHILD CUSTODY, ADOPTION, TERMINATION OF PARENTAL RIGHTS OR OTHER MATTER AFFECTING THE BEST INTERESTS OF A CHILD.

7. State the general issues proposed to be raised (failure to include an issue in this statement will not result in the waiver of the issue on appeal):

   The above captioned matter involves an insurance coverage dispute between Owners Insurance Company and Mark and Karen Kuhn. Appellant Owners Insurance Company proposes to raise the following issues on appeal:

   1) Whether the Circuit Court properly granted summary judgment in favor of Mark and Karen Kuhn, and against Owners Insurance Company, finding that the policy was ambiguous;

   2) Whether the Circuit Court properly granted summary judgment in favor of Mark and Karen Kuhn, and against Owners Insurance Company, finding that the policy allowed for the aggregation or "stacking" of the combined-liability coverages for the seven vehicles covered under the policy written to Owners Insurance Company.

As the attorney for the appellant, I hereby certify that on the 23rd day of September, 2022, I made a written request to the Clerk of the Circuit Court to prepare the record on appeal, and on the 23rd day of September, 2022, I made a written request to the court reporter to prepare the transcript.

Date: September 27, 2022

/s/ Krysta K. Gumbiner
One of Appellant's Attorneys

In lieu of the court reporter's signature, I have attached the written request to the court reporter to prepare the transcript.

Date: September 27, 2022

/s/ Krysta K. Gumbiner
One of Appellant's Attorneys

CERTIFICATE OF SERVICE

The undersigned on oath states that I served the foregoing document via Odyssey eFile to the parties whom it is directed on or before the hour of 5:00 p.m. on September 27, 2022.

K. Lindsay Rakers
Sumner Law Group
7777 Bonhomme Ave., Suite 2100
St. Louis, MO 63105
Lindsay@sumnerlawgroup.com

/s/ Krysta K. Gumbiner
Krysta K. Gumbiner

This form is approved by the Illinois Supreme Court and is required to be accepted in all Illinois Appellate Courts.

Instructions

Check the box to the right if your case involves parental responsibility or parenting time (custody/visitation rights) or relocation of a child.

Enter the appellate court case number if you have it.

In the space below "Appeal to the Appellate Court of Illinois," enter the number of the appellate district where you are filing the appeal and the county of the trial court.

If the case name in the trial court began with "In re" (for example, "In re Marriage of Jones"), enter that phrase. If the case name did not begin with "In re," enter the names of the parties as they appeared in the trial court documents. Below each party name, check either **Appellant** if the party filed the appeal or **Appellee** if the party is responding to the appeal.

To the far right, enter the trial court case number and trial judge's name.

☐ **THIS APPEAL INVOLVES A MATTER SUBJECT TO EXPEDITED DISPOSITION UNDER RULE 311(a).**

Appellate Case No.: 4-22-0827

APPEAL TO THE APPELLATE COURT OF ILLINOIS,

FOURTH ☑ **District**

FROM THE CIRCUIT COURT OF

MCLEAN **County**

In re

Plaintiffs/Petitioners *(First, middle, last names):*

☐ **Appellant** ☒ **Appellee**

Mark Kuhn and Karen Kuhn

v.

Defendants/Respondents *(First, middle, last names):*

☒ **Appellant** ☐ **Appellee**

Owners Insurance Company

Trial Court Case No.: 2019 MR 000643

Honorable Scott Kording

Judge, Presiding

In **1**, enter your name.

If trial exhibits are important to your appeal, you need to make sure the trial court clerk has them before the record is prepared. **Be sure to read *How to Order the Record on Appeal.***

If you are completing this form on a computer, sign your name by typing it. If you are completing it by hand, sign by hand and print your name.

Enter your complete current address, telephone number, and email, if you have one.

REQUEST FOR PREPARATION OF RECORD ON APPEAL

1. Notice is hereby given to the trial court clerk that:

Krysta K. Gumbiner

First *Middle* *Last*

requests the preparation of the Record on Appeal in the above case.

2. I request that the trial court clerk prepare the Record on Appeal in accordance with Illinois Supreme Court Rule 321. I request that the Record on Appeal include all documents filed, all judgments and orders entered, all documentary exhibits entered at trial, and all Reports of proceedings prepared in accordance with Illinois Supreme Court Rule 323.

/s/ Krysta K. Gumbiner
Your Signature

Krysta K. Gumbiner
Print Your Name

krysta.gumbiner@dinsmore.com
Email

6322557
Attorney # (if any)

Dinsmore & Shohl - 222 W. Adams, Suite 3400
Street Address

Chicago, IL 60606
City, State, ZIP

(312) 775-1743
Telephone

This form is approved by the Illinois Supreme Court and is required to be accepted in all Illinois Appellate Courts.

Instructions

Check the box to the right if your case involves parental responsibility or parenting time (custody/visitation rights) or relocation of a child.

Just below "Appeal to the Appellate Court of Illinois," enter the number of the appellate district that will hear the appeal and the county of the trial court.

If the case name in the trial court began with "In re" (for example, "In re Marriage of Jones"), enter that phrase. If the case name did not begin with "In re," enter the names of the parties as they appeared in the trial court documents. Below each party name check either **Appellant** if the party filed the appeal or **Appellee** if the party is responding to the appeal.

To the far right, enter the trial court case number and trial judge's name.

☐ **THIS APPEAL INVOLVES A MATTER SUBJECT TO EXPEDITED DISPOSITION UNDER RULE 311(a).**

APPEAL TO THE APPELLATE COURT OF ILLINOIS

Fourth **District**

FROM THE CIRCUIT COURT OF

McLean **County**

In re

Mark and Karen Kuhn

Plaintiff/Petitioner *(First, middle, last names)*

☐ **Appellant** ☑ **Appellee**

v.

Owners Insurance Company

Defendant/Respondent *(First, middle, last names)*

☑ **Appellant** ☐ **Appellee**

Trial Court Case No.:
2019 MR 000643

Honorable
Scott Kording
Judge, Presiding

In **1a**, check the "Official Court Reporter" box if a court reporter recorded the court trial or hearings, and then write in the name and address of the court reporter. In **1b**, check the "Administrator of Court Reporters" box if the court electronically recorded the trial or hearings, and then fill in the Administrator's name and address.

In **2**, you must list all dates, times, and courtrooms for the hearings that are important to your appeal.

REQUEST FOR REPORT OF PROCEEDINGS (TRANSCRIPTS)

1. I request that the court reporters listed below prepare the Report of Proceedings (Transcripts) of the following court hearings:

a. ☐ Official Court Reporter _____
First *Middle* *Last*

_____
Street *City* *State* *Zip*

b. ☒ Administrator of Court Reporters: Sandra J. Rynders
First *Middle* *Last*

326 Law & Justice Center, 104 W. Front St., Bloomington, IL 61701
Street *City* *State* *Zip*

2. I request transcripts for the following hearings:

Date: 8/27/21 Time: 9:00 a.m. ☐ a.m ☐ p.m. Courtroom: 3E

Date: 4/22/22 Time: 9:00 a.m. ☐ a.m ☐ p.m. Courtroom: 3E

Enter the Case Number given by the Appellate Court Clerk: 4-22-0827

If you need to list more hearings, check the box and fill out an *Additional Transcripts* form. Insert it after this page.

Date: 6/8/22 Time: 11:00 a.m. ☐ a.m. ☐ p.m. Courtroom: 3E

☐ I have listed additional hearings for which transcripts are needed on the attached *Additional Transcripts* form.

In **3**, enter the names and addresses of any lawyers or other parties who have appeared in court for the parties.

If the other party has a lawyer, you must list the lawyer's information.

3. Name and address of the other party or their lawyer *(if applicable)*:

K. Lindsay Rakers/Sumner Law Group
First Middle Last

7777 Bonhomme Ave., Suite 2100, St. Louis, MO 63105
Street City State Zip

lindsay@sumnerlawgroup.com (314) 669-0048
Email Phone

If you need to list more parties or lawyers, check the box and fill out an *Additional Parties or Lawyers* form. Insert it after this page.

☒ I have listed additional lawyers on the attached *Additional Parties or Lawyers* form.

Sign and print your name. Enter your address, telephone number, and email.

/s/ Krysta K. Gumbiner
Your Signature

Krysta K. Gumbiner
Print Your Name

krysta.gumbiner@dinsmore.com
Email

Dinsmore - 222 W. Adams, Suite 3400
Street Address

Chicago, IL 60606
City, State, ZIP

(312) 775-1743
Telephone

If you are completing this form on a computer, sign your name by typing it. If you are completing it by hand, sign by hand and print your name.

PROOF OF SERVICE ***(You must serve the other party and complete this section)***

In **1a**, enter the name, mailing address, and email address of the party or lawyer to whom you sent the document.

In **1b**, check the box to show how you sent the document, and fill in any other information required on the blank lines.

1. I sent this document:

   a. To:

   Name: K. Lindsay Rakers/Sumner Law Group
   First Middle Last

   Address: 7777 Bonhomme Ave., Suite 2100, St. Louis, MO 63105
   Street, Apt # City State ZIP

   Email address: lindsay@sumnerlawgroup.com

   b. By: ☐ Personal hand delivery

   ☐ Regular, First-Class Mail, put into the U.S. Mail with postage paid at:

   _____
   Address of Post Office or Mailbox

   ☐ Third-party commercial carrier, with delivery paid for at:

   _____
   Name (for example, FedEx or UPS) and office address

   ☒ The court's electronic filing manager (EFM) or an approved electronic filing service provider (EFSP)

   ☒ Email *(not through an EFM or EFSP)*

CAUTION: If the other party does not have a lawyer, you may send the document by email only if the other party has listed their email address on a court document.

Enter the Case Number given by the Appellate Court Clerk: 4-22-0827

☐ Mail from a prison or jail at:

_____
Name of prison or jail

In **c**, fill in the date and time that you sent the document.

c. On: _____
Date

At: _____ ☐ a.m. ☐ p.m.
Time

In **2**, if you sent the document to more than 1 party or lawyer, fill in **a**, **b**, and **c**. Otherwise leave **2** blank.

2. I sent this document:

a. To:

Name: Brian P. Thielen/Thielen, Foley & Mirdo, LLC
First *Middle* *Last*

Address: The Illinois House, 207 Jefferson St., Suite 600, Bloomington, IL 61701
Street, Apt # *City* *State* *ZIP*

Email address: thielen.b@thielenlaw.com

b. By: ☐ Personal hand delivery

☐ Regular, First-Class Mail, put into the U.S. Mail with postage paid at:

_____
Address of Post Office or Mailbox

☐ Third-party commercial carrier, with delivery paid for at:

_____
Name (for example, FedEx or UPS) and office address

☐ The court's electronic filing manager (EFM) or an approved electronic filing service provider (EFSP)

☒ Email *(not through an EFM or EFSP)*

☐ Mail from a prison or jail at:

_____
Name of prison or jail

c. On: _____
Date

At: _____ ☐ a.m. ☐ p.m.
Time

In **3**, if you sent the document to more than 2 parties or lawyers, fill in **a**, **b**, and **c**. Otherwise leave **3** blank.

3. I sent this document:

a. To:

Name: James P. Ginzkey and Chase Molchin/Ginzkey Law Office
First *Middle* *Last*

Address: 221 E. Washington St., Bloomington, IL 61701
Street, Apt.# *City* *State* *ZIP*

Email Address: jim@ginzkeylaw.com; chase@ginzkeylaw.com

b. By: ☐ Personal hand delivery

☐ Regular, First-Class Mail, put into the U.S. Mail with postage paid at:

_____
Address of Post Office or Mailbox

☐ Third-party commercial carrier, with delivery paid for at:

_____
Name (for example, FedEx or UPS) and office address

☐ The court's electronic filing manager (EFM) or an approved electronic filing service provider (EFSP)

☒ Email *(not through an EFM or EFSP)*

Enter the Case Number given by the Appellate Court Clerk: 4-22-0827

☐ Mail from a prison or jail at:

_____
Name of prison or jail

If you are serving more than 3 parties or lawyers, check the box and fill out an *Additional Proof of Service* form. Insert it after this page.

c. On: _____
Date

At: _____ ☐ a.m. ☐ p.m.
Time

☒ I have completed an *Additional Proof of Service* form.

Under the Code of Civil Procedure, 735 ILCS 5/1-109, making a statement on this form that you know to be false is perjury, a Class 3 Felony.

I certify that everything in the Proof of Service is true and correct. I understand that making a false statement on this form is perjury and has penalties provided by law under 735 ILCS 5/1-109.

If you are completing this form on a computer, sign your name by typing it. If you are completing it by hand, sign by hand and print your name.

/s/ Krysta K. Gumbiner
Your Signature

Krysta K. Gumbiner
Print Your Name

Enter the Case Number given by the Appellate Court Clerk: 4-22-0827

ADDITIONAL PARTIES OR LAWYERS

Enter the names and addresses of any other lawyers or other parties who have appeared in court for the parties.

If the other party has a lawyer, you must list the lawyer's information.

Attach this form to the *Request for Report of Proceedings (Transcripts)*.

Name and address of the other party or their lawyer:

Brian P. Thielen/Thielen, Foley & Mirdo, LLC
First *Middle* *Last*

The Illinois House, 207 Jefferson St., Suite 600, Bloomington, IL 61701
Street *City* *State* *Zip*

thielen.b@thielenlaw.com (309) 820-0040
Email *Phone*

Name and address of the other party or their lawyer:

James P. Ginzkey/Ginzkey Law Office
First *Middle* *Last*

221 E. Washington St., Bloomington, IL 61701
Street *City* *State* *Zip*

jim@ginzkeylaw.com (309) 821-9707
Email *Phone*

Name and address of the other party or their lawyer:

Chase Molchin/Ginzkey Law Office
First *Middle* *Last*

221 E. Washington St., Bloomington, IL 61701
Street *City* *State* *Zip*

chase@ginzkeylaw.com (309) 821-9707
Email *Phone*

Name and address of the other party or their lawyer:

Terrance B. Kelly/Kraft, Wood, & Kelly LLC
First *Middle* *Last*

207 W. Jefferson St., Suite 200, Bloomington, IL 61701
Street *City* *State* *Zip*

tkelly@tnwlaw.com (309) 807-1308
Email *Phone*

Name and address of the other party or their lawyer:

Lew Bricker/Smith Amundsen, LLC
First *Middle* *Last*

150 N. Michigan Ave., Suite 3300, Chicago, IL 60601
Street *City* *State* *Zip*

lbricker@salawus.com (312) 894-3200
Email *Phone*

Name and address of the other party or their lawyer:

Brian Ebener/Smith Amundsen LLC
First *Middle* *Last*

150 N. Michigan Ave., Suite 3300, Chicago, IL 60601
Street *City* *State* *Zip*

bebener@salawus.com (312) 894-3200
Email *Phone*

Enter the Case Number given by the Appellate Court Clerk: 4-22-0827

ADDITIONAL PROOF OF SERVICE

In **1a**, enter the name, mailing address, and email address of the party or lawyer to whom you sent the document.

In **1b**, check the box to show how you sent the document, and fill in any other information required on the blank lines.

CAUTION: If the other party does not have a lawyer, you may send the document by email only if the other party has listed their email address on a court document.

1. I sent this document:

   a. To:

   Name: Lew Bricker & Brian Ebener/Smith Amundsen, LLC
   First *Middle* *Last*

   Address: 150 N. Michigan Ave., Suite 3300, Chicago, IL 60601
   Street, Apt # *City* *State* *ZIP*

   Email address: lbricker@salawus.com; bebener@salawus.com

   b. By:
   - ☐ Personal hand delivery
   - ☐ Regular, First-Class Mail, put into the U.S. Mail with postage paid at:

     Address of Post Office or Mailbox
   - ☐ Third-party commercial carrier, with delivery paid for at:

     Name (for example, FedEx or UPS) and office address
   - ☐ The court's electronic filing manager (EFM) or an approved electronic filing service provider (EFSP)
   - ☒ Email *(not through an EFM or EFSP)*
   - ☐ Mail from a prison or jail at:

     Name of prison or jail

In **c**, fill in the date and time that you sent the document.

   c. On: _____
   Date

   At: _____ ☐ a.m. ☐ p.m.
   Time

STATE OF ILLINOIS
APPELLATE COURT
FOURTH DISTRICT
201 W. MONROE STREET
SPRINGFIELD, IL 62704

CLERK OF THE COURT
(217) 782-2586

RESEARCH DIRECTOR
(217) 782-3528

FILED
November 29, 2022
APPELLATE
COURT CLERK

4-22-0827

MARK KUHN and KAREN KUHN, Plaintiffs-Appellees, v. OWNERS INSURANCE COMPANY; B. McLEAN ARNOLD, Special Representative of Ryan Hute, Deceased; JASON FARRELL, Individually; JASON FARRELL, d/b/a JASON FARRELL TRUCKING; and 3 GUYS AND A BUS, INC., Defendants-Appellants.	McLean County Case No.: 19MR643

O R D E R

The court, having reviewed the plaintiffs-appellees' motion to dismiss the appeal and the objections, hereby orders that the motion is denied. On the court's own motion, the defendant-appellant, Owners Insurance Company, is ordered to file an amended docketing statement within 5 days of the entry of this order (1) designating all parties in the caption of the docketing statement in strict compliance with Rule 303(b)(1)(ii) governing notices of appeal, (2) listing all defendants as appellees in paragraph 4 of the docketing statement, and (3) serving all parties with the amended docketing statement. Upon compliance with this order, the clerk of the appellate court will issue a revised briefing schedule.

Order entered by the court.