No. 129895

IN THE SUPREME COURT OF ILLINOIS

MARK KUHN and KAREN KUHN,
Plaintiffs-Appellees-Petitioners,

v.

OWNERS INSURANCE COMPANY,
Defendant-Appellant-Respondent,

MICHAEL POWELL, 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 JORIANNA BISCHOFF,
Defendants-Appellees-Petitioners.

On Appeal from the Appellate Court,
Fourth District, No.4-22-0827

On Appeal from the Circuit Court of the Eleventh Judicial Circuit,
McLean County, Illinois, 2019 MR 000643.
The Honorable Scott Kording, Judge Presiding.

APPELLEE'S RESPONSE BRIEF

ORAL ARGUMENT REQUESTED

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E-FILED
12/5/2023 5:16 PM
CYNTHIA A. GRANT
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INTRODUCTION

This is a commercial automobile insurance coverage dispute arising out of a McLean County traffic accident. Appellee-Defendant Owners Insurance Company ("Owners") issued an insurance policy (the "Policy"), which covered a trucking company's seven heavy-duty trucks and trailers. One of those trucks was involved in the subject accident. The Policy contains a $1 million "each accident" limit of liability, which applies regardless which of the trucking company's vehicles was involved in the accident. That $1 million limit plainly applies to the accident here.

Yet Plaintiffs ask this Court to multiply the limits of liability by seven—for a total of $7 million in "each accident" liability coverage—because Owners insured seven trucks and trailers. While Plaintiffs concede that the policy's "anti-stacking" provision unambiguously states that the "each accident" limit applies to all injuries and damages arising out of "any one accident," they nevertheless argue that 30-year-old dicta from this Court concerning policy declaration pages nullifies that express language.

Specifically, Plaintiffs argue that this Court should adopt dicta from *Bruder v. Country Mutual Insurance Co.*, 156 Ill. 2d 179 (1993), as a bright-line rule that *anytime* an insurance policy's declaration pages list liability limits separately this means that the policy is ambiguous and thus the stacking or aggregating of those limits must be permitted. But *Bruder* said nothing of the sort. Indeed, just three years ago this Court stated the exact opposite: there is no *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 v. Estate of Klamm*, 2020 IL 124649, ¶ 22 (quoting *Hobbs v. Hartford Ins. Co. of the Midwest*, 214 Ill. 2d 11, 26 n. 1 (2005) (emphasis added)). "Rather," this Court stated that "the question should be decided on a case-by-case basis," and "the declarations page should not be read in isolation but must be construed together with the other provisions in the policy." *Id.*

Here, that is exactly what the Fourth District Appellate Court did. It heeded this Court's binding precedent, and closely and carefully examined Owners' Policy to determine that its antistacking provision and declarations pages were not ambiguous. An examination of the declaration pages on their own does not render the Policy ambiguous. And, even if there were some doubt, examining the Policy's declaration pages in light of its antistacking provisions makes it clear that the limit of liability for any accident or occurrence was $1 million, not the $7 million Plaintiffs seek. Because there was no reasonable interpretation of the Policy that was ambiguous, the appellate court reversed the trial court's decision, which held that the Policy allowed the stacking of seven individual $1 million limits.

In this appeal, Plaintiffs claim otherwise, arguing that this Court's decision in *Bruder*, stands for the bright-line rule that *anytime* a "declarations page list[s] the liability limits separately for each vehicle insured, the antistacking clause would be rendered ambiguous." (Appellants' Br. 17.) But that is not what *Bruder* stands for, and this Court should use this case as an opportunity to clarify that *Bruder's* dicta is not an absolute rule but an admonition to do what courts should do *every time* they interpret an insurance policy—examine the particular policy in front of them to

determine *its* meaning and import. Moreover, Plaintiffs all but ignore the Policy's explicit antistacking provision because it guts their theory.

Nor are Plaintiffs correct that caselaw uniformly supports their position. (Appellants' Br. 18–23.) Rather, an examination of the caselaw shows that Illinois courts have done exactly what this Court has requested: examine insurance policies on a case-by-case basis. And numerous other decisions have gone in the same direction as the Fourth District when the circumstances warranted it, like here. Owners' Policy is not ambiguous. To put it most starkly: would an insured entering into this Policy believe that if she got into an accident with *one* of the seven autos insured under the Policy, hundreds of miles from where the other six autos were sitting idle, she was entitled to the coverage limit of not only the vehicle involved in the accident but the six other autos that had nothing to do with the accident? The answer must be no.

STATEMENT OF FACTS AND PROCEDURAL BACKGROUND

I. The Underlying Accident

On a December night in 2018, Plaintiff Mark Kuhn was driving a school bus on a westbound interstate in McLean County with returning members of a high school basketball team. (Second Am. Compl., Ex. A ¶18, C297.) At the same time, Ryan Hute was driving a semi-truck on the eastbound side of the interstate. (*Id.*, Ex. A ¶15, C297.) Hute had been hired by Defendants Jason Farrell, Jason Farrell Trucking, or 3 Guys & a Bus, Inc. to drive the truck. (*Id.*, Ex. A ¶¶13-14, C297.) For unknown reasons, Hute crossed into one of the westbound lanes and struck the school

bus. (*Id.*, Ex. A ¶¶17, 20, C297.) Hute and a bus passenger, Charles Crabtree, were killed, and other passengers on the bus were allegedly injured. (*Id.* at ¶¶9, 11, C290; Pls.' Mem. of Law in Support of Mot. for Summ. J., Ex. C, Dep. of Sgt. Stephen Coady at 23:16–22, C675.)

II. The Insurance Policy

The semi-truck involved in the underlying accident was a 2010 Kenworth Construct T600 (the "2010 Kenworth Semi"). (First Am. Compl. ¶8, C290.) The 2010 Kenworth Semi was actively insured under a commercial auto policy issued by Owners Insurance Company ("Owners") to "Jason Farrell, Jason Farrell Trucking," policy number 51-829-065-00 (the "Policy" or "Owners' Policy"). (Certified Copy of Policy, C580–C636; *see id.* at 9, C588.) In addition to covering the 2010 Kenworth Semi, the Owners' Policy also insured two other vehicles and four trailers owned and/or leased by Jason Farrell: a 2000 Kenworth semi-truck, a 1999 Peterbilt semi-truck, a 2003 Wilson Livestock trailer, a 2009 Wilson step deck trailer, a 2000 livestock trailer; and a 2019 Prestige step deck trailer. (*Id.* at 7–10, C586–89.) These semi-trucks and trailers constitute "autos" since the Policy defines an "auto" as a motor vehicle or a trailer. (*Id.* at Section VI.B, C608.) The 2010 Kenworth Semi was the only covered auto involved in the accident. (First Am. Compl. ¶¶ 8, 19, C290–92.)

The declaration pages for the Owners' Policy set out the amounts of coverage provided and the associated premiums over the course of nine pages (the "Declaration Pages"). (Certified Copy of Policy at 4–12, C583–91.) The Declaration Pages begin with a table titled "Item Two – Schedule of Covered Autos and Coverages" ("Item II"),

which provides an overview, summarizing all of the Policy's coverages and the "Limit of Insurance" for any one accident:

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.

(*Id.* at 4, C583.) The Policy also includes a legend indicating which type of auto corresponds with each number listed in Item II's summary table:

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

(*Id.* at 5, C584.) Item II's leftmost column lists the types of coverages provided under the Owners' Policy,[1] including "Combined Liability" coverage,[2] which applies to scheduled autos, hired autos, non-owned autos, and certain mobile equipment. (*Id.* at 4–5, C583–84.) The Policy's limit of "Combined Liability" coverage for any one accident or loss is listed as "1 Million *each accident*." (*Id.* at 4, C583 (emphasis added).)

Because of the number and variety of vehicles and trailers insured under the Policy, the Declaration Pages also contain an explanatory section titled "Item Three — Schedule of Covered Autos, Additional Coverages and Endorsements" ("Item III"), which provides seven tables—one for each insured vehicle or trailer—specifying the covered vehicle or trailer, its premium, applicable coverages, and associated liability limits. (*Id.* at 6–10, C585–589.) For example, the Item III table for the 2010 Kenworth Semi displays the following coverage information:

---

[1] On page 7 of Plaintiffs' Brief, Plaintiffs mistakenly describe the amount of "Uninsured/Underinsured Motorist Coverage" listed in Item II as "$100,000 per person and $300,000 per accident." (Appellants' Br. 7.) The amounts of uninsured/underinsured motorist coverage ("UM/UIM") in Item II are actually listed as $100,000 for each person and $100,000 for each accident. (Certified Copy of Policy at 4, C583.)

[2] Plaintiffs note that the Owners' Policy does not specifically define the term "Combined Liability." (Appellants' Br. 11.) An examination of the Policy's plain language shows that "Combined Liability" is the Policy's bodily injury and property damage limits rolled into one limit. (*Compare* subsection II(C)(1) of the Policy ("When combined liability limits are shown in the Declarations . . ."), *with* subsection II(C)(2) ("When separate bodily injury and property damage limits are shown in the Declarations . . .").) (Certified Copy of Policy at 21, C600.)

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

(*Id.* at 9, C588.) These individually listed coverages in Item III correspond to the amounts collectively listed in Item II. For example, Item III also states that every vehicle or trailer insured under the Policy has a "Combined Liability" coverage of "$1 Million each accident." (*Id.* at 6–10, C585–89). Since Item III helpfully breaks down the coverages in Item II according to each of the vehicles or trailers covered under the Policy, the "Combined Liability" limit amount appears seven times in Item III—once next to each covered vehicle or trailer. Because the coverages and individual premiums vary slightly between each covered vehicle, Item III lists them separately.[3] Importantly, Item II and Item III are not in tension and do not present two distinct and conflicting coverage schedules—rather, Item III merely illustrates how the

[3] This makes sense of course. One would expect the premium for a newer vehicle to be more expensive and an older vehicle to be less expensive. Indeed, a cursory glance at Item III shows this to be the case. (*Compare* Certified Copy of Policy at 7, C586 (listing premiums for 2000 Kenworth and 1999 Peterbilt as $3,950.33 and $1,855.14, respectively) *with id.* at 9, 588 (listing premium for 2010 Kenworth as $6,302.95).

coverages listed in Item II apply to each insured vehicle or trailer.[4] But, even if there were some contradiction between Items II and III, Item III's specific enumeration of coverages controls over Item II's more general overview of coverages and supersedes any other contrary declaration. The premium that Item II lists for "Combined Liability" is $6,311.69. (*Id.* at 4, C583.) That is the same amount obtained if one adds up the premiums in Item III for "Combined Liability" for "Hired Autos" ($72.91), "Non-Owned Auto Liability" ($56.33), and the premiums for "Combined Liability" of the three autos ($1,805.81, $1,805.81, and $2,265.28) and four trailers ($62.28, $75.53, $78.66, and $89.08) covered by the Policy. (*Id.* at 6–10, C585–C589.)

The "Commercial Auto Policy," follows after the Declaration Pages and sets forth the terms and conditions of coverage. (*Id.* at 13–31, C592–610.) At issue in this appeal are the two distinct, yet complementary, antistacking provisions found in "Section II — Covered Autos Liability Coverage," clarifying and limiting the extent of coverage available for any one accident. (*Id.* at 18–22, C597–601.) Section II begins with subsection (A) by stating that 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." (*Id.* at 18, C597 (emphasis omitted).)

---

[4] Plaintiffs purport to have discovered a "conflict" between the general uninsured/underinsured ("UM/UIM") limits of liability set forth in Item II, and the absence of UM/UIM limits of liability for the non-passenger trailers in Item III. (*See* Appellants' Br. 10.) But UM/UIM covers only certain damages that "result from *bodily injury* caused by an *accident*." (Certified Copy of Policy at 37, 40, C616, C619.) Because the trailers do not have occupants who could suffer "bodily injury," Owners did not provide (or collect a premium for) UM/UIM coverage for the trailers.

Subsection II(C), titled "Limit of Insurance," then defines the limit of insurance coverage available for any one accident. (*Id.* at 21, C600.) This subsection contains multiple parts, including both antistacking provisions at issue in this appeal, and opens by stating that Owners "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." (*Id.* (emphasis omitted).)

Next, subsection II(C)(1) first *generally* prohibits stacking by stating that "[w]hen 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*." (*Id.* (emphasis altered).) This is what the Fourth District described as the Policy's "traditional" antistacking provision. (Judgment and Opinion, ¶ 65.)

Subsection II(C)(2), which clarifies the extent of Owners' liability when separate bodily injury and property damage limits are shown in the Declarations, is not applicable here because the Declarations list Combined Liability limits and not separate bodily injury and property damage limits. Subsection II(C)(3) states that the "Limit of Insurance" applicable to a trailer connected to a vehicle covered by the Policy "shall be the limit of insurance applicable to such auto." (*Id.* at 22, C601 (emphasis omitted).) "The auto and connected trailer," the Policy clarifies, "are considered one auto and do not increase the Limit of Insurance." (*Id.*)

Lastly, subsection (II)(C)(5) *explicitly* prohibits the intra-policy stacking Plaintiffs are attempting here:[5]

> 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. [(*Id.* (emphasis altered).)]

This is what the Fourth District described as the Policy's "explicit" antistacking provision. (Judgment and Opinion, ¶ 66.)

Subsections II(C)(1) and II(C)(5) work in tandem to prohibit the stacking of coverages. Subsection II(C)(1) incorporates by reference the liability limits "shown in the Declarations" and generally explains that the applicable limit "shown for *each accident*" is the most that Owners will pay. (*Id.* (emphasis added).) Meanwhile, subsection II(C)(5) more specifically contemplates a situation, such as here, where the same policy covers multiple vehicles and clarifies that the applicable limit described in subsection II(C)(1) may not be added or stacked with the coverage limit(s) of any other insured auto. (*Id.*) This coordination between the antistacking provisions in subsection II(C)(1) and II(C)(5) is underscored by subsection II(C)(3), which explains that if a trailer is connected to a covered auto, the trailer and auto

[5] "Intra-policy stacking allows an individual to stack coverage under a single policy that insures multiple vehicles." Alyssa L. Kempke, Comment, *You Get What You Pay for: Why Wisconsin Should Adopt Uninsured and Underinsured Motorist Stacking Waivers*, 2016 Wis. L. Rev. 411, 442 (2016).

count as only "one" auto for purposes of the applicable liability limit—the covered auto and trailer do not stack. (*Id.*)

III. The Declaratory Judgment Action

Despite the Policy's clear antistacking provisions, Plaintiffs Mark and Karen Kuhn filed suit seeking a declaratory judgment that they can "stack" the $1 million policy limits of the six other insured vehicles and trailers that were not involved in the accident on top of the $1 million policy limit for the 2010 Kenworth Semi to create $7 million in coverage. (First Am. Compl. ¶ 25, C293.) Claiming the Policy was ambiguous, the Kuhns asked the trial court to declare that it "should be reasonably interpreted to provide a total of seven (7) separate limits which cover the claims at issue in the Underlying Action,[6] for a total of seven million dollars ($7,000,000.00) in 'Combined Liability' coverage." (*Id.*)

In their initial complaint, the Kuhns named Owners as a defendant, along with Ryan Hute, Jason Farrell, Jason Farrell Trucking, and 3 Guys & A Bus, Inc. (Compl., C25–31.) The Kuhns amended their complaint to name the other bus passengers allegedly injured in the crash as additional defendants: Kathleen Crabtree (as the Executor of the estate of Charles Crabtree), Steven Price, Jessica O'Brien, Montinique Howard, Haley Willan, Grace Storm, Abby Hoeft, Olivia Reed, Kirsten Lellelid,[7] and Jorianna Bischoff (the "Nominal Defendants"). (First Am. Compl., C288–370.) These defendants were named "solely to be bound by the judgment

[6] The "Underlying Action" refers to the Kuhns' pending lawsuit against the estate of semi-truck driver, Ryan Hute, and his employer(s). (First Am. Compl. ¶1, C288–89.)
[7] Lellelid refused to participate in the litigation and a default judgment was entered against her. (Order for Default Judgment, C1424.)

rendered in this cause." (*Id.* at ¶ 4, C289.) Of the Nominal Defendants, only Price filed a cross-claim against Owners seeking the same declaration sought by the Kuhns. (Defendant Price's Cross-Claim, C463–89.)

The Kuhns and Owners filed cross-motions for summary judgment. The Kuhns argued that the Owners' Policy was ambiguous because its declarations listed two separate coverage limits in "Item Two" and "Item Three," and since the term "Limit of Insurance" used in subsection II(C)(5) was not defined, it was unclear whether the antistacking provision referred to the limits listed in Item Two or Item Three. (Pls.' Mem. of Law in Support of Mot. for Summ. J. at 18–21, C570–73.)

Owners argued that the Policy clearly stated that the $1 million liability limit for each covered auto cannot be combined to create additional coverage, and that Illinois courts have repeatedly held nearly identical antistacking provisions to be unambiguous. (Def.'s Mem. of Law in Support of Mot. for Summ. J. at 7–8, C1090–91 (collecting cases where courts held that similar antistacking language unambiguously prevented stacking).) In response to the Kuhns' claim that the Declaration Pages created an ambiguity, Owners argued that the Illinois Supreme Court has already rejected their position and pointed out that the *very first page* of the Declaration Pages clearly stated the "limit of liability for any *one* accident or loss" is $1 million. (*Id.* at 9–12, C1092–95 (emphasis added).)

Of the Nominal Defendants, only Price, Crabtree, and Reed participated in the summary judgment process by filing briefs summarily joining in the Kuhns' motion

and adopting their arguments. (Def Price's Resp., C1391–92; Defs.' Crabtree and Reed's Resp., C1393–96.)

In a 73-page opinion, the trial court granted the Kuhns' motion for summary judgment, denied Owners' motion, and issued a declaratory judgment in the Kuhns' favor. (Final Order and Judgment at 70–71, C1573–74.) The trial court's lengthy decision can be summed up in the following three conclusions:

First, while recognizing that the Policy's antistacking clause "contains many elements commonly found in valid stacking-prohibition provisions in automobile insurance policies," (*id.* at 20, C1523), the trial court ultimately held that subsection II(C) did not unambiguously prohibit intra-policy stacking for four reasons: (1) subsection (C)(1)'s use of the plural term "combined liability limits" could suggest the availability of multiple "combined liability limits"; (2) the adjective "combined" seemingly indicated that aggregation of the liability limits listed in the Declaration Pages is expressly contemplated, rather than forbidden; (3) subsection (C)(2) was "extremely difficult to follow"; and (4) subsection (C)(5) does not define "Limit of Insurance." (*Id.* at 20, 22–26, C1523, C1525–1529.) "Reading the entire antistacking clause together as a whole and in isolation," the trial court concluded, "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." (*Id.* at 26–27, C1529–1530.)

Second, the trial court construed the Declaration Pages in isolation and found that they, too, were ambiguous. (*Id.* at 28–36, C1531–1539.) The court recognized that the "Item Two" chart "appears to say that the 'Limit of Insurance' for all 'Combined Liability' coverages for all covered automobiles is $1 million per accident." (*Id.* at 30, C1533.) But because the seven tables in the "Item Three" schedule each listed a combined liability coverage of $1 million per-accident, the court reasoned that the Declaration Pages "could be read to suggest that Owners contracted to provide seven different $1-million-per-accident coverages in exchange for seven different listed premiums." (*Id.*)

Third, in construing the antistacking provision and the Declaration Pages together, the trial court—after a lengthy discussion of the caselaw cited by both parties—concluded that "the Owners' policy is indeed ambiguous on whether it prohibits intrapolicy-limits stacking." (*Id.* at 37–47, 48, C1540–1550, C1551.) Accordingly, the trial court granted the Kuhns' motion for summary judgment, denied Owners' motion, and entered declaratory judgment in favor of the Kuhns (as well as Crabtree and Price) and against Owners on the question whether the Policy is vague or ambiguous. (*Id.* at 71, C1574.)

IV. The Fourth District's Decision

The Fourth District reversed the trial court's decision. In doing so, the court first noted the difference between antistacking provisions relating to different types of insurance, expounding upon the difference between coverage stacking in the UM/UIM context and the stacking of liability coverages. (Judgment and Opinion, ¶¶

10–15.) In doing so, the Fourth District generally observed that for liability coverage to apply, a vehicle "must (1) be covered by the policy and (2) cause damage while being used as an automobile." (*Id.* at ¶ 13.) Referencing several authorities, it commented that "it is not clear" whether liability coverage could be given "for vehicles not involved in the accident because they did not cause the accident." (*Id.*) But the Fourth District, citing this Court's recent decision in *Hess v. Estate of Klamm*, 2020 IL 124649, ¶ 30, ultimately declined to adopt a *per se* rule prohibiting stacking of liability coverages. (*Id.* at ¶ 15.)

Instead, the court carefully analyzed the language of the specific policy at issue. It first looked to the Policy's Declaration Pages and recognized the *Bruder* dicta as well as this Court's decisions in *Hobbs* and *Hess*, noting, "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." (*Id.* at ¶ 46.) Ultimately, the Fourth District concluded from "[r]eading the policy as a whole and interpreting its plain language" that "(1) the declarations are consistent, not ambiguous, and (2) the antistacking clause set forth in the policy clarifies any possible ambiguity." (*Id.* at ¶ 51.) Noting the Policy's list of liability limits multiple times across its Declaration Pages, the court highlighted an example from Item III and concluded that Owners "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." (*Id.* at ¶ 57.)

Because the Policy set forth each vehicle's coverages, limits, and premiums in such detail, and those coverages were not identical for each vehicle, the Fourth District determined that "Owners clearly needed to provide information over multiple pages." (*Id.* at ¶ 58.) And the court held that Owner's declarations would be clear to an insured. "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." (*Id.* at ¶ 61.) Indeed, "no insured could believe that he was paying separate premiums for combined liability to be stacked." (*Id.* at ¶ 62.)

Finally, the Fourth District reasoned, "Even if some ambiguity existed, the policy's antistacking clause clears up any possible confusion." (*Id.* at ¶ 65.) In doing so, the court drew a distinction between "traditional" antistacking provisions—such as subsection II(C)(1) and those at issue in *Hess*, *Hobbs*, and *Bruder*—and an "*explicit* antistacking clause" like subsection II(C)(5). (*Id.* at ¶ 66.) Given its inclusion of an "explicit antistacking clause," the Fourth District concluded that the Policy's language was "unambiguous and should be enforced as written." (*Id.*) Indeed, the court observed that, in its search to find an ambiguity within the Owners' Policy, the trial court "engaged in the very sort of tortured and strained reading of the Policy . . . that this Court and the Illinois Supreme Court have repeatedly rejected." (*Id.* at ¶ 71.)

Plaintiffs filed a Petition for Leave to Appeal on August 1, 2023. Owners filed an Answer on August 22, 2023. This Court allowed the Petition to proceed on September 27, 2023.

STANDARD OF REVIEW

This Court reviews the trial court's grant of summary judgment *do novo*. *Cohen v. Chicago Park Dist.*, 2017 IL 121800, ¶ 17. "Summary judgment is proper when the pleadings, depositions, affidavits, and other matters on file establish that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law." *Id.* The construction of an insurance contract's terms is a question of law. *See Schultz v. Ill. Farmers Ins. Co.*, 237 Ill.2d 391, 399 (2010). And whether a policy, properly construed, prohibits or permits the stacking of insurance coverage is a legal issue that this Court reviews *de novo*. *See Hobbs*, 214 Ill.2d at 17.

ARGUMENT

I. The Policy's plain language unambiguously prohibits Plaintiffs' attempt to stack the coverage limits of two vehicles and four trailers, which were also insured but were not involved in the accident.

Under Illinois law, "the general rules governing the interpretation of other types of contracts also govern the interpretation of insurance policies." *Hobbs*, 214 Ill.2d at 17. Courts "must begin" by looking at an insurance contract's "express terms," which stand "as the singular representation of the parties' intentions."

Bruder v. Country Mut. Ins. Co., 156 Ill.2d 179, 185 (1993). Illinois courts construe insurance policies' terms in reference to the "average, ordinary, normal, reasonable person," giving undefined terms "their plain, ordinary, and popular meaning." *Gillen v. State Farm Mut. Auto Ins. Co.*, 215 Ill.2d 381, 393 (2005). If a policy's "language is unambiguous, the policy will be applied as written, unless it contravenes public policy." *Hobbs*, 214 Ill.2d at 17.

"Whether an ambiguity exists turns on whether the policy language is subject to more than one reasonable interpretation." *Id.* For Illinois courts conducting this inquiry, "[r]easonableness is the key," not "whether creative possibilities can be suggested," and a court "will not strain to find an ambiguity where none exists." *Bruder*, 156 Ill.2d at 193; *Hobbs*, 214 Ill.2d at 17. Policy language that is susceptible to more than one reasonable interpretation "is considered ambiguous and will be construed against the insurer." *Gillen*, 215 Ill.2d at 393. If a policy provision "purports to exclude or limit coverage," it "will be read narrowly and will be applied only where its terms are clear, definite, and specific." *Id.* Importantly, "[a]lthough policy terms that limit an insurer's liability will be liberally construed in favor of coverage, this rule of construction only comes into play when the policy is ambiguous." *Hobbs*, 214 Ill.2d at 17.[8]

[8] Plaintiffs misstate this rule of construction when they claim that "[i]f a policy is ambiguous, the court must adopt the interpretation that *most favors* the insured and *disfavors* the insured" and assert that limiting language in antistacking clauses must be construed "*most strongly*" against the insurer. (Appellants' Br. 13–14) (emphasis added). "*[W]hen a policy is ambiguous*," provisions restricting coverage will be interpreted "liberally in favor of the insured and against the insurer," but the construction given to a policy's language must be "reasonable," and terms limiting coverage will be enforced when they are "clear, definite, and specific." *Hobbs*, 214 Ill.2d at 17 (emphasis added); *Am. States Ins. Co. v. Koloms*, 177 Ill.2d

A. Plaintiffs overread *Bruder's* dicta.

The fundamental disagreement in this case hinges on how this Court's 30-year-old dicta in *Bruder* is to be read. Is it a *per se* rule that any time an insurance policy's declarations pages list multiple liability limits or multiple vehicles each with it is own separate limit this creates an ambiguity such that the stacking of limits is required? Or do *Bruder* and this Court's other precedents stand for the proposition that courts are to take a case-by-case approach to insurance policies and determine whether stacking is allowed by looking at the specific policy as a whole? While Plaintiffs repeatedly argue that *Bruder*'s dicta should be adopted as a *per se* rule, this Court's opinions stand for the opposite proposition.

This Court has repeatedly declined to establish *per se* rules in this area. In *Bruder*, the Court carefully reviewed the specific language of the policy at issue when it stated that the relevant limit of liability was "noted only once on [the declarations] page." 156 Ill.2d at 192–93. Although the Court hypothesized that "[i]t would not be difficult to find an ambiguity created by [] a listing of the bodily injury liability limit for each person insured," its conclusion turned *on the text* of the policy provisions *before it*. *Id.* In other words, just as this Court has consistently held, in *Bruder* the Court examined that *policy's* language as a whole to determine whether stacking was required. The *Bruder* Court ultimately clarified that "[r]easonableness is the key,"

473, 479 (1997); *Bruder*, 156 Ill.2d at 193; *Gillen*, 215 Ill.2d at 393. Indeed, in *Bruder*, this Court emphasized, "As for each case, the critical point remains that an insurer is entitled to the enforcement of unambiguous antistacking provisions to the extent that such provisions represent terms to which the parties have agreed to be bound." 156 Ill.2d at 185–86.

and the "touchstone in determining whether ambiguity exists regarding an insurance policy [] is whether the relevant portion is subject to more than one reasonable interpretation." *Id.* at 193. This methodical, case-by-case approach does not support the creation of a *per se* rule.

Later, in *Hobbs*, this Court observed that its discussion of the *Bruder* dicta and its progeny "should not be construed as establishing a *per se* rule that an insurance policy will be deemed ambiguous as to the limits of liability any time the limits are noted more than once on the declarations." 214 Ill.2d at 26 n.1. And this Court emphasized that "[v]ariances in policy language and, in particular, antistacking clauses, frequently require case-by-case review." *Id.* In *Hobbs*, the Court also stated that the "declarations page of an insurance policy is but *one piece* of the insuring agreement" that "cannot address every conceivable coverage issue." *Id.* at 23 (emphasis added). And that decision observed that reading a declarations page "in isolation from the rest of the agreement" could give rise to "some uncertainty," which is "precisely why an insurance policy must be interpreted from an examination of the *complete document*." *Id.* (citing *Zurich Ins. Co. v. Raymark Indus., Inc.*, 118 Ill. 2d 23, 50 (1987) (emphasis added)).

Recently, in *Hess*, this Court reiterated that *Bruder*'s dicta:

> 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.' Rather, the question should be decided on a case-by-case basis. Moreover, the declarations page *should not be read in isolation* but must be construed *together* with the *other provisions* on the policy. [2020 IL

> 124649 at ¶ 22 (quoting *Hobbs*, 214 Ill.2d at 26 n.1) (emphasis added).]

In *Hess*, the Court examined the policy language, which listed the liability limits for three vehicles on one page and those for an additional vehicle on a second page. *Id.* at ¶ 24. And it found that the declaration pages restated the liability limits on the second page because "the information for all four vehicles could not fit on one physical page." *Id.* at ¶ 25. Although the *Hess* court noted that the policy did "not list liability limits separately for each covered vehicle," it did not rest its analysis on that point. *Id.* Rather, reading those declaration pages "together" with the policy's antistacking clause, the Court concluded that "the policy unambiguously prohibits stacking of bodily injury liability coverage." *Id.* at ¶ 25. In other words, reading the policy *as a whole* led to the conclusion that it barred stacking.

This Court's precedents demonstrate that insurance policies should be interpreted on a case-by-case basis and counsel against the application of the *Bruder* dicta as an absolute rule. Indeed, this Court has explicitly refused to adopt *Bruder*'s dicta as a *per se* rule. Appellate courts in this state have also disapproved of the robotic analysis that Plaintiffs endorse. The Second District, informed by this Court's precedent, explained why applying the *Bruder* dicta as a *per se* rule would prove deeply problematic. *In re Estate of Striplin*, 347 Ill.App.3d 700, 704 (2d Dist. 2004). The Second District, in *Striplin*, observed that such a *per se* approach, "by focusing solely on the layout of the declarations page," "ignores the command that *all portion*s of an insurance policy must be construed together." *Id.* (emphasis added). It further reasoned that if different liability limits applied to different vehicles, "under a broad

reading of *Bruder*, [an insurer] could *never* unambiguously prohibit stacking." *Id.* Because the "different coverage limits would have to be set out somewhere," this listing of separate liability limits "would always trump an antistacking clause, no matter how clearly the latter was written." *Id.* Indeed, under Plaintiffs' reading of the *Bruder* dicta, an insurer could *never* draft a policy covering multiple vehicles with different primary liability coverage limits in a way to avoid intra-policy stacking. *Anytime* an insurer's policy provided declaration pages listing multiple vehicles with multiple limits the insurer would be rendering its policy ambiguous and allowing stacking. Practically speaking, this result would prove exceptionally burdensome for both insurers and insureds, who, to cover multiple vehicles, would have to enter into separate insurance policies for each vehicle.

The Fifth District has also recognized that the *Bruder* dicta did not establish a *per se* rule regarding whether coverage may be stacked and that "whether coverage may be stacked . . . depends on the language used *both* in the body of the policy and on the declarations page itself." *Progressive Premier Ins. Co of Ill. v. Kocher*, 402 Ill.App.3d 756, 761 (5th Dist. 2010) (emphasis added). Specifically, the Fifth District stated, "As both this court and the supreme court have recognized, this does not mean there is a *per se* rule that where the limits of a particular type of coverage are shown multiple times they may be stacked." *Id.*; *see also Johnson v. Davis*, 377 Ill.App.3d 602, 609 (5th Dist. 2007) ("We are mindful that there is no *per se* rule that listing the numerical limits more than once on the declarations page creates an ambiguity which results in allowing the policies to be stacked.").

Finally, the First District has expressed "discomfort" with the weight that various other districts' decisions have given to the dicta in *Bruder*. "We admit to some discomfort deciding a case on the basis of how many times the 'Limits of Liability' figure appears on a piece of paper-here, the Declarations page." *Domin v. Shelby Ins. Co.*, 326 Ill.App.3d 688, 697 (1st Dist. 2001).

But this Court's precedent demonstrates that *Bruder* should not be applied as a *per se* rule. Rather, this Court should use this case to clarify that—regardless of whether a policy's declaration pages list liability limits a single time or separately, broken down by each covered vehicle—reviewing courts must examine *the entire text* of an insurance policy on a case-by-case basis to determine whether stacking is permitted. This Court should reject Plaintiffs' approach, which would have courts abstract an insurance policy's declaration pages from the rest of the policy and conclude that ambiguity is present and stacking allowed anytime the declaration pages list multiple limits.

B. The Owner's Policy is clear and unambiguous.

Here, the Policy's plain language is clear and unambiguous—the insured would not read the Owners' Policy and believe she was obtaining coverage of $7 million if one of her vehicles were in an accident. Rather, the Policy's unambiguous antistacking clauses read in conjunction with the Declaration Pages and other policy provisions, lead to only one reasonable interpretation: it prohibits intra-policy stacking and sets a $1 million per-accident coverage limit.

1. The Declaration Pages are internally consistent and not ambiguous.

There is nothing ambiguous about the Policy's Declaration Pages. Items II and III are internally consistent: both provisions clearly set out $1 million as the applicable liability limit for any one accident. The first page of the Declaration Pages states that the Policy is limiting liability for any one accident to $1 million total. (Certified Copy of Policy at 4, C583.) In unmistakable capitalized type it states: "LIMIT OF INSURANCE FOR ANY ONE ACCIDENT OR LOSS" and then lists "$1 Million *each* accident" for combined liability. (*Id.* (emphasis added).) Item II's table is simply a summary, an at-a-glance chart of the detailed coverages, premiums, exclusions, endorsements, and limitations (among other information), which are then broken down by covered vehicle or trailer in Item III's explanatory chart. (*Compare id.* at 4, C583, *with id.* at 6–11, C585–90.) In other words, Item II provides an overview of the coverages that are detailed in Item III.

Item III lists each of the individual insured vehicles and trailers, their specific coverages, limits, and corresponding premiums based on specific risk factors and the agreement of the parties. For example, the 2010 Kenworth Semi has a premium of $2,265.28 for combined liability coverage, while the 2000 Kenworth W900 semi-truck has a premium of $1,805.81. (*Id.* at 7, 9, C586, 588.) Because the coverages and premiums vary for each covered auto, it was reasonable for the Owners' Policy to list the coverages and liability limits for each insured vehicle or trailer separately. Indeed, failing to do so could easily confuse an insured. If Item III failed to list out the separate coverages for each scheduled vehicle, the insured might be confused and

believe he or she did *not* have liability coverage on a vehicle. And, as the Second District noted, if the *Bruder* dicta were read as broadly as Plaintiffs read it, an insurer could never draft a policy covering multiple vehicles with different liability limits in a way that unambiguously prohibits intra-policy stacking. *See Estate of Striplin*, 347 Ill.App.3d at 704. Even if Items II and III are in tension, which they aren't, it would not impact this Court's analysis because the more specific vehicle-by-vehicle breakdown of coverages in Item III controls over Item II's general summary table. *See Grevas v. U.S. Fidelity & Guar. Co.*, 152 Ill.2d 407, 411 (1992) ("Courts and legal scholars have long recognized that, where both a general and a specific provision in a contract address the same subject, the more specific clause controls."); *Willison v. Econ. Fire & Cas. Co.*, 294 Ill.App.3d 793, 800 (4th Dist. 1998) ("It is a well-settled principle of contract construction that when a contract contains both general and specific provisions relating to the same subject, the specific provision controls.").

2. The plain text of the Policy's antistacking provisions unambiguously prohibits intra-policy stacking.

Here, the Declaration Pages do not stand on their own. In addition to the clear Declaration Pages, the Owners' Policy includes section II(C). Even if there were any confusion—which there is not—regarding the Declaration Pages alone, read in conjunction with subsections II(C)(1) and II(C)(5), the Declaration Pages make clear that an insured is limited to $1 million for each accident. Subsection II(C)(1), which resembles antistacking provisions in many other insurance policies, first generally limits recovery to the per accident liability limit under the Policy's Declaration Pages. (Certified Copy of Policy at 21, C600.) This is a "traditional" antistacking clause.

(Judgment and Opinion, ¶ 65.) This subsection refers to the combined liability limits "shown in the Declarations" and states that the "limit shown for each accident" is the total coverage amount and "the most" that Owners will pay for damages arising out of any one accident. (*Id.*)

But Subsection II(C)(1) does not stand on its own. Subsection (C)(5) is an "explicit" antistacking provision. (Judgment and Opinion, ¶ 66.) It unequivocally prohibits intra-policy stacking by explicitly stating that the applicable liability limit under the Policy "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 anyone accident" and clarifies that this is true "*regardless of the number of*" insured vehicles involved in an accident. (*Id.* at 22, C601 (emphasis added).) When examining this policy language, it is hard to imagine how an insurer could more clearly bar intra-policy stacking.

The conclusion that the Policy plainly prohibits intra-policy stacking is further bolstered by the Policy's language in subsection II(C)(3), which specifies that a covered vehicle and connected trailer "are considered *one auto*" under the Policy and "*do not increase* the Limit of Insurance." (*Id.* (emphasis altered).) This provision would not be present in the Policy if stacking were allowed.[9] Indeed, Plaintiffs'

[9] Plaintiffs claim that Owners "forfeited" this point "by not raising the argument at the trial court level." (Appellants' Br. 48 n.9.) Owners did not waive this argument. Owners has consistently asserted that the Policy unambiguously prohibits stacking. A party may refine its arguments on appeal so long as the challenged *issue* was properly preserved in the lower courts. *1010 Lake Shore Ass'n v. Deutsche Bank Nat. Tr. Co.*, 2015 IL 118372, ¶ 18 ("This court only requires parties to preserve issues or claims for appeal. They are not required to limit their arguments in this court to the same ones made in the trial and appellate courts."); *Brunton v. Kruger*, 2015 IL 117663, ¶ 76 ("We require parties to preserve issues or claims for

argument reads II(C)(3) *out* of the Policy—renders it surplusage. But such readings are to be avoided. *Dowd & Dowd, Ltd. v. Gleason*, 181 Ill. 2d 460, 479, 693 N.E.2d 358, 368 (1998) ("Courts will generally avoid interpretations that render contract terms surplusage."); *Outboard Marine Corp. v. Liberty Mut. Ins. Co.*, 154 Ill. 2d 90, 123, 607 N.E.2d 1204, 1219 (1992) ("A court must strive to give each term in [an insurance] policy meaning unless to do so would render the clause or policy inconsistent or inherently contradictory."); *see also Cent. Ill. Light Co. v. Home Ins. Co.*, 213 Ill. 2d 141, 154, 821 N.E.2d 206, 214 (2004) (applying surplusage canon in insurance context).

As this Court recognized three years ago in *Hess*, "Even if the declarations page left open the question of stacking," an explicit antistacking clause "eliminate[s] any uncertainty by unambiguously prohibiting stacking." 2020 IL 124649 at ¶ 28 (citing *Hobbs*, 214 Ill. 2d at 23–24). Here, you have *and* explicit antistacking provisions. In addition, you have a provision, Section II(C)(3), that makes no sense if stacking is permitted. The only reasonable conclusion then is that the Policy prohibits the stacking Plaintiffs seek.

3. The remaining provisions do not render the Policy ambiguous.

Plaintiffs further assert that other provisions of the Owners' Policy are ambiguous. (*See* Appellants' Br. 35–39.) They are not. As discussed above, Items II and III within the Declaration Pages do not conflict. Items II and III are not "two

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appeal; we do not require them to limit their arguments here to the same arguments that were made below."). Because it properly preserved the issue raised here, Owners has neither waived nor forfeited this argument or *any* argument in favor of the conclusion that the Policy unambiguously prohibits stacking.

different" sets of declarations—rather, Item III clarifies and explains how the coverages listed in Item II's summary table are broken down by insured vehicle or trailer. Crucially, Item III does not amend the Policy's Declaration Pages to indicate that the insured purchased separate $1,000,000 combined liability limits on each of the seven vehicles listed. As the Fourth District noted in its decision, "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. . . . Accordingly, no insured could believe that he was paying separate premiums for combined liability to be stacked." (Judgment and Opinion at ¶ 62.) It is clear from the Policy's plain language that Items II and III merely convey the same information in different ways. But, to the extent that they are in tension, as previously noted, Item III's more specific enumeration of coverage prevails. *See Grevas*, 152 Ill.2d at 407; *Willison*, 294 Ill.App.3d at 800.

Plaintiffs also argue that the Policy's use of the terms "combined liability" and "combined liability limits" creates an inference that "the policy's multiple listing of dollar limits for each vehicle are to be 'combined' in order to constitute 'combined liability limits." (Appellants' Br. 38.) But, under a plain reading of the Policy's terms, "combined liability" clearly refers to the Policy's bodily injury and property damage coverages rolled into one limit. (*Compare* subsection II(C)(1) of the Policy ("When combined liability limits are shown in the Declarations . . ."), *with* subsection II(C)(2) ("When separate bodily injury and property damage limits are shown in the Declarations . . .").) (Certified Copy of Policy at 21, C600.) Plaintiffs contend that

this reading of the Policy is a "misnomer" because such a term should be called a "single liability limit," not a "combined liability limit." (Appellants' Br. at 39.) But Plaintiffs' interpretation is not in keeping with the "plain, ordinary and popular meaning" of the Policy language. *See Gillen*, 215 Ill.2d at 393. Items II and III both list "combined liability" under the "coverages column." (Certified Copy of Policy at 4–12, C583–591.) The "average, ordinary, normal, reasonable person" reading the Owners' Policy would understand the term "combined liability" to refer to a specific type of "combined" coverage—not an aggregation of the combined liability coverage limit separately listed for each vehicle in Item III. *See Gillen*, 215 Ill.2d at 393.

4. The Fourth District's decision correctly interpreted the Policy.

Given the clarity of the Owners' Policy, the Fourth District's decision in this case was unremarkable. Rather, it was a straightforward application of this Court's precedent to the policy at issue in *this case*. Plaintiffs argue that the Fourth District's opinion "erroneously relied upon" the Central District of Illinois' decision in *Kovach v. Nationwide Gen. Ins. Co.*, 475 F. Supp. 3d 890 (C.D. Ill. 2020), misinterpreted this Court's decision in *Hess*, and cannot be reconciled with *Bruder*. (Appellants' Br. 31–35.) Plaintiffs are mistaken.

First, Plaintiffs overstate the Fourth District's reliance on *Kovach*. The appellate court below did not "rely" upon *Kovach* as dispositive. Rather, the Fourth District here merely found the district court's decision persuasive and used it as an analog when interpreting the Owners' Policy. As cited in the court's opinion, *Kovach* stands for the proposition that, when presented with an insurance policy containing

an antistacking clause and multiple liability limits in its declarations, an interpreting court must perform a detailed analysis of each particular policy, paying close attention to a policy's specific language. (*See* Judgment and Opinion at ¶ 55.) Here, the Fourth District performed its own analysis of the Policy language and concluded that "[e]ven if some ambiguity existed, the policy's antistacking clause clears up any possible confusion." (*Id.* at ¶ 65.) The district court in *Kovach* did not misinterpret *Hess*. Rather, the *Kovach* court correctly observed that this Court rejected a *per se* approach and "in *Hess* indicated that what was important about multiple listings was not necessarily the number of times something is listed in the declaration page, but the way it is listed, thus necessitating *a case by case analysis*." 475 F. Supp. 3d at 896 (citing *Hess*, 2020 IL 124649, at ¶¶ 11, 22) (emphasis added).

The Fourth District also did not misinterpret this Court's decision in *Hess*. Rather, Plaintiffs misinterpret *Hess* when they assert that the "crucial distinction" this Court made in that decision was that the declarations did not list the liability limits separately "for each car insured" and contend that this Court's "admonition against a *per se* rule of ambiguity" was limited to policies that list liability limits "more than once" but not separately "for each vehicle." (Appellants' Br. 33, 33 n.5.) In *Hess*, this Court, without qualification, stated that an ambiguity inquiry "should be decided on a case-by-case basis," and a policy's declarations "should not be read in isolation but must be construed together with the other provisions in the policy." 2020 IL 124649, at ¶ 22. The Fourth District approached the Policy language at issue here exactly in line with the dictates of *Hess*.

In their brief, Plaintiffs also refuse to acknowledge this Court's statement in *Hess* that, "[e]ven if the declarations page left open the question of stacking, we held [in *Hobbs*] that the antistacking clause eliminated any uncertainty by unambiguously prohibiting stacking." *Id.* at ¶ 28 (citing *Hobbs*, 214 Ill. 2d at 23–24). *Hess*, like the Fourth District's decision in this case, recognized that a clear and explicit antistacking provision can serve as a disambiguator—eliminating any ambiguity that might arise from a policy's declaration pages. *Id.*; *see also Pekin Ins. Co. v. Estate of Ritter*, 322 Ill. App. 3d 1004, 1005 (4th Dist. 2001) (holding that even if "there could be some confusion arising out of whether the coverages could be 'stacked,' [based on the declaration pages,] the UIM coverage limitation provision clarifies that question. That provision is not ambiguous."); *Grinnell Select Ins. Co. v. Baker*, 362 F.3d 1005, 1007 (7th Cir. 2004) (holding that the function of an antistacking clause "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; it is not remotely to justify overriding the anti-stacking clause.").[10]

Finally, the Fourth District's decision does not conflict with *Bruder* because the *Bruder* dicta never sought to establish a bright line or *per se* rule. Rather, as explained *supra* pp. 19-23, this Court in *Bruder* endorsed a case-by-case approach and looked at the specific policy's express terms to determine whether they were

[10] In *Hobbs*, this Court favorably cited the Seventh Circuit's opinion in *Baker* as precluding any interpretation that would "read[] the antistacking clause completely out of the policy." 214 Ill.2d at 27 (citing *Baker*, 362 F.3d at 1005).

susceptible to multiple reasonable interpretations. *See generally* 156 Ill.2d at 192–94. *Bruder* simply indicated that courts should thoroughly analyze insurance policies where liability limits are listed more than once in the declaration pages—something they have always been required to do. And that policy-specific analysis is the exact approach that the Fourth District adopted here.

C. Plaintiffs' proposed interpretation of the Policy's antistacking provisions is nonsensical.

In opposition to a straightforward reading of the Owners' Policy, Plaintiffs propose a novel and nonsensical manner of interpreting the Policy's antistacking provisions. Contrary to established precedent, Plaintiffs contend that a court examining an insurance policy should "look to the declaration page to determine if the anti-stacking clause is rendered ambiguous." (Appellants' Br. 16.) And Plaintiffs claim that the Fourth District's decision was "completely backward" when it concluded that the Owners' Policy's antistacking clause could clear up any possible confusion "created by the multiple listing of limits on the declaration page." (*Id.* at 17.) Plaintiffs' narrow approach views a policy's declarations in isolation, completely disregarding even the clearest antistacking provision. This Court's precedents reject such a myopic analysis.

Basic contract law principles require an interpreting court to begin its analysis by examining an agreement's "express terms" because "[t]hat language stands as the singular representation of the parties' intentions." *Bruder*, 156 Ill.2d at 185. A court construing an insurance policy should not read language out of the policy or read a specific policy provision in a vacuum. *See Travelers Ins. Co. v. Eljer Mfg., Inc.*, 197

Ill.2d 278, 292 ("In order to ascertain the meaning of a policy's language and the parties' intent, the court must construe the policy as a whole."). This Court observed in *Hobbs* that "[t]he declarations page of an insurance policy is but one piece of the insuring agreement. Although it contains important information specific to the policyholder, the declarations page cannot address every conceivable coverage issue." 214 Ill.2d at 23 (internal citations omitted). For this reason, in *Hobbs* and *Hess*, the Court explicitly cautioned that "the declarations page *should not* be read in isolation but must be construed together with the other provisions in the policy." *Hess*, 2020 IL 124649, at ¶22 (emphasis added); *Hobbs*, 214 Ill.2d at 23 ("[S]ome uncertainty could arise if the declarations page is read in isolation from the rest of the agreement. This is precisely why an insurance policy must be interpreted from an examination of the complete document.").

This Court, when construing an insurance agreement, has expressly declined to adopt an interpretative approach that would read an "antistacking clause completely out of the policy." *Hobbs*, 214 Ill.2d at 27 (overruling *Hall v. Gen. Cas. Co. of Ill.*, 328 Ill.App.3d 655 (5th Dist. 2002)). Instead, this Court stated in *Bruder* that "an insurer is entitled to enforcement of unambiguous antistacking provisions." 156 Ill.2d at 186. And this Court's precedents show that an unambiguous antistacking clause can eliminate any uncertainty created by a policy's declarations. *Hess*, 2020 IL 124649 at ¶28 ("Even if the declarations page left open the question of stacking, we held that the antistacking clause eliminated any uncertainty by unambiguously prohibiting stacking."); *see also Estate of Striplin*, 347 Ill.App.3d at 704 ("Another

problem with the *per se* approach is that, by focusing solely on the layout of the declarations page, it ignores the command that all portions of an insurance policy must be construed together. Although seldom stated the reason for this rule is obvious. Documents are written with the intention that they be read as a whole, a question left unanswered by one portion of the document may be answered quite clearly by another portion of it.") (internal citations omitted).

Plaintiffs' *per se* interpretive approach solely relies on the arrangement of the Declaration Pages and attempts to read the antistacking language out of the Owners' Policy. Perhaps Plaintiffs perform these interpretive gymnastics because a simple reading of the *whole policy*, including its antistacking provisions, bars their argument. Here, the plain language in subsection II(C)(5) of the Owners' Policy explicitly and unambiguously prohibits intra-policy stacking, clearly answering any confusion left open by the Declaration Pages. *See supra* pp. 25-27. And, while the Declaration Pages do not cause any confusion, to the extent they even lacked some clarity, the explicit antistacking provision clears it up.

To the extent Plaintiffs are asking this Court to overrule its long-standing precedents and adopt a *per se* rule that requires courts to read an insurance policy's declaration pages in isolation and without reference to other parts of the policy, this Court should reject the invitation.

D. Plaintiffs rely on decisions only involving general antistacking provisions.

As they did below, Plaintiffs point this Court to numerous cases post-*Bruder* that they say examined similar policy language as in the Owners' Policy, concluded

that the policy was ambiguous, and therefore, permitted stacking. (*See* Appellants' Br. 25–28.) But Plaintiffs rely only on cases that interpreted policies without an *explicit* antistacking provision—that is, decisions lacking the clear language found in subsection II(C)(5) of the Owners' Policy. The language in the Owners' Policy goes beyond the "traditional" antistacking provisions which generally prohibit stacking by only incorporating the policy declarations' liability limits. Rather, it also contains subsection II(C)(5), which directly answers the question of intra-policy stacking by explicitly prohibiting the addition or stacking of one auto coverage limit to another "to determine the amount of coverage available for any one accident." (Certified Copy of Policy at 22, C601.)

Here, the Fourth District opinion below was not the first appellate decision to distinguish between more general or "traditional" antistacking provisions and an explicit antistacking clause. (*See* Judgment and Opinion at ¶ 66.) In *Estate of Striplin*, the Second District distinguished between an antistacking provision that "does not merely refer to the 'limits of liability' in the declaration pages," but instead, "specifically provides that '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 applicable to any other *auto* shown on the policy declarations.'" 347 Ill.App.3d at 705. There, because that explicit antistacking provision specifically answered the coverage stacking dispute, the appellate court concluded, "The antistacking clause simply is not ambiguous when read in conjunction with the declarations page." *Id.* In *Kocher*, the Fifth District likewise noted that the disputed policy, which included a general or

traditional antistacking clause, also contained some "very specific" language in its declarations like that in *Striplin*. 402 Ill.App.3d at 763–64. And the court concluded that it would have been "inclined to find that the policy unambiguously prohibits stacking" if *Kocher* had been "a traditional stacking case" involving the aggregation of coverage from an additional covered vehicle not involved in an accident. *Id.* at 764.

Plaintiffs cite to eight cases from the Fifth and Third Districts that they identify as "factually similar"[11] to this case and argue that the Fourth District should have addressed: *Bowers v. Gen. Cas. Ins. Co.*, 2014 IL App (3d) 130655; *Pekin Ins. Co. v. Est. of Goben*, 303 Ill.App.3d 639 (5th Dist. 1999); *Yates v. Farmers Auto Ins. Ass'n*, 311 Ill.App.3d 797 (5th Dist. 2000); *Skidmore v. Throgmorton*, 323 Ill.App.3d 417 (5th Dist. 2001); *Johnson*, 377 Ill.App.3d at 602; *Kocher*, 402 Ill.App.3d at 756; *Cherry v. Elephant Ins. Co., Inc.*, 2018 IL App (5th) 170072; and *Barlow v. State Farm Mut. Auto. Ins. Co.*, 2018 IL App. (5th) 170484. (Appellants' Br. 35.) And yet, Plaintiffs have never claimed that any of these cases involved the sort of explicit antistacking provision at issue in this case. That is because they do not. Instead, all eight decisions involved general, "traditional" antistacking provisions, not "explicit" antistacking provisions like that employed by Owners in subsection II(C)(5) of the Policy. (Judgment and Opinion at ¶ 66.) In other words, the cases to which Plaintiffs cite only include "traditional" antistacking provisions—the language found in the Policy's subsection II(C)(1). None of the eight cases involved a policy with an "explicit" antistacking provision—the language found in subsection II(C)(5)—that

[11] Plaintiffs have backed off their claim from their Petition that these cases involve "identical issues and facts." (Pet. at 1, 9.)

would clear up any ambiguity in the declarations. The difference between the antistacking provisions in these eight cases and the explicit provision at issue in the Owners' Policy is demonstrated in chart form by listing out the case and provisions:

Case	Antistacking Provision(s)
The Policy at Issue in *this* Case	"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*." (Certified Copy of Policy at 21, C600 (emphasis added and modified).) **AND** **"**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." (*Id.* at 22, C601 (emphasis added).)
Bowers	"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." *Bowers*, 2014 IL App (3d) 130655 at ¶ 3 (emphasis added).
Pekin	"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 for UNDERINSURED MOTORISTS COVERAGE *shown in this endorsement*." *Pekin*, 303 Ill. App. 3d at 646 (emphasis added).
Yates	"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." *Yates*, 311 Ill. App. 3d at 799 (emphasis added).
Skidmore	"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." *Skidmore*, 323 Ill. App. 3d at 423 (emphasis added).
Johnson	"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." *Johnson*, 377 Ill. App. 3d at 605 (emphasis added).
Kocher	"The limit of liability *shown on the Declarations Page* is the most we will pay . . ." *Kocher*, 402 Ill. App. 3d at 757 (emphasis added).
Cherry	"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 . . ." *Cherry*, 2018 IL App (5th) 170072 at ¶ 5 (emphasis added).
Barlow	"The Underinsured Motor Vehicle Coverage limits are *shown on the Declarations Page* under 'Underinsured Motor Vehicle Coverage—Bodily Injury Limits—Each Person, Each Accident. a. The most we will pay for all damages resulting from bodily injury is the lesser . . ." *Barlow*, 2018 IL App (5th) 170484 at ¶ 7 (emphasis added).

As demonstrated by the above chart, the Fourth District below did not show an "indifferent" or "outright disdain" for other appellate divisions' decisions by opting not to address these eight, distinguishable appellate cases. (*See* Appellants' Br. 35.) Rather, the appellate court here opted to consider the plain meaning of the specific policy at issue, which explicitly prohibits intra-policy stacking. Noticeably, Plaintiffs assiduously avoid engaging subsection II(C)(5)'s text, likely because the language is fatal to their argument. They have never offered an interpretation, let alone an alternative interpretation of the Policy's explicit antistacking provision but instead, solely consider the wording and arrangement of the Declaration Pages. Plaintiffs, therefore, have waived any theory that subsection II(C)(5)'s meaning is ambiguous by failing to raise the issue. *See West. Cas. & Sur. Co. v. Brochu*, 105 Ill.2d 486, 499

(1985) ("It is axiomatic that questions not raised in the trial court are deemed waived and may not be raised for the first time on appeal.")

E. Plaintiffs' extended excursus on the Fourth District's discussion of the difference between liability insurance and UM/UIM insurance is beside the point.

Finally, Plaintiffs devote a substantial portion of their brief to the argument that courts should not distinguish between liability and UM/UIM insurance coverages for purposes of stacking. (*See* Appellants' Br. 39–49.) As a threshold matter, Plaintiffs claim that Owners "forfeited" this contention because it did not discuss this line of reasoning at length until its appellate reply brief. (*Id.* at 40.) Owners did not waive this argument. Parties are only required "to preserve issues or claims for appeal." *1010 Lake Shore Ass'n*, 2015 IL 118372, at ¶ 18. A party is not required to limit its specific arguments to ones that it made before the lower courts but rather, may refine its arguments on appeal. *Id.*; *see also Brunton*, 2015 IL 117663, at ¶ 76 ("We require parties to preserve issues or claims for appeal; we do not require them to limit their arguments here to the same arguments that were made below."). Because Owners has consistently asserted that the Policy unambiguously prohibits stacking and has properly preserved this issue on appeal, it could further refine its arguments in support of this claim on appeal including by drawing a distinction between antistacking language in the liability (this case) and UM/UIM (other cases) stacking contexts.

Casting Plaintiffs' forfeiture argument aside, their extended discussion on the distinction between liability and UM/UIM coverages is also beside the point. In *Hess*,

this Court declined to consider whether to impose a *per se* rule barring the stacking of automobile liability insurance coverages as a matter of law since the policy at issue was "not ambiguous." 2020 IL 124649 at ¶¶ 17, 30. Because it found that the Owners' Policy unambiguously prohibits stacking, (Judgment and Opinion at ¶ 70), the Fourth District similarly did not rely on the distinction between liability and UM/UIM coverages. Still, to the extent this Court does address the distinction Plaintiffs' arguments are unavailing. The difference between UM/UIM and liability coverage is why courts have more readily allowed stacking in the former and prohibited in the latter

Although this Court has noted that "liability, UM, and UIM provisions" are "inextricably linked" under Illinois law, that observation does not necessitate a conclusion that stacking should be permitted in the liability context just because it may be allowed with respect to UM/UIM coverages. *See Schultz v. Illinois Farmers Ins. Co.*, 237 Ill.2d 391, 404 (2010) (observing that an insurer may not deny UM/UIM coverage to a person it insures for purposes of liability coverage, rendering the various coverage provisions "thus inextricably linked"). Under Illinois law, "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 v. State Farm Mut. Auto. Ins. Co.*, 2018 IL 122558, ¶ 26 (cleaned up). But liability coverage serves a functionally different purpose from UM/UIM coverage. Regarding primary liability insurance this Court has noted, "The principal purpose of [Illinois'] mandatory liability insurance

requirement is to protect the public by securing payment of their damages." *Progressive Universal Ins. Co. of Ill. V. Liberty Mut. Fire Ins. Co.*, 215 Ill.2d 121, 129 (2005). In contrast, UM/UIM coverage only comes into play when a tortfeasor fails to carry the mandatory minimum amount of liability insurance and serves "to place the insured in the same position he would have occupied if the tortfeasor had carried adequate insurance." *Sulser v. Country Mut. Ins. Co.*, 147 Ill.2d 548, 555 (1992).

Plaintiffs extensively argue that liability coverage under the Owners' Policy "follows its insured," not "the scheduled vehicles" because the Owners' Policy provides combined liability coverage for hired autos, non-owned autos, and certain mobile equipment. (Appellants' Br. 43–44.) What Plaintiffs neglect to mention is that those coverages only apply if a hired auto, non-owned auto, or piece of mobile equipment is *involved in an accident*. *See*, *e.g.*, *Kopier v. Harlow*, 291 Ill. App. 3d 139, 142–43, 683 N.E.2d 536, 539 (2d Dist. 1997) ("'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.") (quoting 6B J. Appleman & J. Appleman, Insurance Law & Practice § 4291 (Supp.1997)) (emphasis added); s*ee also* Certified Copy of Policy at 18, C597.) Under Plaintiffs'

construction of the Owners' Policy, the insured could rent a fleet of semitrucks, park them in an empty field, and gain a virtually limitless amount of stacked primary liability coverage for any one of its scheduled autos even though none of those hired autos was involved in any accident. No "average, ordinary, reasonable person" would reach such a nonsensical conclusion from reading the Policy's language. *See Gillen*, 215 Ill.2d at 393.

Plaintiffs can only point to one Illinois appellate case, *Skidmore*, where the Fifth District allowed primary liability limits of vehicles not involved in an accident to be stacked. (Appellants' Br. 41–42.) But *Skidmore* is distinguishable. There, the Fifth District held that the *Bruder* dicta applies where—unlike in this case—an insurer used "identical policy language" to describe "both the liability and the uninsured- or underinsured-motorist coverages." *Skidmore*, 323 Ill.App.3d at 425. But that is *not* the case here. And that decision's persuasiveness is questionable when even the Fifth District recently determined that an unambiguous antistacking provision barred stacking of liability coverages under a commercial fleet policy where the limit of liability coverage was printed next to each covered vehicle in the policy's declarations. *See W. Bend Mut. Ins. Co. v. Vaughan's Fetch, Inc.*, 2022 IL App (5th) 210168-U, ¶¶ 26–28, *as modified on denial of reh'g* (Apr. 21, 2022), *appeal denied*, 197 N.E.3d 1066 (Ill. 2022).

Plaintiffs also cite three cases from two other states in support of their argument that other jurisdictions "allow stacking of liability coverage." (Appellants' Br. 43.) But those decisions are easily distinguishable from the facts at hand and do

not persuasively support stacking of liability coverages where, as here, a single policy covers multiple vehicles, only one of which was involved in the accident. First, in *Goodman*, a New York court concluded as an issue of first impression that the stacking of liability coverages was permitted where the insurer "insisted upon two policies instead of one," which led the insurer to receive "a greater premium than it otherwise would have," and the terms of both policies provided liability coverage for the specific vehicle involved in the accident. *Goodman v. Allstate Ins. Co.*, 523 N.Y.S.2d 391, 392–94 (N.Y. App. Div. 1987) (one policy was specifically issued to cover the 1957 Buick, while a second policy simultaneously covered the Buick as a "newly-acquired vehicle"). The court in *Goodman* also noted that the policy at issue contained an antistacking clause that prohibited the stacking "of liability coverage limits on different automobiles covered under a single policy" and observed that this provision "follows well-settled law" but was not implicated by the claim at issue because there were two separate policies that applied to the auto at issue. *Id.* at 395.

Plaintiffs also cite two appellate cases from Missouri. (Appellants" Br. 43.) These decisions are also not on point. First, in *Karscig*, the court stacked liability coverages, but it also concluded that both policies at issue covered the insured's use of the vehicle involved in the accident because one policy specifically insured the vehicle, and Missouri law mandated that the other policy (an "operator's policy") cover the insured's use of any non-owned vehicle—including the vehicle involved. *Karscig v. McConville*, 303 S.W.3d 499, 501–05 (Mo. 2010). And the Missouri Court of Appeals in a later decision concluded that the fact pattern in *Karscig* "is clearly

distinguishable" from the facts where "one policy covers two automobiles, only one of which was involved in the accident." *O'Rourke v. Esurance Ins. Co.*, 325 S.W.3d 395, 398 (Mo. Ct. App. 2010) (concluding that stacking of liability coverages was not permitted under the disputed policy). Similarly, in *Lester* (also cited by Plaintiffs), the parties had already stipulated that "each of the four policies provide[d] coverage" for use of a "non-owned auto," such as the vehicle involve in the accident. *Shelter Mut. Ins. Co. v. Lester*, 544 S.W.3d 276, 278–282 (Mo. Ct. App. 2018). No such stipulation was entered into here.

The greater weight of authority from other jurisdictions counsels against the stacking of primary liability coverages in a case such as this. The Wisconsin Supreme Court has specifically concluded that a third party cannot stack liability coverages from vehicles that were not involved in an accident. *See Agnew v. Am. Family Mut. Ins. Co.*, 150 Wis.2d 341, 350–51, 441 N.W.2d 222 (1989). And just four years ago, the Montana Supreme Court concluded that it is not "reasonable to expect the policy would pay more" than the coverage limit for the vehicle involved in the accident "[g]iven that liability coverage is tied to a particular vehicle's use." *Kenneth & Kari Cross v. Warren*, 2019 MT 51, ¶ 22, 435 P.3d 1202.

Most states generally do not allow liability coverage limits to be stacked under an insurance policy. The Kentucky Supreme Court observed, "The overwhelming majority of jurisdictions which have addressed the issue prohibit stacking of liability coverages, whether the claim is made with respect to owned vehicle coverage, either in the context of multiple vehicles insured by the same policy, or in the context of

multiple policies insuring separate vehicles, or whether the claim is made with respect to nonowned vehicle coverage." *Stevenson ex rel. Stevenson v. Anthem Cas. Ins. Grp.*, 15 S.W.3d 720, 722, 724 (Ky. 1999) (citations omitted) (rejecting stacking of liability coverages because the passenger plaintiff "did not pay for the coverage and had no reasonable expectation of collecting it"). Courts in Oklahoma and Nevada have also recognized that stacking is almost uniformly disallowed in this context. *Gordon v. Gordon*, 2002 OK 5, ¶ 13, 41 P.3d 391 ("A variety of theories supporting the proposition that liability coverages should be stacked has been advanced in many opinions from around the country [and] have been uniformly rejected by the courts that have considered them."); *Rando v. Cal. State Auto. Ass'n*, 100 Nev. 310, 317–18, 684 P.2d 501 (1984) (adding "our imprimatur to the *uniform conclusion* reached by courts in other jurisdictions disallowing stacking [of liability policies]."") (emphasis added).

Because of the clarity with which the Owners' Policy explicitly and unambiguously prohibits intra-policy stacking of primary liability coverage limits, this Court does not need to engage with the distinction between liability and UM/UIM coverages to resolve this case. And the Fourth District did not rely on this distinction in its decision, but rather engaged in a policy-specific analysis without adopting a *per se* rule prohibiting stacking in the context of primary liability insurance. If this Court, however, should believe there is a need to distinguish between primary liability and UM/UIM insurance here, it should follow the uniform approach of other states disallowing stacking in the liability context.

CONCLUSION

Plaintiffs' brief demonstrates that this Court's dicta in *Bruder* continues to cause confusion. This Court should use this case as a vehicle to underscore that *Bruder*'s dicta is not a rule of law, but a reiteration of the principle that Illinois courts are to examine insurance policies to determine whether they allow stacking on a case-by-case basis. Because the Owners' Policy's clear antistacking provisions unambiguously prohibit the intra-policy of primary liability coverages, Owners respectfully requests that this Court affirm the Fourth District's decision reversing the trial court's summary judgment order.

Respectfully submitted,

Dated: December 5, 2023

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rule 315. 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 342(a), is 12,665 words.

Dated: December 5, 2023

By */s/*Conor B. Dugan

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NOTICE OF FILING and PROOF SERVICE

The undersigned, being first duly sworn, deposes and states that on December 5, 2023, there was electronically filed and served upon the Clerk of the above court the Appellee's Response Brief. Service of the Brief will be accomplished electronically through the filing manager, Odyssey eFileIL, to the following counsel of record.

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statement set forth in this instrument are true and correct.

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12/5/2023 5:16 PM
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