

NO. A07-1093

State of Minnesota
In Court of Appeals

State Farm Fire and Casualty Company,
Appellant,

vs.

Gary Harold Schwich, Jeanne Carol Stone, and
Brandon Mitchell Hackbarth, as Trustee
for the next of kin of Alicia Sue Hackbarth,
Respondents.

RESPONDENT HACKBARTH'S BRIEF

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STATEMENT OF LEGAL ISSUES

1. Was the cardiac arrhythmia that led to Alicia Hackbarth's death, and which was caused in part by taking methamphetamine that Gary Schwich provided to her, an "occurrence" for the purpose of triggering liability coverage under the State Farm insurance policy?

The trial court held that Hackbarth's death was an "occurrence," thus triggering State Farm's duty to defend and duty to indemnify its insured, Gary Schwich, for the wrongful death claims brought against him by Hackbarth's next-of-kin.

The most apposite authorities are:

American Family Ins. Co. v. Walser, 628 N.W.2d 605 (Minn. 2001).

Hauenstein v. St. Paul-Mercury Indemnity Co., 242 Minn. 354, 65 N.W.2d 122 (1954).

2. Did Gary Schwich's act of providing Hackbarth with methamphetamine lead to an "expected or intended injury" to Hackbarth within the meaning of the policy's intentional act exclusion?

The trial court held that it did not.

The most apposite authorities are:

American Family Ins. Co. v. Walser, 628 N.W. 2d 605 (Minn. 2001).

B.M.B. v. State Farm Fire and Cas. Co., 664 N.W.2d 817 (Minn. 2003).

3. Did Gary Schwich's act of providing Hackbarth with methamphetamine fall within the "willful and malicious acts" portion of the policy's intentional act exclusion?

The trial court held that it did not.

The most apposite authority is:

American Family Ins. Co. v. Walser, 628 N.W. 2d 605 (Minn. 2001).

4. Should State Farm be held to the terms of the insurance policy it drafted as a matter of public policy?

The trial court held that the policy language itself controls the outcome, and that the court should not invalidate contract language that provides insurance coverage by its own plain terms under the guise of public policy.

The most apposite authorities are:

Lynch v. American Family Mut. Ins. Co., 626 N.W.2d 182 (Minn. 2001).

Equitable Holding Co. v. Equitable Building & Loan Ass'n, 202 Minn. 529, 279 N.W. 736 (1938).

United Steel Workers of Am. v. Quadna Mountain Corp., 435 N.W.2d 120 (Minn. App. 1989).

STATEMENT OF THE CASE

Alicia Hackbarth ("Hackbarth") died on March 11, 2005. The cause of her death was cardiac arrhythmia. The underlying

contributing conditions to the fatal cardiac arrhythmia were found by the medical examiner's office to be acute methamphetamine and alcohol intoxication coupled with the presence of an underlying cardiac condition called arrhythmogenic right ventricular cardiomyopathy. Hackbarth's roommate Gary Schwich ("Schwich") had provided her with methamphetamine, and Schwich's friend Jeanne Stone ("Stone") had, at her request, injected her with it. Schwich was subsequently convicted of third-degree murder for his act of supplying Hackbarth with a controlled substance that led to her death. Stone pled guilty to third-degree unintentional murder.

Following Hackbarth's death her next-of-kin brought a wrongful death action against Schwich in Scott County District Court. At the time of the incident Schwich was the named insured under a homeowner's insurance policy issued by State Farm Fire and Casualty Company ("State Farm"). State Farm provided Schwich with counsel to defend the wrongful death action under a reservation of rights and commenced this Declaratory Judgment Action in which it seeks a judicial declaration that it has no obligation to defend or indemnify Schwich against the claims of Hackbarth's next-of-kin, either under the terms of the policy itself, or as a matter of public policy.

Following discovery State Farm brought a motion for summary judgment, arguing (1) that Hackbarth's death was not an "occurrence" under the policy, and alternatively that (2) the claims against Schwich fall within one of two prongs of the intentional act exclusion in the policy. State Farm also argued that public policy should preclude a finding of insurance coverage for Schwich's criminal conduct. After the motion was briefed, in order to eliminate factual disputes that

would preclude a summary judicial resolution of the matter, the parties stipulated to three material facts: (1) that Schwich provided Hackbarth with methamphetamine on the night she died; (2) that the methamphetamine was at least one of the causes of Hackbarth's death; and (3) although Schwich intentionally provided Hackbarth with methamphetamine, he did not intend to kill her.

The trial court denied State Farm's motion for summary judgment. It concluded that Hackbarth's death was an "occurrence," that Schwich's conduct did not fall within either prong of the intentional act exclusion in the policy, and that while public policy will allow a court to enforce a criminal acts exclusion in a homeowner's insurance policy, public policy will not write such a clause into a policy where the insurer did not write one. Accordingly, the trial court held that State Farm must both defend and indemnify Schwich in the wrongful death claim brought by Hackbarth's next-of-kin. Judgment was entered to this effect. State Farm timely appealed from the judgment.

STATEMENT OF THE FACTS

Alicia Hackbarth, who worked as Gary Schwich's housecleaner, moved in with Schwich in the late summer or fall of 2004. She lived with him on and off until her death on March 11, 2005.¹ Jeanne Stone, Schwich's friend, moved in with Schwich and Hackbarth one day prior to Hackbarth's death.²

¹ AA-6, 20 (Schwich Depo at 13-14, 20).

² AA-9 (Schwich Depo at 25-26).

During the time that Hackbarth lived with Schwich, she frequently used illegal drugs, including methamphetamine and marijuana.³ In the days preceding her death and on the day of her death she was drinking heavily.⁴ Schwich himself used methamphetamine on a daily basis for a ten year period prior to March 2005.⁵ His preferred method of use was injection.⁶ Hackbarth preferred to snort it.⁷ Stone also used illegal drugs.⁸

On March 11, 2005, after injecting himself with methamphetamine, Schwich made one syringe of the drug for Stone and one for Hackbarth.⁹ Hackbarth was too shaky to inject herself, so at Hackbarth's request Stone injected the drug into Hackbarth.¹⁰ Later that night Schwich found Hackbarth unconscious and face down in the hot tub.¹¹ Schwich performed CPR on her, but was

³ AA-7 (Schwich Depo at 16-17).

⁴ AA-102, 105-106 (Stone Depo at 43-44, 53-58).

⁵ AA-10, 35 (Schwich Depo at 28, 130).

⁶ AA-103 (Stone Depo at 46-48); AA-11 (Schwich Depo at 33).

⁷ AA-103 (Stone Depo at 46-47)

⁸ AA-9 (Schwich Depo at 25-26).

⁹ AA-19, 20 (Schwich Depo at 65-66, 69).

¹⁰ AA-107 (Stone Depo at 61-62); See also Transcript of Proceedings, State v. Schwich, Scott County District Court File No. 70-CR-05-07048, Vol. IV at 438.

¹¹ AA-26 (Schwich Depo at 92-95).

unable to revive her.¹² Hackbarth was pronounced dead on March 11, 2005. According to Dr. Shannon Mackey-Bojeck, who performed an autopsy of Hackbarth, Hackbarth died of a cardiac arrhythmia due to the underlying contributing conditions of acute methamphetamine and alcohol intoxication, together with a heart condition called arrhythmogenic right ventricular cardiomyopathy.¹³

Gary Schwich was convicted of third-degree murder for his involvement in the events leading to Hackbarth's death. The statute under which Schwich was convicted states, in part:

Whoever, without intent to cause death, proximately causes the death of a human being by, directly or indirectly, unlawfully selling, giving away, bartering, delivering, exchanging, distributing, or administering a controlled substance classified in schedule I or II, is guilty of murder in the third degree¹⁴

For the purpose of this declaratory judgment action, the parties have stipulated to these material facts: (1) that Schwich provided Hackbarth with methamphetamine on the night she died; (2) the methamphetamine was at least one of the causes of Hackbarth's death; and (3) although Schwich intentionally provided Hackbarth with methamphetamine, he did not intend to kill her.¹⁵

¹² AA-26 (Schwich Depo at 92-95).

¹³ AA-237 (Transcript of Proceedings, State v. Schwich, Scott County District Court File No. 70-CR-05-07048, Vo. IV at 308, 317).

¹⁴ Minn. Stat. § 609.195(b).

¹⁵ AA-162.

At the time of Hackbarth's death, Schwich was insured under a homeowner's insurance policy issued by State Farm Fire and Casualty Company, policy number F23-EF-8557-7.¹⁶ The omnibus clause in the Liability portion of the policy provides that if a claim or suit is brought against Schwich, the named insured, for "damages because of bodily injury . . . caused by an occurrence," State Farm will indemnify Schwich up to the policy limits for the damage for which Schwich is found to be legally liable, and will provide him with a defense for any such claim or suit.¹⁷ An "occurrence" is defined in Paragraph 7 of the "Definitions" portions of the policy as "an accident . . . which results in bodily injury" during the policy period.¹⁸ The Liability portion of the policy also contains what is known as an intentional act exclusion that provides that the liability coverage provided by the policy does not apply to "bodily injury . . . (1) which is either expected or intended by the insured or (2) which is the result of willful and malicious acts of the insured."¹⁹ State Farm argues (1) that Hackbarth's death was not caused by an occurrence, (2) that one or both prongs of the intentional act exclusion applies to eliminate coverage, or (3) that Schwich's criminal behavior ought not be insured as a matter of public policy.

¹⁶ AA-210-235.

¹⁷ AA-226.

¹⁸ AA-213.

¹⁹ AA-227.

ARGUMENT

I. STANDARD OF REVIEW.

On appeal from summary judgment this court's task is to determine whether there are any genuine issues of material fact and whether the district court erred in applying the law.²⁰ Interpretation of insurance policy language based on undisputed underlying facts is a question of law.²¹ Legal issues are subject to *de novo* review.²²

The facts pertinent to the coverage question at issue are not in dispute. *De novo* review is the appropriate standard of review.

II. THE CARDIAC ARRHYTHMIA THAT LED TO ALICIA HACKBARTH'S DEATH, WHICH WAS CAUSED IN PART BY TAKING METHAMPHETAMINE SUPPLIED TO HER BY INSURED GARY SCHWICH, WAS AN "OCCURRENCE" FOR THE PURPOSE OF TRIGGERING LIABILITY COVERAGE UNDER STATE FARM'S HOMEOWNER'S INSURANCE POLICY.

The State Farm policy provides coverage for the Hackbarth family's claims if the incident resulting in her death was an "occurrence" within the meaning of the omnibus clause of the State Farm policy. An "occurrence" is defined as an "accident". The term "accident" is not defined in the policy, but has been defined by the Minnesota Supreme Court in case law on multiple occasions, most recently in 2001 in *American Family Insurance Company v. Walser*.²³

²⁰ *Wartnick v. Moss & Barnett*, 490 N.W.2d 108, 112 (Minn. 1992).

²¹ *Magnetic Data, Inc. v. St. Paul Fire & Marine Ins.*, 442 N.W.2d 153, 155 (Minn. 1989).

²² *Lynch v. American Family Mut. Ins. Co.*, 626 N.W.2d 182, 185 (Minn. 2001).

²³ 628 N.W.2d 605 (Minn. 2001).

After careful analysis of the developing case law concerning the definition of “accident” in automobile and homeowners’ insurance policies, the *Walser* court reaffirmed the definition of “accident” used in *Hauenstein v. St. Paul-Mercury Indemnity Company*²⁴ in 1954: “an unexpected, unforeseen, or undesigned happening or consequence.”²⁵ Focusing on the word “consequence,” the *Walser* court held that:

In applying the *Hauenstein* definition of accident to a coverage provision, particularly the *unexpected, unforeseen or undersigned consequence* aspect, our cases interpreting intentional act exclusions are instructive; that is, where there is specific intent to cause injury, conduct is intentional for purposes of an intentional act exclusion, and not accidental for purposes of a coverage provision. As was the case under the *Hauenstein* definition, ***where there is no intent to injure, the incident is an accident, even if the conduct itself was intentional.***²⁶

The facts of *Walser* and the court’s analysis of those facts are pertinent to the proper analysis of Gary Schwich’s conduct in this case. In *Walser*, three high school boys were involved in horseplay in the school gym. Matthew Jewison, a ninth-grader, jumped up and began hanging from the rim of a basketball hoop. After he had been hanging there for a few seconds, two other boys, Walser and Schoemaker, grabbed Jewison’s ankles and began tugging on them. They backed up while holding his ankles, but then let go. Jewison continued to hang from the hoop. The two boys grabbed his ankles a

²⁴ 242 Minn. 354, 65 N.W.2d 122 (1954).

²⁵ 242 Minn. at 358, 65 N.W.2d at 126.

²⁶ *Walser*, 628 N.W.2d at 612.

second time, backed up and pulled harder. Jewison lost his grip, but before he hit the floor the two boys let go of his ankles. Jewison fell to the floor and injured his left hand.

Jewison brought a negligence claim against Walser and Shoemaker. American Family Insurance Company (American Family) insured Walser through a homeowner's policy issued to his parents. American Family denied coverage, claiming the incident was not an "occurrence" within the meaning of the policy and that even if it were an occurrence, it was excluded by the policy's intentional act exclusion. The term "occurrence" was defined in the policy to be an "accident" – which, as in the State Farm policy in this case, was not further defined. The matter was submitted to the trial court on the basis of depositions on a motion for summary judgment. The trial court found that Walser intended to pull Jewison down from the rim, but did not intend to injure him. The trial court stated that as a matter of law Walser's actions "were intentional but the resulting injury was both unexpected and unintended and was therefore an accident."²⁷ The trial court further found that the facts of the case did not warrant inferring intent to injure as a matter of law.²⁸ The trial court concluded that the incident was an occurrence for the purposes of the American Family policy, so the policy provided coverage for Jewison's injuries.²⁹

²⁷ *Walser*, 628 N.W.2d at 608.

²⁸ *Id.*

²⁹ *Walser*, 628 N.W.2d at 608.

The Court of Appeals, in an unpublished opinion, reversed. It concluded that Walser had committed an intentional tort when he grabbed Jewison's ankles. Since the injury resulted from an act that was both intentional and wrongful, it could not be considered an accident.³⁰ This is similar to the argument State Farm makes in this case when it argues that Hackbarth's death could not be an accident since the person who provided her with one of the causes of her death was convicted of third-degree murder.

The Supreme Court in Walser reversed. It conducted an extensive review of the case law dealing with the term "accident" and the intentional act exclusion in homeowners and automobile insurance policies. With respect to the meaning of the term "accident,"

We conclude that in analyzing whether there was an accident for purposes of coverage, ***lack of specific intent to injure will be determinative, just as it is in an intentional act exclusion analysis.***³¹

Applying this conclusion to the facts before it, the Supreme Court found nothing in the record to suggest that the trial court erred when it found that Walser intentionally pulled Jewison from the hoop but did not intend to injure him. Applying its definition of accident to the trial court's factual findings, the Supreme Court found that the incident in which Jewison was injured was an accident and thus an occurrence under the American Family policy.

³⁰ *American Family Ins. Co. v. Walser*, 2000 WL 1182799 at *2 (Minn. App. 2000).

³¹ *Walser*, 628 N.W.2d at 612 (emphasis added).

Walser is dispositive of the question of whether the omnibus clause in the State Farm policy provides Schwich with liability coverage. In *Walser*, the trial court found that Walser intended to pull Jewison down from the hoop, but did not intend to injure him. In this case, Gary Schwich intentionally provided Hackbarth with methamphetamine – at her request, though in a form she was unaccustomed to using. It is undisputed that Schwich did not intend to kill Hackbarth. State Farm makes much of the fact that there is distinction between an injury that leads to death and death itself. Be that as it may, in this case the injury that led to Hackbarth’s death was cardiac arrhythmia. There is absolutely nothing in the record to support the factual conclusion that Schwich intended to physically harm Hackbarth in any way, let alone give her cardiac arrhythmia. The fact that Schwich knew that methamphetamine was illegal, dangerous, and physically addicting does not equate to a specific intent to cause Hackbarth injury. Hackbarth had used methamphetamine on multiple occasions in the past and Schwich had injected it himself over a ten year period with no known ill effects. There is no evidence that Schwich had any knowledge of Hackbarth’s heart condition, or that he had any knowledge that she might be made susceptible to injury than someone else. With respect to the methamphetamine Schwich provided to Hackbarth on March 11, 2005, he intended to provide her with the means to get a quick high, not to cause her harm.

In the *Walser* decision, Walser’s actions constituted an intentional tort. Nevertheless, because Walser’s intent was not to injure, the entire incident was an “accident” for the purposes of

insurance coverage. Likewise, since Gary Schwich's intent was not to injure, even though his intentional act of providing Hackbarth with an illegal drug led to his conviction of third-degree murder due to the nature of the drug he provided, the incident causing Alicia Hackbarth's cardiac arrhythmia and ultimate death was an "accident" for the purposes of the State Farm policy. The cases cited by State Farm to support its argument to the contrary pre-date *Walser* and do not change this result.

III. GARY SCHWICH'S CONDUCT, WHICH CONSISTS OF PROVIDING HACKBARTH WITH METHAMPHETAMINE, DOES NOT FALL WITHIN THE STATE FARM POLICY'S TWO-PRONGED INTENTIONAL ACT EXCLUSION.

It is well settled that an insurer has the burden of proving a policy exclusion applies.³² "Exclusions in insurance contracts are read narrowly against the insurer."³³ State Farm thus carries the burden of demonstrating that one or both of the prongs to the intentional act exclusion in the policy it issued to Schwich excludes coverage for his conduct on March 11, 2005. The trial court correctly found that it cannot meet this burden.

³² *Henning Nelson Constr. Co. v. Fireman's Fund American Life Ins. Co.*, 383 N.W.2d 645, 652 (Minn. 1986); *Walser*, 628 N.W.2d at 613.

³³ *Atwater Creamery Co. v. Western Nat'l Mut. Ins. Co.*, 366 N.W.2d 271, 276 (Minn. 1985).

A. Gary Schwich's Act of Providing Hackbarth with Methamphetamine did not Lead to an "Expected or Intended Injury" to Hackbarth Within the Meaning of the Policy's Intentional Act Exclusion.

The trial court concluded that the "expected or intended injury" portion of State Farm's exclusion is an intentional act exclusion and treated it as such. An intentional act exclusion operates to avoid coverage where "the insured has acted with intent to cause bodily injury."³⁴ When the act itself is intended but the resulting injury is not, the insurance exclusion has no application.³⁵ Thus, the question of whether a victim's bodily injury or death is an "accident" or whether coverage for such bodily injury or death is excluded under the intentional act exclusion is "for all practical purposes, identical."³⁶ In practice, "accidental conduct and intentional conduct are opposite sides of the same coin. The scope of one in many respects defines the scope of the other."³⁷ As it was with respect to whether the events leading to Alicia Hackbarth's death on March 11, 2005 were an "occurrence," Gary Schwich's lack of specific intent to injure Hackbarth is determinative of the applicability of this portion of the exclusion. For this portion of the intentional act exclusion to apply, State Farm "must prove, under a subjective standard, that the

³⁴ *Milbank Ins. Co. v. B.I.G.*, 484 N.W.2d 52, 58 (Minn. App. 1992).

³⁵ *Id.*

³⁶ *B.M.B. v. State Farm Fire and Cas. Co.*, 664 N.W.2d 817, 821 (2003), *citing Walser*, N.W.2d 628 at 612 and *Tower Ins. Co. v. Judge*, 849 F. Supp. 679, 690 (D. Minn. 1993).

³⁷ *Walser*, 628 N.W.2d at 611.

insured [Schwich] intended to harm his victim.”³⁸ The trial court correctly held that State Farm cannot meet this burden.

The language of the exclusion itself upholds the trial court’s treatment of it. The “injury” leading to Hackbarth’s death was cardiac arrhythmia. There is no evidence that Schwich intended to cause Hackbarth any harm, or even that he subjectively expected her use of the methamphetamine he provided her to do any harm. She had used methamphetamine in the past; he had injected methamphetamine himself for 10 years with no obvious physical harm. He had no reason to know of her pre-existing heart condition. While it is foreseeable that the use of methamphetamine in combination with alcohol carries with it the very real risk of overdose and death, that is a negligence standard, not specific subjective intent to injure. To enforce this exclusion as written would be equivalent to eliminating coverage for a drunk who intentionally gets in his car to drive home, loses control of his car and kills someone. Was the result of his drunk driving foreseeable? Absolutely. Did he subjectively intend or expect to injure or kill someone? Probably not.

B. Gary Schwich’s Act of Providing Hackbarth with Methamphetamine Does Not Fall Within the “Willful and Malicious Acts” Portion of the Policy’s Intentional Act Exclusion.

The second prong of State Farm’s intentional act exclusion falls beyond the scope of the exclusion analyzed in *Walser*. It provides that liability coverage will not apply to bodily injury that is the result of the

³⁸ *B.M.B.*, 664 N.W.2d at 824.

insured's "willful and malicious" acts. Neither the term "willful" nor the term "malicious" is defined in the policy.

The trial court correctly looked to Black's Law Dictionary³⁹ for definitional guidance. The court found that the term "willful" is defined as "voluntary and intentional, but not necessarily malicious." The term "malicious" is defined as "substantially certain to cause injury." This portion of State Farm's exclusion is written with the conjunctive "and" between the two words. Accordingly, the State Farm policy excludes coverage for bodily injury that is the result of the insured's intentional acts **and** where those acts are substantially certain to cause injury. In short, State Farm's "willful and malicious" exclusion is identical to Minnesota's standard for finding intent to injure as a matter of law.

Once again, *American Family v. Walser* provides the definitive standard to be applied. *Walser* carefully articulated the standard under which a court may conclude that an insured has intent to injure as a matter of law.

[T]he inference of intent to injure as a matter of law arises when the insured **acted in a calculated and remorseless manner** or when the insured's actions were such that the insured knew or should have known that a harm was **substantially certain to result** from the insured's conduct. . . . The mere fact that the harm was a "natural and probable consequence" of the insured's actions is not enough to infer intent to injure.⁴⁰

³⁹ Black's Law Dictionary (8th ed. 2004) at 1630 ("willful") and 977 ("malicious").

⁴⁰ *Walser*, 628 N.W.2d at 613 (emphasis added).

The *Walser* court, using this definition, held that the trial court was correct in concluding that it could not infer that Walser intended to injure Jewison as a matter of law. The cases in which an appellate court has inferred intent to injure have involved extreme facts. For example, intent to injure has been inferred when the insured drove to a construction site armed with a high-powered rifle loaded with armor-piercing bullets and fired at a guard's truck he knew to be occupied.⁴¹ Intent to injure was inferred as a matter of law when the insured armed himself with loaded weapons to facilitate a robbery.⁴² Intent to injure has also been inferred in a line of cases involving intentional sexual contact. For example, intent to injure was inferred when the insured had unprotected sexual intercourse even though he knew or should have known that he had herpes.⁴³ Equally extreme, intent to injure was inferred as a matter of law where the insured removed the body of a child from a crypt, dissected it, displayed it to friends and discarded it.⁴⁴

On the other hand, there are numerous cases in which the conduct was less extreme or calculated. In these cases intent to injure has not been inferred as a matter of law. For example, intent to

⁴¹ *Woida v. North Star Mut. Ins. Co.*, 306 N.W.2d 570, 573-74 (Minn. 1981).

⁴² *Continental West Ins. Co. v. Toal*, 309 Minn. 169, 177, 244 N.W.2d 121, 126 (1976).

⁴³ *R.W. v. T.F.*, 528 N.W.2d 873 (Minn. 1995).

⁴⁴ *State Farm Fire & Cas. Co. v. Neises*, 598 N.W.2d 709 (Minn. App. 1999).

injure was not inferred when the insured struck a baggage clerk after a tug-of-war over a piece of luggage,⁴⁵ when the insured intentionally pushed a hatcheck girl,⁴⁶ or when a teenager threw an explosive device that exploded and injured a bystander.⁴⁷ Intent to injure was not even inferred where an insured tackled someone during a fight.⁴⁸ In the context of addressing whether collateral estoppel from a conviction for first degree assault will preclude re-litigation of intent by the victim, intent to injure was not inferred as a matter of law even where a day care provider shook a child to the point of brain damage.⁴⁹

In the context of these cases, it would be error for this court to infer that Gary Schwich intended to injure Alicia Hackbarth as a matter of law. His act was similar to that of a bartender who illegally serves an overly intoxicated patron additional alcohol, knowing that the patron will leave the bar and drive home. It is similar to the act of the high school student in *Walser*, who deliberately tried to pull a classmate down from hanging on a basketball hoop, the same as the

⁴⁵ *Brown v. State Auto. & Cas. Underwriters*, 293 N.W.2d 822, 823-25 (Minn. 1980).

⁴⁶ *Casperson v. Weber*, 298 Minn. 93, 98-99, 213 N.W.2d 327, 330 (1973).

⁴⁷ *German Mut. Ins. Co. v. Yeager*, 554 N.W.2d 116, 118 (Minn. App. 1996).

⁴⁸ *Gilman v. State Farm Fire & Cas. Co.*, 526 N.W.2d 378 (Minn. App. 1995).

⁴⁹ *Illinois Farmers Ins. Co. v. Reed*, 662 N.W.2d 529 (Minn. 2003).

traveler in *Brown v. State Automobile & Casualty Underwriters*,⁵⁰ who injured a baggage clerk during a tug-of-war over a piece of luggage, and the same as the insured in *Gilman v. State Farm Fire & Casualty Company*,⁵¹ who tackled a man while angry, throwing him to the ground and ultimately broke his leg. Intent to injure was not inferred in these cases, and it ought not be inferred here.

IV. STATE FARM, THE DRAFTER OF THE CONTRACT AT ISSUE, WAS FREE TO DRAFT A CRIMINAL ACT EXCLUSION INTO THE POLICY; HAVING FAILED TO DO SO, ITS POLICY OUGHT TO BE ENFORCED AS WRITTEN TO PROVIDE ITS INSURED WITH THE COVERAGE THAT HE PURCHASED AS A MATTER OF PUBLIC POLICY.

One of the most fundamental precepts of insurance law is that “the extent of the insurer’s liability is governed by the contract into which it entered as long as the policy does not omit coverage required by law and does not violate applicable statutes.”⁵² State Farm cannot demonstrate that its policy violates some applicable statutory requirement. Instead, State Farm requests the court to invalidate an insurance contract that it drafted and that the parties entered into freely. This is a heavy burden. Minnesota law has long recognized that:

it is of paramount public policy not lightly to interfere with freedom of contract. * * * It must not be forgotten that the right of private contract is no small part of the liberty of

⁵⁰ 293 N.W.2d 822 (Minn. 1980).

⁵¹ 526 N.W.2d 378, 381 (Minn. App. 1995).

⁵² *Lynch v. American Family Mut. Ins. Co.*, 626 N.W.2d 182, 185 (Minn. 2001).

the citizen, and that the usual and most important function of courts of justice is rather to maintain and enforce contracts than to enable parties thereto to escape from their obligation on the pretext of public policy, unless it clearly appears that they contravene public right or the public welfare.⁵³

Minnesota courts have also cautioned that “[t]he power of courts to declare a contract void for being in contravention of sound public policy is a very delicate power and like the power to declare a statute unconstitutional, should be exercised only in cases free from doubt.”⁵⁴

The trial court correctly reasoned that this standard has not been met in this case. Minnesota has a long history of favoring a public policy that allows victims of the wrongful acts of others to recover their damages. The very function of liability insurance is to provide a ready fund for the payment of those kinds of damages on behalf of the wrongdoer who caused them. The thrust of State Farm’s public policy argument is that because Schwich’s conduct was illegal, involving an illegal drug, the courts must rewrite the contract it wrote and void the coverage it contracted to provide. This argument must fail. State Farm ought not be relieved of its responsibility as the drafter of the contract at issue to live by the terms of its own agreement.

State Farm could have included a specific exclusion in its policy to eliminate criminal acts from coverage. Such an exclusion was

⁵³ *Equitable Holding Co. v. Equitable Building & Loan Ass’n*, 202 Minn. 529, 536, 279 N.W. 736, 741 (1938).

⁵⁴ *United Steel Workers of Am. v. Quadna Mountain Corp.*, 435 N.W.2d 120, 123 (Minn. App. 1989); See also *Isles Wellness, Inc. v. Progressive Northern Ins. Co.*, 725 N.W.2d 90 (Minn. 2006).

upheld by this court in *Liebenstein v. Allstate Insurance Company*.⁵⁵ There is every reason to believe that an exclusion for bodily injury caused by the use of narcotics would also be enforced.⁵⁶ The trial court correctly held that the courts will not rewrite the State Farm policy after the fact on public policy grounds. It is the public policy of Minnesota that the contract State Farm wrote and accepted premiums for will be enforced.

CONCLUSION

The trial court correctly concluded that the events leading to the death of Alicia Hackbarth were an “occurrence” under the State Farm omnibus clause, and that Gary Schwich’s act of providing Hackbarth with methamphetamine was not “willful and malicious” and did not lead to an “expected or intended injury” to Hackbarth. The trial court was also correct in concluding that having written a policy that provides coverage to Schwich for the wrongful death claims of Hackbarth’s next-of-kin, State Farm should be compelled by public policy to honor that contract. Accordingly, Respondent Hackbarth respectfully requests this court to affirm the trial court in all respects.

⁵⁵ 617 N.W.2d 73 (Minn. App. 1994).

⁵⁶ *See, e.g., Prudential Property & Cas. Ins. Co. v. Brenner*, 350 N.J. Super. 316, 795 A.2d 286 (2002).

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CERTIFICATION OF BRIEF LENGTH

I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, subds. 1 and 3, for a brief produced with a proportional font. The length of this brief is 5,785 words. This brief was prepared using Microsoft Word 2000.

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