DICKINSON BRADSHAW
DICKINSON, BRADSHAW, FOWLER & HAGEN, P.C.

Benjamin J. Kenkel
(515) 246-5891
bkenkel@dickinsonbradshaw.com

Re: Insurable Interest Personal Auto Liability Coverage

You requested our office provide you with a coverage opinion concerning personal auto liability claims filed in situations where the named insured is not the owner—and thus not the primary driver—of a vehicle listed in the liability policy's declarations. We concluded that Iowa law requires that an insured have an insurable interest in a motor vehicle to be liable under Iowa's ownership liability statute. For purposes of defending against a claim of liability, sale, delivery, and transfer of title are absolute bars to liability and coverage under a personal auto liability policy pursuant to Iowa Code section 321.493. In situations where sale and delivery of a vehicle have occurred, but formal transfer of title is lacking, the insured/seller has a viable defense to liability but the insurer is obligated to defend and indemnify the insured/seller pursuant to Iowa Code section 321.45(2).

Factual Background

The factual scenario for which this coverage opinion is sought involves the scope and existence of a named insured's insurable interest in a vehicle listed in the policy declarations, but the vehicle is owned by a non-listed third-party. For instance, a named insured may have previously owned the vehicle and listed the vehicle in their personal auto policy declarations. The named insured then sells the vehicle to a family member or other third-party not listed as a named insured under the Personal Auto Policy. After selling the vehicle though, the named insured either forgets or knowingly fails to update the vehicles listed in the policy declarations, leaving the third-party owned vehicle as a listed vehicle.

After the sale and transfer of title of the listed vehicle to a non-named third-party, the third-party owner drives the vehicle, is involved in a car accident for which they are found at fault, and a claim is filed on the personal auto policy for liability coverage arising out of the third-party's use of the listed vehicle.[1]

[1] Importantly, this coverage opinion is a generic opinion reviewing the terms and conditions of a generic Personal Auto Policy as applied to a hypothetical factual situation. This opinion should not be construed as applying equally to every factual scenario which may arise under a Personal Auto Policy, and is only meant to serve as a general examination of potential coverage and legal issues which should be considered under the broad factual circumstances outlined herein.

Coverage Analysis

Our coverage analysis will proceed in several steps. First, we summarize the general principles governing an insurer's duty to defend and indemnify an insured under Iowa law. Second, we address what factors must be demonstrated to establish coverage. Third, we analyze whether the Insurer has a duty to defend or indemnify an insured based on the factual scenario supplied.

General Principles

Insurance coverage questions such as the present one necessarily involves a two-step analysis. The first step examines whether the subject loss *prima facia* falls within the coverage provisions of the policy, while the second step examines whether any of the policy's exclusionary provisions remove the subject loss from coverage or limit the amount of coverage available. *See Walnut Grove Partners, L.P. v. Am. Family Mut. Ins. Co.*, 479 F.3d 949, 952 (8th Cir. 2007); *Pursell Constr. Inc. v. Hawkeye-Security Ins. Co.*, 596 N.W.2d 67, 69 (Iowa 1999).

Several additional principles apply to the analysis of liability insurance coverage matters under Iowa law. To begin, "an insurer's duty to defend is separate from its duty to indemnify; the duty to defend is broader than the duty to indemnify." *A.Y. McDonald Indus. v. Ins. Co. of N. Am.*, 475 N.W.2d 607, 627 (Iowa 1991). "An insurer has a duty to defend whenever there is potential or possible liability to indemnify the insured based on the facts appearing at the outset of the case." *First Newton Nat'l Bank v. Gen. Cas. Co. of Wis.*, 426 N.W.2d 618, 623 (Iowa 1988).

The analysis of coverage for a liability insurance claim usually begins with a review of the petition to determine whether any of the allegations arguably or potentially "bring the claim within the liability covered by the policy." *Stine Seed Farm, Inc. v. Farm Bureau Mut. Ins. Co.*, 591 N.W.2d 17, 18 (Iowa 1999). Nevertheless, "[w]hen contrasted with the factual allegations, the legal nomenclature chosen by a plaintiff [in the petition] is 'relatively unimportant.'" *Stine Seed Farm, Inc.*, 591 N.W.2d at 18. This is because "coverage is controlled by the actual claim asserted against the insured, not the label the claimant chooses to put on his or her claim." *Cont'l Ins. Co. v. Bones*, 596 N.W.2d 552, 559 (Iowa 1999). In other words, when conducting a coverage analysis, one must examine the substance, not the form, of the allegations. *See Essex Ins. Co. v. Fieldhouse, Inc.*, 506 N.W.2d 772, 775 (Iowa 1993).

"When necessary[,] [courts] expand [their] scope of inquiry to any other admissible and relevant facts in the record." *First Newton Nat'l Bank*, 426 N.W.2d at 623. "[T]he reference to 'relevant facts in the record' merely means any facts that would be relevant

in determining the insurer's duty to defend in later coverage litigation." *Talen v. Employers Mut. Cas. Co.*, 703 N.W.2d 395, 406 n.2 (Iowa 2005). "Where there are facts extraneous to the allegations in the complaint which are known either to the insurer or the insured which, if proved, make out a case against the insured which is covered by the policy, the duty to defend exists." *Cent. Bearings Co. v. Wolverine Ins. Co.*, 179 N.W.2d 443, 445 (Iowa 1970). Conversely, there is no duty to defend when, after considering the policy, the plaintiffs' pleadings, and "any other admissible and relevant facts," the applicable policy does not appear to provide coverage for the insured. *Id.*

Finally, "when an action . . . involves both covered and non-covered claims, the insurer . . . has a duty to defend the entire action." *First Newton Nat'l Bank*, 426 N.W.2d at 630. Therefore, "[i]f any claim alleged against the insured can rationally be said to fall within such coverage, the insurer must defend the entire action." *Employers Mut. Cas. Co.*, 552 N.W.2d at 641 (citations omitted); *A.Y. McDonald Indus.*, 475 N.W.2d at 627. Any "[d]oubt as to the obligation to defend must be resolved in favor of the insured." *Dairyland Ins. Co. v. Hawkins*, 292 F. Supp. 947, 951 (S.D. Iowa 1968); *accord Employers Mut. Cas. Co.*, 552 N.W.2d at 641 (citations omitted); *A.Y. McDonald Indus.*, 475 N.W.2d at 627; *Cent. Bearings Co.*, 179 N.W.2d at 446.

Generally Applicable Policy Language

The Insurer offers a Personal Auto Policy, Form No. PP 00 01 09 18 ("the Policy"). Coverage under the Policy includes liability coverage, medical payments coverage, uninsured motorists' coverage, and comprehensive auto coverage. Only the liability coverage will be addressed in this coverage opinion.

Liability Coverage

The Policy provides the following general definitions:

> **DEFINITIONS**
>
> **A.** Throughout this Policy, "you" and "your" refer to:
>
> **1.** The named insured shown in the Declarations; and
>
> **2.** The spouse if a resident of the same household.
>
> . . .
>
> **F.** "Family member" means a person related to you by blood, marriage or adoption who is a resident of your household. This includes a ward or foster child.

. . .

I. "Trailer" means a vehicle designed to be pulled by a:

1. Private passenger auto; or

2. Pickup or van.

It also means a farm wagon or farm implement while towed by a vehicle listed in **1.** or **2.** above.

J. "Your covered auto" means:

1. Any vehicle shown in the Declarations;

2. A "newly acquired auto";

3. Any "trailer" you own; or

4. Any auto or "trailer" you do not own while used as a temporary substitute for any other vehicle described in this definition which is out of normal use because of its:

a. Breakdown;

b. Repair;

c. Servicing;

d. Loss; or

e. Destruction

This provision **(J.4.)** does not apply to Coverage For Damage To Your Auto.

K. "Newly acquired auto":

1. "Newly acquired auto" means any of the following types of vehicles you become the owner of during the policy period:

a. A private passenger auto; or

b. A pickup or van, for which no other insurance policy provides coverage, that:

(1) Has a Gross Vehicle Weight Rating of 10,000 lbs. or less; and

(2) Is not used for the delivery or transportation of goods and materials unless such use is:

(a) Incidental to your "business" of installing, maintaining or repairing furnishings or equipment; or

(b) For farming or ranching.

Form PP 00 01 09 18 at 1. The Policy's insuring agreement states:

> We will pay damages for "bodily injury" or "property damage" for which any "insured" becomes legally responsible because of an auto accident. Damages include prejudgment interest awarded against the "insured". We will settle or defend, as we consider appropriate, any claim or suit asking for these damages. In addition to our limit of liability, we will pay all defense costs we incur. Our duty to settle or defend ends when our limit of liability for this coverage has been exhausted by payment of judgments or settlements. We have no duty to defend any suit or settle any claim for "bodily injury" or "property damage" not covered under this policy.

Form PP 00 01 09 18 at 2. The liability coverage portion of the policy defines an "insured" as:

1. You or any "family member" for the ownership, maintenance or use of any auto or "trailer".
2. Any person using "your covered auto".
3. For "your covered auto", any person or organization but only with respect to legal responsibility for acts or omissions of a person for whom coverage is afforded under this Part.
4. For any auto or "trailer", other than "your covered auto", any other person or organization but only with respect to legal responsibility for acts or omissions of you or any "family member" for whom coverage is afforded under this Part. This provision **(B.4.)** applies only if the person or organization does not own or hire the auto or "trailer".

Form PP 00 01 09 18 at 2. The Policy also includes the following exclusions:

> **EXCLUSIONS**
>
> **. . .**
>
> **B.** We do not provide Liability coverage for the ownership, maintenance or use of:
>
> **. . .**
>
> **2.** Any vehicle, other than "your covered auto", which is:
>
> **a.** Owned by you; or

b. Furnished or available for your regular use.

3. Any vehicle, other than "your covered auto", which is:

a. Owned by any "family member"; or

b. Furnished or available for the regular use of a "family member"

However, this exclusion **(B.3.)** does not apply to you while you are maintaining or "occupying" any vehicle which is:

(1) Owned by a "family member"; or

(2) Furnished or available for the regular use of a "family member".

Form PP 00 01 09 18 at 3–4.

To trigger coverage under this insuring agreement, liability coverage generally applies to a loss if a claim: (1) seeks damages; (2) for "bodily injury" or "property damage"; (3) that an "insured" is legally responsible for; (4) because of an auto accident; and (5) to which coverage applies. The described factual scenario presents issues under the third element.

The "Legally Responsible" Requirement

To satisfy a *prima facie* claim under the Policy, the third element requires that a claim for damages allege that an "insured" is legally responsible for the damages. The language of the Policy's liability coverage defines an "insured" in a number of ways, including "any person using 'your covered auto'." The policy defines "your covered auto" as "any vehicle shown in the [Policy] Declarations." The plain meaning of these Policy provisions, standing alone, indicate an individual driving a vehicle listed in the Policy Declarations is an "insured" for purposes of the Policy. Thus, any damages which the "insured" is legally responsible for arising out of the use of the "covered auto" would initially seem to be afforded liability coverage under the Policy, even if the Policy's named insured has sold the vehicle listed in the declarations and is no longer the owner.

But Iowa law recognizes "an insurable interest is essential to the validity of a policy regardless of its subject matter." *Farmers Butter and Dairy Co-op. v. Farm Bureau Mut. Ins. Co.*, 196 N.W.2d 533, 536 (Iowa 1972). "In the absence of such interest, legal, equitable or real, in the thing or right insured the policy of coverage is nothing more than a mere wager, therefore void Ab initio." *Id.* Within the context of liability insurance though, "a person or other legal entity has an unlimited insurable interest in his or its individual liability." *Id.*

Under the factual circumstances previously described, the insured would not have been driving the "listed vehicle" and therefore any personal liability under the Policy could

only attach through Iowa's ownership liability statute. *See* Iowa Code § 321.493(2)(a). Under Iowa Code section 321.493(2)(a), "a person who has made a bona fide sale or transfer of his right, title, or interest in or to a motor vehicle and who has delivered possession of such motor vehicle to the purchaser or transferee shall not be liable for any damage thereafter resulting from negligent operation of such motor vehicle by another." *State Farm Mut. Auto. Ins. Co. v. Wyant*, 191 N.W.2d 689, 692 (Iowa 1971). Therefore, an insured is not liable under the ownership statute if they have made a bona fide sale, delivered possession of the vehicle to the buyer, and transfer of title has taken place. *Id.*

There is an important distinction in Iowa law though that may be applicable in certain factual circumstances wherein a seller has presumptively sold the vehicle and delivered possession of a vehicle to a buyer, but the vehicles title certificate has not been formally transferred to the buyer before the buyer incurs liability in a motor vehicle accident. Under these circumstances, the seller is permitted to defend against a claim of ownership liability on the ground that they are not in fact the owner, but the insurer of the seller is not able to defend against a claim for defense and indemnification brought by the seller. *Id.* Stated differently, prior to formal transfer of the vehicle title, the seller of the vehicle can defend against liability to the injured third-party arising from the buyer's negligence in driving the car, but the seller's insurer is not able to deny or avoid their duty to defend or indemnify the seller from liability until after the vehicle's title has been formal transferred. *See id.*; *Western States Ins. Co. v. Continental Ins. Co.*, 602 N.W.2d 360, 363 (Iowa 1999) (recognizing that Iowa Code section 321.493 distinguishes ownership of vehicles for the purpose of fixing or establishing liability).

CONCLUSION

In conclusion, Iowa law requires that an insured have an insurable interest in a motor vehicle to be liable under Iowa's ownership liability statute. For purposes of defending against a claim of liability, sale, delivery, and transfer of title are absolute bars to liability and coverage under a personal auto liability policy pursuant to Iowa Code section 321.493. In situations where sale and delivery of a vehicle have occurred, but formal transfer of title is lacking, the insured/seller has a viable defense to liability but the insurer is obligated to defend and indemnify the insured/seller pursuant to Iowa Code section 321.45(2).

Please feel free to call with any questions or to discuss our coverage analysis.

Very truly yours,

Benjamin J. Kenkel