CASE NO. 24-1824

IN THE
UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

ROLAND POUR, SR, ET AL.,

Appellants,

v.

LIBERTY MUTUAL PERSONAL INSURANCE COMPANY

Appellee.

Appeal from the United States District Court for the District of Minnesota
Case No. 22-cv-01502-PJS-DJF

PRINCIPAL BRIEF OF APPELLANTS ROLAND POUR, SR., KMONTEE POUR, AND ROLAND POUR, JR.

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SUMMARY AND REQUEST FOR ORAL ARGUMENT

This appeal arises out of a judgment entered by the United States District Court for the District of Minnesota, the Honorable Patrick J. Schiltz, presiding, following the Court's grant of Liberty Mutual Personal Insurance Company's motion for summary judgment and denial of the Pours' partial motion for summary judgment. The district court incorrectly concluded on the record before it that Roland Pour, Sr.'s Champlin, Minnesota home was not his "residence premises," and therefore Roland Pour, Sr.'s insurance claim for the damage to his home following a fire was not covered by the Liberty Mutual homeowners' insurance policy. As an extension of this, the district court also incorrectly concluded there was no coverage for the claims of Roland Pour, Sr.'s family: Kmontee Pour, Kmontee Pour's three children, and Roland Pour, Jr. because they were not "insureds" under the policy.

The district court further erred when it granted Liberty Mutual's summary judgment, dismissing the entire case with prejudice, because Liberty Mutual conceded that Roland Pour, Sr.'s personal property claim had insurance coverage, but Liberty Mutual has made no payment for it.

The appellants request that the Court permit oral argument on the issues presented and request that each side be allowed 15 minutes to present its argument.

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JURISDICTIONAL STATEMENT

The district court had jurisdiction under 28 U.S.C. §1332 because there was complete diversity of citizenship between the parties and the amount in controversy, exclusive of interest and costs, exceeded $75,000. Appellants, Roland Pour, Sr., Kmontee Pour, and Roland Pour, Jr. are Georgia and Minnesota citizens, respectively. Liberty Mutual Personal Insurance Company is a corporation which has its principal place of business in Massachusetts.

This appeal is from a final order or judgment that disposed of all the parties' claims. This Court has jurisdiction over this appeal pursuant to 28 U.S.C. §1291.

The district court issued its order granting Liberty Mutual Personal Insurance Company's motion for summary judgment and denying the Pours' partial motion for summary judgment on March 22, 2024. Add. 1-18; App. 28-45 R. Doc. 41, at 1-18. The district court entered an amended judgment on March 25, 2024. Add. 19; App. 46; R. Doc. 43, at 1. The Pours filed a timely notice of appeal on April 19, 2024. Add. 20; App. 47; R. Doc. 46, at 1.

STATEMENT OF THE ISSUES

1) Whether the district court erred in determining there was no insurance coverage for the damage arising out of a house fire at a second home owned by the policyholder, Roland Pour, Sr., based on the court's conclusion that the subject house was not a "residence premises."

The district court concluded that even though Roland Pour, Sr. owned only one home, his Champlin, Minnesota home, that it had no coverage under his Liberty Mutual insurance policy because it was not a "residence premises." As an extension of this conclusion, the district court also concluded there was no coverage for the claims of Kmontee Pour and Roland Pour, Jr.

MOST APPOSITE AUTHORITIES:

Aetna Ins Co. v. Grube, 6 Minn. 32 (Minn. 1861)

Frost's Detroit Lumber Works v. Millers' Mut. Ins. Co., 37 Minn. 300, 34 N. W. 35 (Minn. 1887)

FBS Mortgage. v. State Farm Fire & Cas. Co., 833 F. Supp. 688 (N.D. Ill. 1993)

2) Whether the district court erred in dismissing Roland Pour, Sr.'s claim for damage to his personal property even though Liberty Mutual conceded that Roland Pour, Sr. is entitled to payment for that damage.

The district court dismissed the Pours' entire lawsuit with prejudice, even though Liberty Mutual conceded that Roland Pour, Sr.'s personal property claim had insurance coverage, but Liberty Mutual has made no payment on it.

MOST APPOSITE AUTHORITIES:

Canadian Universal Co., Ltd. v. Fire Watch, Inc., 258 N.W.2d 570, 573 (Minn. 1977)

STATEMENT OF THE CASE

This case comes before the Court because the district court granted the summary judgment motion for appellee, Liberty Mutual Personal Insurance Company, and denied the partial summary judgment of appellants, Roland Pour, Sr., Kmontee Pour, and Roland Pour, Jr., dismissing this case in its entirety. The district court erroneously concluded that Roland Pour, Sr. was not entitled to insurance coverage for a fire at his Champlin home because it was not a "residence premises" even though the definition of "residence premises" is not a condition for coverage, violates Minnesota statutory law, and as Liberty Mutual interprets it, prevents insureds from having more than one residence. The district court further concluded that Roland Pour, Sr.'s adult sons, Kmontee Pour and Roland Pour, Jr. were also not entitled to coverage for their personal property or alternative living expenses because they were not "insureds" under the policy since the Champlin home was not Roland Pour, Sr.'s "residence premises." Last, Liberty Mutual conceded that Roland Pour, Sr. had insurance coverage for his personal property, but no payment has been issued for it. The district court erred when it concluded that the Pours were not entitled to coverage for their respective claims and dismissed the Pours' case with prejudice.

1. Roland Pour, Sr.'s Champlin Home.

The material facts of this case are largely undisputed. Roland Pour, Sr. is the sole owner and mortgagor of the home at 11637 Nevada Lane in Champlin, Minnesota. App. 7-8; R. Doc. 5, at 1-2; App. 16; R. Doc. 13, at 2.[1] Roland Pour, Sr. insured his Champlin home through Liberty Mutual; he is the only named insured on the Liberty Mutual homeowner's policy. App. 8; R. Doc. 5, at 2; App. 17; R. Doc. 13, at 2; *See* a complete certified copy of the Liberty Mutual insurance policy at R. Doc. 28-1, at 1-55.

The Champlin home is the only home Roland Pour, Sr. owns. App. 8; R. Doc. 5, at 8; R. Doc. 28-2, at 6. Kmontee Pour and Roland Pour, Jr., are Roland Pour, Sr.'s adult sons, who were living in the Champlin home at the time of the fire. App. 8, 11-13; R. Doc. 5, at 2, 5-7; App. 20-21; R. Doc. 13, at 5-6, R. Doc. 28-4, at 5. Three of Kmontee Pour's children also lived at the Champlin home at the time of the fire.[2] App. 8; R. Doc. 5, at 2; R. Doc. 28-5 at 3.

In 2019, Roland Pour, Sr. moved from his Champlin home to live with his wife in Bethlehem, Georgia. App. 9; R. Doc. 5, at 3; R. Doc. 28-2, at 6. His wife owns the Georgia home in her own name. R. Doc. 28-2, at 6. At the time Roland

[1] Appellants' Appendix is abbreviated as "App." and Appellants' Addendum is abbreviated as "Add."
[2] For purposes of this appeal, all references to Kmontee Pour's claim also includes the claims of his three children.

Pour, Sr. moved to Georgia, Kmontee Pour and Roland Pour, Jr. lived with him at the Champlin home. R. Doc. 28-2, at 4-10. They continued to live at the Champlin home after Roland Pour, Sr. moved to Georgia. App. 8, 11-13; R. Doc. 5 at 2, 5-7, 49-50; App 20, R. Doc. 13, at 5. Kmontee Pour and Roland Pour, Jr. did not pay rent to stay at the Champlin home. R. Doc. 28-2, at 4. Roland Pour, Sr. did not sell this Champlin home, he continued to pay the mortgage, property taxes, and insurance for it. App. 9; R. Doc. 5, at 3; R. Doc. 28-2, at 4; R. Doc. 28-3. Roland Pour, Sr. also continued to file tax returns in Minnesota and considered himself a resident of Minnesota. R. Doc. 28-2, at 7-9. Roland Pour, Sr. considered the Champlin residence his home in this Georgia tax return. R. Doc. 28-2, at 8-9; R. Doc. 28-3 at 15. When Roland Pour, Sr. returned to Minnesota he stayed at his Champlin home. R. Doc. 28-4 at 6.

Roland Pour, Sr. also kept personal property at the Champlin home in the garage and under the stairs. App. 9; R. Doc. 5, at 3; R. Doc. 28-4, at 13-15. Between the time Roland Pour, Sr. moved to Georgia and the time of the fire, he returned to Minnesota to visit his family and stay at his Champlin home. App. 9; R. Doc. 5, at 3; R. Doc. 28-4, at 7-12.

2. The September 2021 fire at Roland Pour, Sr.'s Champlin home and Liberty Mutual's coverage determinations.

On September 5, 2021, there was a fire at Roland Pour, Sr.'s Champlin home, rendering it uninhabitable and damaging the dwelling and attached garage,

and the personal property within them. App. 9-11; R. Doc. 5, at 3-5; App. 18, 20; R. Doc. 13, at 3, 5. Roland Pour, Sr.'s Liberty Mutual homeowners' insurance policy was in effect at the time of the September 5, 2021, fire. App. 10; R. Doc. 5, at 4; App. 19; R. Doc. 13, at 4; R. Doc. 28-1, at 2. After the fire, Roland Pour, Sr. submitted a claim to Liberty Mutual. App. 10, R. Doc. 5, at 4; App. 19, R. Doc. 13, at 4. Liberty Mutual investigated the claim and denied coverage for the Pours' claims, except for Roland Pour, Sr.'s personal property claim for which Liberty Mutual conceded there was insurance coverage. App. 10, R. Doc. 5, at 4; App. 19; R. Doc. 13, at 4. Liberty Mutual also denied the claims for Kmontee Pour and Roland Pour, Jr. App. 10-11; R. Doc. 5, at 4-5; App. 19, R. Doc. 13, at 4. The insurance claims at issue in this appeal are:

- Roland Pour, Sr.'s dwelling damage and attached garage, and debris removal claim;
- The personal property damage and alternative living expenses claims for Kmontee Pour and Roland Pour, Jr.; and
- Roland Pour, Sr.'s personal property damage claim, for which there is coverage, but no payment has been made, and the district court improperly dismissed.

Liberty Mutual's basis for its denial is that the Champlin home was not Roland Pour, Sr.'s "residence premises," as Liberty Mutual interprets its policy

definition. App. 10; R. Doc. 5, at 4; App. 19; R. Doc. 13, at 4. Liberty Mutual wrote in its denial letter, the "policy provides coverage for the residence premises where you [Roland Pour, Sr.] reside during the policy period. Since you [Roland Pour, Sr.] do not reside at the loss location, your sons and his family would not be considered insureds under the policy." Liberty Mutual's denial letter at R. Doc. 28-7, at 3. Importantly, Liberty Mutual did not deny the claims because the Champlin home was vacant, that the home was unoccupied, or that Roland Pour, Sr. was engaged in a business on the property. R. Doc. 28-6, at 4. The policy, does not require a certain amount of time that Roland Pour, Sr. must be at, or reside, at his Champlin home during the policy period. R. Doc. 28-6, at 32; *See generally* R. Doc. 28-1, 1-55.

3. The terms of Liberty Mutual homeowners' policy.

The declarations page lists Roland Pour as the named insured (this refers to Roland Pour, Sr. notwithstanding the missing suffix). R. Doc. 28-1, at 2-5.

The policy defines a "named insured" as " 'you' and 'your' refer to the 'named insured' shown in the Declarations and the spouse if a resident of the same household." Add. 25; R. Doc. 28-1, at 8. The Liberty Mutual policy defines an "Insured" in relevant part as:

"Insured" means you and residents of your household who are:

a. Your relatives; or

b. Other persons under the age of 21 and in the care of any person named above.

Add. 25; R. Doc. 28-1, at 8.

The policy defines the “residence premises” as:

"Residence premises" means:

a. The one family dwelling, other structures, and grounds; or

b. That part of any other building;

where you reside and which is shown as the "residence premises" in the Declarations.
“Residence premises” also means a two family dwelling where you reside in at least one of the family units and which is shown as the “residence premises” in the Declarations.

Add. 25; R. Doc. 28-1, at 8. The Declarations page, however, does not contain the phrase “residence premises.” R. Doc. 28-1, at 2. Instead, it only identifies the “insured location” as 11637 Nevada Lane, Champlin, MN 55316. Add. 21-24; R. Doc. 28-1, at 2-5.

The policy provides personal property coverage for property “owned or used by an ‘insured’ while it is anywhere in the world.” Add. 25; R. Doc. 28-1, at 9. Under this definition, Liberty Mutual determined that Roland Pour, Sr., the named insured, has personal property coverage, but Kmontee Pour and Roland Pour, Jr. do not have personal property coverage because they are not “insureds” under the

policy. Liberty Mutual further admitted in its answer and memorandum in support of its motion for summary judgment that Roland Pour, Sr. is entitled to coverage under the policy for his personal property. App. 10-11; R. Doc. 5, at 4-5; App. 19-21; R. Doc. 13, at 4-6, R. Doc. 32, at 7 n.5. Liberty Mutual, however, has made no payment for Roland Pour, Sr.'s personal property.

4. Procedural History

The Pours filed this lawsuit against Liberty Mutual on June 6, 2022, alleging that Liberty Mutual breached its contract with the Pours. App. 11-14; R. Doc. 1, at 11-14.

The parties filed cross-motions for summary judgment. R. Doc. 25; R. Doc. 30. The Pours moved for partial summary judgment concerning Liberty Mutual's coverage denial. Liberty Mutual moved for summary judgment on the coverage issue, concerning the structure claim, and the personal property and alternative living expense claims for Kmontee Pour and Roland Pour, Jr.

On March 22, 2024, the Court entered its order granting Liberty Mutual's motion for summary judgment, denying the Pours' motion for partial summary judgment, and dismissing this matter in its entirety. Add. 1-18; App. 28-45; R. Doc. 41, at 1-18. The court entered judgment on March 22, 2024. Add. 19; App. 46; R. Doc. 42, at 1, and then entered an amended judgment on March 25, 2024.

Add. 20; App. 47; R. Doc. 43, at 1. The Pours filed a timely notice of appeal on April 19, 2024. Add. 20; App. 47; R. Doc. 46, at 1.

SUMMARY OF ARGUMENT

Liberty Mutual's interpretation of its definition of "residence premises" cannot serve as the basis to deny essentially all coverage under the policy. Liberty Mutual's definition has no continuing warranty of residence, provides illusory coverage, violates Minnesota statutory law, and prevents insureds from having more than one residence. Because of these issues, there is coverage for the Pours' respective claims.

As to Roland Pour, Sr.'s personal property claim , Liberty Mutual conceded that this claim was covered under the policy. Accordingly, the district court erred in dismissing the entire case with prejudice.

STANDARD OF REVIEW

The legal issue presented to this Court is whether the Pours' claims resulting from the fire are covered under Liberty Mutual's policy. The Court reviews grants of summary judgment *de novo*. *Volk v. Ace Am. Ins. Co.*, 748 F.3d 827, 828 (8th Cir. 2014) citing to *Torgerson v. City of Rochester*, 643 F.3d 1031, 1042 (8th Cir.2011) (en banc) ("The question is whether the record, viewed most favorably to the non-moving party, shows no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law.). The issues here are

contract and statutory interpretation, both of which are reviewed *de novo*. *Volk*, 748 F.3d at 828 citing to *American Family Ins. Co. v. Walser*, 628 N.W.2d 605, 609 (Minn. 2001); *Marvin Lumber and Cedar Co. v. Ppg Industries*, 401 F3d 901, 917 (8th Cir. 2005).

ARGUMENT

The Pours are asking this Court to reverse the district court because Liberty Mutual's policy's definition for "residence premises" does not preclude coverage for each of the Pours' claims. The Minnesota Supreme Court provides clear guidance for interpreting insurance policies, writing:

> The provisions of an insurance policy are to be interpreted according to plain, ordinary sense so as to effectuate the intention of the parties. The policy should be construed as a whole with all doubts concerning the meaning of language employed to be resolved in favor of the insured…The terms of an insurance policy should be construed according to what a reasonable person in the position of the insured would have understood the words to mean rather than what the insurer intended the language to mean.

Canadian Universal Co., Ltd. v. Fire Watch, Inc., 258 N.W.2d 570, 573 (Minn. 1977) (internal citations omitted). Under this standard, Liberty Mutual's policy, viewed in its entirety, provides coverage for Roland Pour, Sr's dwelling and debris removal claim, and the personal property and alternative living expense claims for his sons, Kmontee Pour and Roland Pour, Sr.

1. The policy's "residence premises" definition is not a warranty, but a representation about the Champlin home at the time it is insured.

No Minnesota court has analyzed a residency requirement in a policy definition to decide if it is a warranty or simply a representation for coverage. The Minnesota Supreme Court, however, has analyzed the difference between a representation and a warranty in an insurance policy, supporting the Pours' position that the "where you reside" phrase in Liberty Mutual's definition of "residence premises" is a representation and not an absolute warranty. The district court erred in denying the Pours' motion for partial summary judgment motion.

A. Minnesota case law demonstrates that Liberty Mutual's definition of "residence premises" is not an absolute warranty, but a representation of the when Pour first took out the policy.

The Minnesota Supreme Court in *Aetna Ins Co. v. Grube*, 6 Minn. 32 (Minn. 1861), explains the difference between a representation and a warranty in an insurance contract:

> An *express warranty, * * in the law of insurance*, is a stipulation inserted in writing on the face of the policy, on the *literal* truth or *fulfillment* of which the validity of the entire contract depends. The stipulation is considered to be on the face of the policy, although it may be written in the margin or transversely, or on a subjoined paper referred to in the policy." Angell Ins., § 140 (note 1). A *representation* as distinguished from a warranty in the law of insurance, "is a verbal or written statement made by the assured to the underwriter, *before the subscription of the policy*, as to the existence of some fact or state of facts tending to induce the writer more readily to assume the risk, by diminishing the estimate he would otherwise have formed of it." Angell Ins., § 147. In the law of insurance, a warranty is always part of the contract, a condition precedent upon the fulfillment of which its

> validity depends. A representation, on the other hand, is not part of the contract, but is collateral to it. The essential difference between a warranty and a representation is, that in the former it must be literally fulfilled, or there is no contract, the parties having stipulated that the subject of the warranty *is material*, and closed all inquiry concerning it; while in the latter, if the representation prove to be untrue, still if it is not material to the risk, the contract is not avoided. Angell Ins., §§ 142, 147

Id. at 36-37 (emphasis in original). The Court in *Grube* analyzed language about a description of the property, concluding that the description of the land "is not an absolute warranty that they are stated, but only that they are true so far as the same are known to an applicant and material to the risk, which qualifies the warranty, and gives it the same effect as a representation of the facts would have." *Id.* at 37-38. Here, Roland Pour, Sr. lived in this Champlin home when he applied for his homeowners' policy. R. Doc. 32, at 3; R. Doc. 33-12. Like *Grube,* Pour made a representation at the time he took out the policy that he lived in the home, this was not a warranty that he continue to live in his Champlin home. *Id.* As a result, the definition for "residence premises" cannot prevent the Pours' claims.

Consistent with *Grube*, the Minnesota Supreme Court in *Everett v. Continental Ins. Co.*, 21 Minn. 76 (Minn. 1874), analyzed an insurance policy's description of a thresher, described as "stored in barn on 'Sec. 36, T. 23, R. 28, owned and insured by L. L. Chaffin.'" The insurer denied coverage for the thresher because when it was destroyed by fire it was not in the barn. *Id.* at 77.

The Minnesota Supreme Court rejected the insurer's position, concluding the thresher was covered, even though it was not damaged when in the barn, writing:

> But, whatever might have been the purpose of the location of the machine in the application and policy, there is no ground whatever for contending that it was, in letter or in spirit, a promissory stipulation on the part of the insured, or a condition of insurance on the part of the insurer, that this location should remain unchanged, or, if changed, that, while changed, the insurance should cease or be suspended.

Id. at 79. The Minnesota Supreme Court's reasoning in *Everett*, for personal property, parallels the language and import of Liberty Mutual's definition of "residence premises" as it applies to real property. It is a description of the Champlin home Roland Pour, Sr. insured and where he resided when he applied for the Liberty Mutual policy. The definition is not a promissory stipulation or absolute warranty that Roland Pour, Sr. continue to reside at his Champlin home, rather it is a description to insure it. Likewise, in *Frost's Detroit Lumber Works v. Millers' Mut. Ins. Co.*, 37 Minn. 300, 34 N. W. 35 (Minn. 1887) the Minnesota Supreme Court, applied this principle to real property when an insured property was described as a "saw-mill building" but the building was also used for other purposes. The Court wrote, "the plainer purpose and effect of the term 'saw-mill building' was to describe and distinguish the property insured, not to declare the purposes for which only the mill should be used." *Id.*, 37 Minn. at 305, 34 N. W. at 37.

Under the analysis in *Grube*, *Everett*, and *Frost* and given the lack of Minnesota case law analyzing Liberty Mutual's policy definition of "residence premises." The district court erred when it used liablity cases to analyze whether a named insured is entitled to coverage under the definition of residence premises.. This is not a liability case. Liberty Mutual denied the Pours' first-party property damage claims on the basis that the named insured, Roland Pour, Sr., has no coverage under a policy *in his name*, because he did not "reside" in his Champlin home. In the cases relied on by the district court, the named insured is trying to bring in another person for coverage under the policy. These cases, and the analysis, are inapposite to whether Roland Pour, Sr. as the sole named insured, who returns to his home to stay and visit his family, is entitled to coverage under his own policy for his only home. The district court erred when it did not conclude that the definition of "residence premises" is a description of Roland Pour's home at the time he took out his insurance with Liberty Mutual and therefore he is entitled to coverage.

B. Case law from other jurisdictions have concluded that language similar to that in Liberty Mutual's policy here is a representation about the insured home.

Analyzing similar language to Liberty Mutual's policy, courts in other jurisdictions have concluded that words in a description of the property requiring it be used for a specific purpose, do not serve as conditions or warranties for

coverage because they describe the property insured; and operate like representations in the insurance policy. *Grube*, 6 Minn. 32, 36-37. Given the Minnesota case law above, and the persuasive authority in this section, the Minnesota Supreme Court would likely conclude that Liberty Mutual's policy definition of "residence premises" is a representation and not an absolute warranty. *Integrity Floorcovering, Inc. v. Broan-Nutone LLC*, 521 F3d 914, 917 (8th Cir. 2008) ("if the Minnesota Supreme Court has not spoken on a particular issue, we must attempt to predict how the Minnesota Supreme Court would decide an issue and 'may consider relevant state precedent, analogous decisions, considered dicta ... and any other reliable data.'...").

In *Reid v. Hardware Mut. Ins. Co. of Carolinas*, 252 S.C. 339 (S.C. 1969), the Supreme Court of South Carolina, like *Grube*, wrote:

> Generically, warranties are either affirmative or promissory. An affirmative warranty is one which asserts the existence of a fact at the time the policy is entered into, and appears on the face of said policy, or is attached thereto and made a part thereof. A promissory warranty may be defined to be an absolute undertaking by the insured, contained in a policy or in a paper properly incorporated by reference, that certain facts or conditions pertaining to the risk shall continue, or that certain things with reference thereto shall be done or omitted. 29 Am.Jur., Insurance, Sections 708 and 709. While it is generally recognized that a warranty may be 'promissory' or 'continuing', the tendency is to construe a statement in the past or present tense as constituting an affirmative rather than a continuing warranty. Thus, a description of a house in a policy of insurance, as 'occupied by' the insured, is a description merely and is not an agreement that the insured should continue in the occupation of it…A statement in an insurance policy that the property is occupied by the insured as a

> dwelling for himself and family, is not a warranty that it shall continue to be so occupied by is only a warranty of the situation at the time the insurance is effected.

Id. at 346-47. Like, the "occupied by" language in *Reid*, the "where you reside" language in Liberty Mutual's policy is a description of the Champlin home Roland Pour, Sr. insured, it is not a continuing warranty, but a warranty of the situation of the home when Pour applied for his insurance policy. *Id.; Grube*, 6 Minn. 32, 36-37. In *The German Ins. Co. v. Russell*, 65 Kan. 373, 374-75 (Kan. 1902), the Supreme Court of Kansas analyzed a provision of an insurance policy requiring that a home be occupied by the insured and his family. The insured rented the home to a tenant when it was destroyed by fire. The insurance company argued the insured violated the policy because the insured and his family no longer resided in the home. *Id.* The Kansas Supreme Court rejected the insurance company's argument, writing, "The statement in the application that the property was then occupied by the assured as a dwelling for himself and his family is not a warranty that it shall continue to be so occupied; it is only a warranty of the situation at the time the insurance is effected." *Id.* at 376.

In *Rush v. Harford Mut. Ins. Co.*, 652 F. Supp. 1432 (W.D. Va. 1987), the district court analyzed a provision stating, "We cover the dwelling on the described location, used principally for dwelling purposes." *Id.* at 1433. The insured began renting part of the dwelling for business purposes; thereafter the dwelling was

destroyed by fire. *Id.* The insurance company denied coverage because the dwelling was no longer being used for "dwelling purposes" at the time of the fire. The Court wrote that the only issue it needed to determine for coverage was whether "the building was being used as a dwelling at the time of the issuance of the policy." *Id.* at 1434. Using a framework similar to that described in *Grube*, the district court wrote:

> The language in the policy stating "used principally for dwelling purposes" is not a warranty but a representation. The distinction is important because a warranty in a policy acts as a condition and failure to abide by the condition precludes any recovery while a representation is merely a descriptive term in a policy and failure to conform to the representation does not preclude recovery.

Id. at 1434.

In *O'Niel v. Buffalo Fire Ins. Co.*, 3 N.Y. 122 (N.Y. 1849) the New York Court of Appeals, addressed a provision in an insurance policy requiring that a tenant occupy a home. The tenant moved out, and three weeks later fire destroyed the home. *Id.* at 123 The insurance company argued that the home was vacant because the tenant no longer occupied it. *Id.* The New York Court of Appeals rejected this argument writing:

> Assuming there was a written application by the plaintiff describing the house as occupied by [the tenant], the description of the policy must be regarded as a warranty of the fact that he was the occupant at the date of the policy, and nothing more. The description imports nothing more...If it had been the intention of the parties to make it a condition that he should remain the occupant during the term of the insurance, it would have been easy to say so, and there is no good

> reason in this case for supposing the parties intended what they have not expressed.

Id. See also, *Joyce v. Maine Ins. Co.*, 45 Me. 168, 168 (1858) ("The house insured is represented in the policy as occupied in part by William H. D. Joyce. This cannot be an agreement that he should continue in the occupation, but it is merely descriptive of the house, such as is common in a deed of conveyance.")

In *Insurance Co. of North American v. Howard*, 679 F.2d 147 (9th Cir. 1982), the court analyzed language requiring the home to be "owner occupied" and wrote:

> The provision describes the residence at the time of the issuance of the policy. It contains a representation that the insured is the homeowner and occupant and that the insurance is not being purchased by a third party. It does not impose a condition requiring the policy holder to continue to live at the residence.

Id. at 147. In *Howard* the court interpreted the state law as it believed the Oregon Supreme Court would apply it; relying on *Reid*, the court wrote:

> If an insurance company wishes to have a homeowner's policy terminate upon rental of his home, it must so provide explicitly and unambiguously in the policy of insurance, and that a mere statement in the policy that he is the owner and occupant is wholly insufficient for this purpose.

Id. at 149. In *Alvarez v. Country Mut. Ins. Co.*, No. 19-35790 (9th Cir. Jan. 13, 2021) (not for publication), the court concluded that policy language defining the residence premises as the "one or two family dwelling where 'you' principally

reside…amounted to a mere description of the covered premise rather than an agreement that the insured would continue to reside in the home." *Id.* at p. 3.

Here, Liberty Mutual's definition, including the "where you reside" language is not a condition for coverage, but a description of the property insured. Had Liberty Mutual wanted the "where you reside" language to be a condition that prevented coverage, it should have included it explicitly in the policy. *Frost's Detroit*, 37 Minn. at 305, 34 N.W. at 38 ("This term of description occurs only in that part of the policy employed to designate the property insured, and the amount of insurance upon it. It is used in the application only in the same connection.").

C. Liberty Mutual's uses of the phrase "where you reside" in its policy demonstrates the phrase, when used in the "residence premises" definition, is not a warranty or condition for coverage.

Liberty Mutual uses the phrase "where you reside" inconsistently within its policy. Liberty Mutual's policy distinguishes between a description of the policy and a condition for coverage. In COVERAGE D – Loss of Use, Liberty Mutual's policy provides:

> **1.** If a loss covered under this Section makes that part of the *"residence premises" where you reside* not fit to live in, we cover, at your choice, **either of the following. However**, if the "residence premises" is not your principal place of residence, we will not provide the option under paragraph b. below.
>
> a. **Additional Living Expense,** meaning any necessary increase in living expenses incurred by you so that your household can maintain its normal standard of living;

or

b. **Fair Rental Value,** meaning the fair rental value of that part of *the "residence premises" where you reside* less any expenses that do not continue while the premises is not fit to live in.

(bold in original; italics added); Add. 27; R. Doc. 28-1, at 10. This section of the policy twice follows the defined phrase "residence premises" with the phrase "where you reside." Since the definition of "residence premises" already includes the phrase "where you reside" repeating it in this section would be unnecessary. However, under Minnesota law, all terms of an insurance policy must be given meaning. *Casey v. Brotherhood of Locomotive Firemen, Etc.*, 197 Minn. 189, 193 (Minn. 1936) (when interpreting contract provisions, "[w]e must give effect to the plain language of the rule and must not give it an interpretation which would leave part of the language unnecessary and meaningless"); *accord Econ. Premier Assurance Co. v. W. Nat'l Ins. Co.*, 839 N.W.2d 749, 756 (Minn. App. 2013) (when interpreting an insurance policy, Minnesota courts follow "the rule to interpret contract language to give effect to all terms."). Thus, using "where you reside" to follow a defined term, which already incorporates the phrase, is not a mere redundancy and must have meaning.

In COVERAGE D, there are several qualifications for coverage. First, the phrase "where you reside" is a condition for coverage for the insured to recover

additional living expenses or fair rental value. The policy then again uses the phrase "where you reside" as a condition to recover fair rental value. Add. 27; R. Doc. 28-1, at 10. Next, the policy distinguishes the phrase "residence premises," by allowing an insured to recover the fair rental value only if the "residence premises" is a principal residence, not a secondary residence. *Id.* That the policy differentiates between "residence premises" and " 'residence premises' where you reside" and "principal residence" and secondary homes shows the coverage of Liberty Mutual's policy is broader than Liberty Mutual interprets it in this case.

The phrase "where you reside" as used in definition of "residence premises" is a description of the property. Put another way, it is a representation, not an absolute warranty or condition for coverage. *Grube*, 6 Minn. 32, 36-37. If the phrase "where you reside" was a condition for coverage within the definition of "residence premises," then the use of "where you reside" following "residence premises" in COVERAGE D would be unnecessary and meaningless. Every phrase in an insurance policy must be given meaning. The only reasonable interpretation of the different uses of "where you reside" is that in the definition the phrase is a description, and when the phrase is used in the coverage section to exclude coverage, it is a condition to coverage.

Another section in Liberty Mutual's policy supports the Pour's interpretation. In COVERAGE A – Dwelling, the policy states that "We

Cover…the dwelling on the 'residence premises' shown in the Declarations, including structures attached to the dwelling…" Add. 25; R. Doc., at 28-1, at 8. The phrase "where you reside" is not repeated in COVERAGE A. Had Liberty Mutual intended the "where you reside" language to be a condition or exclusion for the dwelling coverage, it could have done so by using the language it used in COVERAGE D, but it did not. *Travelers v. Bloomington Steel*, 718 N.W.2d 888, 895 (Minn. 2006) ("policy exclusions are strictly construed against the insurer, and [insurance company] could have unilaterally included provisions in its policies that would have unambiguously excluded coverage"); *O'Niel*, 3 N.Y. at 123. That Liberty Mutual did not include "where you reside" as a condition for coverage in COVERAGE A, like in COVERAGE D, indicates that it did not intend the phrase "where you reside" in the definitions section to be a condition for coverage, but merely a description of the property.

Liberty Mutual's finds no support for its denial of coverage of Roland Pour, Sr.'s fire loss within the definition "residence premises." The district court's judgment should be reversed.

2. Liberty Mutual's policy definition for "residence premises" provides illusory coverage.

Notwithstanding the above, Liberty Mutual's definition of the phrase "residence premises" does not provide coverage for anything under the policy. The policy states that the "residence premises means….where you reside and which is

shown as the residence premises in the Declarations." Add. 25; R. Doc. 28-1, at 8. The phrase "residence premises," however, is not used in the Declarations. As written, the definition of "residence premises" provides no coverage for the Champlin home no matter who resides there or how long they reside there because the Champlin home is not listed as the "residence premises" on the Declarations page. Add. 21-24; R. Doc. 28-1, at 1-5; *Jostens, Inc. v. Northfield Ins. Co.*, 527 N.W.2d 116 (Minn. App. 1995) ("The illusory coverage doctrine, like reasonable expectations, operates to qualify the general rule that courts will enforce an insurance contract as written.").

The court in *Jostens*, wrote concerning the application of the illusory coverage doctrine, ("We believe that the doctrine of illusory coverage is best applied…where part of the premium is specifically allocated to a particular type or period of coverage and that coverage turns out to be functionally nonexistent." *Id.* 527 N.W.2d at (Minn. App. 1995) citing *Glarner v. Times Ins.*, 465 N.W.2d 591 (Minn. App. 1991) and *Sawyer v. Midland Ins.*, 383 N.W.2d 691 (Minn. App. 1986). Here, Roland Pour, Sr. paid insurance premiums for dwelling coverage which by the terms of Liberty Mutual's policy turned out to be functionally nonexistent based on Liberty Mutual's definition of "residence premises."

Because Liberty Mutual is seeking to prevent almost all the coverage under the policy on the definition of "residence premises," the definition must be

accurate and correctly delineate the terms of coverage. *Bloomington Steel*, 718 N.W.2d at 895 ("insurance contracts are contracts of adhesion…[,] policy exclusions are strictly construed against the insurer") (internal citation omitted).

Pour noted this the discrepancy in its opening memorandum. R. Doc., 27 at 6. The district court observed this discrepancy at oral argument, and briefly noted it in a footnote of its order. Add. 3; App. 30; R. Doc. 4, at 3. There was no elaboration in the briefing or oral argument about it. This Court, however, should exercise its discretion to consider this argument in this appeal. This is a purely legal issue, involving interpretation of the policy language and requires no additional factual development because the facts are largely undisputed. Last, a determination that the definition of "residence premises" is illusory, as a matter of law, would affect the outcome of this case because the issues in this appeal revolve around that definition. *Universal Title Ins. Co. v.* U.S., 942 F.2d 1311, 1314-15 (8th Cir. 1991). The Pours' respectfully request the Court to consider this argument and reverse the district court's order.

3. Liberty Mutual's interpretation of its policy prevents Roland Pour, Sr. from having more than one residence.

While a person can have only one domicile, a person may have multiple residences for insurance purposes. *American Family Mut. Ins. Co. v. Theim*, 503 N.W.2d 789, 790-91 (Minn. 1993). Indeed, Minnesota law allows an insured to own more than residence. *Mut. Serv. Cas. Ins. Co. v. Olson*, 402 N.W.2d 621, 624

(Minn. App. 1987) ("As a general rule, while a person can have only one domicile, he can have more than one residence."); *Vang v. Ill. Farmers Ins. Co.*, A09-1249 at p. 5 (Minn. App. 2010) (unpublished) ("a person may be a resident in more than one household for insurance purposes."). Liberty Mutual, however, conflates domicile and residence in its interpretation of "residence premises" in violation of this clear statement of law.

The Pours' position, despite Liberty Mutual's statements to the contrary, is that Liberty Mutual's *interpretation* of its policy prevents Roland Pour, Sr. from having more than one residence. Roland Pour, Sr. has a residence in Minnesota, which he owns, and a residence in Georgia, which his wife owns. Roland Pour, Sr. would return to his home in Minnesota to be with his family. No criteria is detailed in the policy to explain what Liberty Mutual requires for an insured to "reside" in a "residence premises" especially given provisions within the policy that distinguish between principal residences and secondary residences. Add. 27; R. Doc. 28-1, at 10. Instead, Liberty Mutual ordains an entire exclusion from coverage, for all but named insured's personal property, based on a three word phrase – "where you reside" – in the definitions section. When Liberty Mutual's interpretation of its policy is followed to its logical conclusion, Roland Pour, Sr. is prevented from coverage for this Champlin home and cannot have more than one home.

Liberty Mutual's policy distinguishes between principal and secondary homes, as shown by COVERAGE D – Loss of Use and COVERAGE C – Personal Property.[3] Add. 26-27; R. Doc. 28-1, at 9-10. Liberty Mutual's policy contemplates situations where the insured has multiple residences, and so appropriately states. *Casey*, 266 N.W. 737 at 739, 197 Minn. at 193; *Econ. Premier*, 839 N.W.2d at 756. Liberty Mutual's denial of the Pours' claims fails to consider this policy language.

The policy definition of "residence premises," does not differentiate between principal and secondary residences. Liberty Mutual's interpretation requires the Court to read the word "principal" into its definition of "residence premises," when no such requirement exists. As a result, Liberty Mutual's interpretation of its policy affects anyone with multiple homes. Insureds with more than one residence do not have coverage as Liberty Mutual interprets the term in this case. Especially with no express guidance on what Liberty Mutual requires to reside at a "residence premises." "Snowbirds," Minnesotans who own homes here and in warmer climates like Arizona and Florida, could not insure either home under Liberty Mutual's interpretation because they do not continuously reside in either location.

[3] COVERAGE C provides coverage for "[p]ersonal property in a newly acquired principal residence is not subject to [a limit on personal property] for the 30 days from the time you begin to move to the property there." Add. 26; R. Doc. 28-1, at 9.

So, if the Minnesota residence is destroyed by fire while the insured is in Florida, under Liberty Mutual's reasoning here, the Minnesota residence is not covered by the policy because at the time of the fire the insureds were not residing in Minnesota. This clearly violates the basic principle that an insured can have more than one residence and the Minnesota public policy that "insurance is vitally affected with the public interest" because it essentially negates insurance on multiple homes. *Donarski v. Lardy*, 88 N.W.2d 7, 12 (Minn. 1958).

Liberty Mutual's policy does not state any length of time or number of days which an insured must "reside" at his home. R. Doc. 28-6, at 32. Also, nothing in the policy requires Roland Pour, Sr. to give notice to Liberty Mutual if there is a change in his residency or occupancy. *See* R. Doc. 28-1. As a result, Liberty Mutual is free to deny claims for all its insureds based on arbitrary time requirements for cabin owners and "snowbirds." *Canadian Universal Co.* 258 N.W.2d at 573. *See* R. Doc. 28-1; *Reid*, 252 S.C. at 347; *Howard*, 679 F.2d at 149. Accordingly, this Court should reject Liberty Mutual's interpretation of its definition of "residence premises" because the interpretation prevents an insured from having more than one residence.

4. Liberty Mutual's interpretation of its policy impermissibly reduces coverage, violating the Minnesota standard fire insurance policy, Minn. Stat. §65A.01.

No Minnesota state court has addressed whether a residence requirement, like Liberty Mutual's use of phrase the "where you reside," violates the Minnesota standard fire insurance. Minn. Stat. §65A.01. Courts in other states, however, analyzing residency restrictions with identical language in their respective states' standard fire insurance policies have concluded that residency restrictions violate the standard fire policy. *Integrity Floorcovering*, 521 F3d at 917. This case is no different, and the judgment in the district court should be reversed.

A. The Minnesota standard fire policy is based on public policy and sets the minimum amount of coverage for fire insurance in the state.

The Minnesota standard fire insurance policy is founded on public policy, incorporated into every insurance policy in the state, save exceptions not present here, provides the minimum amount of coverage for insureds, and is broadly construed. Minn. Stat. §65A.01 subd. 1; *Else v. Auto-Owners Ins. Co.*, 980 N.W.2d 319, 324 (Minn. 2022); *Poehler v. Cincinnati Ins. Co.*, 899 N.W.2d 135, 145 (Minn. 2017); *Watson v. United Services Auto. Ass'n*, 556 N.W.2d 683, 690 (Minn. 1997); and *Heim v. Am. Alliance Ins. Co. of N.Y.*, 180 N.W. 225, 226-227 (Minn. 1920).

The Minnesota Supreme Court does not shy away from concluding that insurance policies violate the Minnesota standard fire insurance policy. *Watson*,

566 N.W.2d at 692 ("[w]e hold that, to the extent that USAA's policy purports to exclude innocent co-insured spouses from coverage, it must be reformed to comply with the Minnesota standard fire insurance policy."). It the public policy of Minnesota to have homes insured. *Donarski*, 88 N.W.2d at 11-12 ("[i]t is our further opinion that, if this provision were not so interpreted but interpreted as contended by the company, it would be a violation of the public policy of this state. There can be little doubt that insurance is vitally affected with the public interest."). Liberty Mutual's policy violates this essential public policy.

The Minnesota standard fire insurance policy provides a list of restrictions insurance companies may use. Minn. Stat. §65A.01, subd 3. One restriction states that the "company shall not be liable for loss occurring…(b) while the described premises, whether intended for occupancy by owner or tenant, are vacant or unoccupied beyond a period of 60 consecutive days."

Liberty Mutual's interpretation of "where you reside" within its definition of "residence premises" violates Minn. Stat. §65A.01, subd 3, because the interpretation requires the named insured, Roland Pour, Sr., to continuously live at the Champlin home at the time of loss. Here, there is no dispute that Pour's Champlin home was not vacant or unoccupied. R. Doc. 28-6, at 4. To be clear, despite Liberty Mutual arguing it does not require continuous occupation by the named insured for covered, the impact of Liberty Mutual's arguments and its

interpretation of the phrase "where you reside," essentially requires continuous occupation by Roland Pour, Sr., impermissibly providing less coverage than Minn. Stat. §65A.01, subd 3. Accordingly, Liberty Mutual's policy violates Minn. Stat. §65A.01 and cannot serve as the basis to deny the Pours' claims here. *Krueger v. State Farm Fire and Cas. Co.*, 510 N.W.2d 204 (Minn. App. 1993) ("[b]y using the standard policy against the insured to impose a vacancy clause not found in the policy, the trial court used the statute as a sword for the insurer, rather than a shield for the insured. This remedial statute guarantees coverage that will supersede any attempt to limit coverage to less than the statutory minimum.").

Roland Pour, Sr. properly insured his home and followed the policy guidelines. He owned no other homes. App. 8; R. Doc. 5, at 8; R. Doc. 28-2, at 6. His Champlin home was neither vacant nor unoccupied. R. Doc. 28-6, at 4. R. He can have more than one residence; his policy distinguishes both principal and secondary residences. Add. 27; R. Doc. 28-1, at 10. He was not renting his Champlin home. R. Doc. 28-2, at 4.[4]

All fire insurance policies issued in the state must have the minimum protections afforded by the Minnesota standard fire insurance policy. *Else*, 980 N.W.2d at 324. Thus, the only reasonable conclusion to be drawn from Liberty

[4] Regardless, the Minnesota standard fire insurance policy also applies to landlord policies. Minn. Stat. §65A.01.

Mutual's denial of the Pours claims is that its *interpretation* of its policy effectively requires continuous residency by the name insured for coverage and this violates Minnesota law. Minn. Stat. §65A.01 subd. 3; *see also FBS Mortgage. v. State Farm Fire & Cas. Co.*, 833 F. Supp. 688, 695 (N.D. Ill. 1993); and *Dixon v. First Premium Ins. Grp.*, 934 So. 2d 134 (La. App. 2006).

B. Courts in other jurisdictions analyzing provisions the same as the Minnesota standard fire insurance policy have concluded that residency requirements, like that in Liberty Mutual's policy, violate the standard fire insurance policy.

Analyzing an identical provision in the Illinois standard fire insurance policy, 215 ILCS 5/397, to the Minnesota standard fire insurance policy, the district court in *FBS Mortgage* concluded that a residency requirement in the insurance company's policy violated the state's standard fire policy, writing:

> State Farm's proposed interpretation of the Homeowner's Policy denies coverage in the absence of continuous, physical inhabitation of the Insured Premises by the Named Insured at the time of loss. Hence, State Farm broadens the Standard Policy's exclusions by requiring physical occupation of the Insured Premises for a period of less than 60 days before the loss. In doing so, State Farm unlawfully compromises the Standard Policy by diminishing the coverage it provides to achieve uniformity and concurrence of contract.

833. F. Supp. at 695. Like in *FBS*, Liberty Mutual's interpretation of its "residence premises" definition violates Minn. Stat. §65A.01, subd. 3, requiring Roland Pour, Sr. as the named insured, to continuously live at his Champlin home. This is a

stricter requirement than the Minnesota standard fire insurance policy, which requires that the home be occupied.

The Louisiana Court of Appeals in *Dixon v. First Premium Ins. Grp.* analyzed a definition of "residence premises" identical to the definition in Liberty Mutual's policy, *Id.* at 139, and language in Louisiana standard fire insurance policy, LSA-R.S. 22:1311, identical to the Minnesota standard fire insurance policy, writing:

> Louisiana law statutorily incorporates these standard policy provisions in all fire insurance policies issued in the State of Louisiana. Thus, a sixty-day grace period is statutorily mandated wherein an insurance company is effectively prevented from terminating coverage unless the insured property remains vacant or unoccupied beyond a period of sixty consecutive days. Moreover, if the hazard is increased by any means within the control or knowledge of the insured, an insurance company can deny coverage for any loss occurring during such a period.
> …
> Reviewing the Copenhagen policy and considering the pertinent provisions of the standard fire insurance policy form that must be incorporated therein, we see no valid basis for Copenhagen to deny coverage. Based on the unique facts and circumstances of this case, we conclude that the Dixons' actions in renting the property to Mr. Route was not a "violation of the residency requirement" of the policy as is argued by Copenhagen on appeal. Accordingly, we find no legal error in the trial court's decision that the Copenhagen policy provided coverage to the Dixons for their loss.

Dixon, 934 So.2d at 140-41. The Pours' case is clearer, and no less unique than *Dixon*. Roland Pour, Sr. never rented his Champlin home and his home remained occupied for at least sixty days before the September 2021 fire – his sons were

living there. Liberty Mutual breached its contract when it denied the claims based on its incorrect definition of "residence premises."

The Minnesota standard fire insurance policy, like the Illinois and Louisiana standard fire insurance policies, all require occupancy of the insured home, not continued residency. Minn. Stat. §645.17(2) ("the legislature intends the entire statute to be effective and certain."); *Borten v. Commissioner of Public Safety*, 610 N.W.2d 703, 706 (Minn. App. 2000).

Accordingly, the district court's order should be reversed because Liberty Mutual's interpretation of "residence premises" imposes a residency requirement in violation of the Minnesota standard fire insurance policy.[5]

5. Kmontee Pour and Roland Pour, Jr. are entitled to coverage for their personal property and alternative living expense claims.

Kmontee Pour and Roland Pour, Jr. were insureds under Liberty Mutual's policy.[6] Add. 25; R. Doc. 28-1, at 8. Minnesota courts recognize three main factors

[5] If there is any doubt concerning whether the Minnesota Supreme Court would conclude that residency restrictions violate the Minnesota standard fire insurance policy, then this Court should certify that issue to the Minnesota Supreme Court for determination. *Kaiser v. Memorial Blood Center of Minneapolis, Inc*, 938 F.2d 90, 93 (8th Cir. 1991); Minn. Stat. §480.065.

[6] Liberty Mutual's September 15, 2021, denial letter states, "your sons and his family would not be considered insured's under the policy. Therefore, we must deny your claim for dwelling, other structure, and *additional living expense* coverage." R. Doc. 28-7, at 3. The denial, however, did not expressly deny the personal property claims for Kmontee Pour and Roland Pour, Jr.

when determining whether a family member is a member of the named insured's household:

> (1) living under the same roof;
>
> (2) in a close, intimate and informal relationship; and
>
> (3) where the intended duration is likely to be substantial, where it is consistent with the informality of the relationship, and from which it is reasonable to conclude that the parties would consider the relationship ". . . in contracting about such matters as insurance or in their conduct in reliance thereon."

Firemen's Ins. Co. of Newark, N.J v. Viktora, 318 N.W.2d 704, 706 (Minn. 1982); *McGlothlin v. Steinmetz*, 751 N.W.2d 75, 83 (Minn. 2008) ("Our cases reflect that we utilize the factors to inform the analysis of the residency question, but we do not apply them rigidly.").

The district court upheld Liberty Mutual's denial of Kmontee Pour and Roland Pour, Sr.'s claims based on the first element, concluded the second element was satisfied, and did not address the third element. App. 39 and 44; Add. 12 and 17; R. Doc 41, at 12 and 17. The district court erred in concluding that Kmontee Pour and Roland Pour, Sr. were not residents of Roland Pour, Sr.'s household.

At the outset, Minnesota cases analyzing whether a family member is a resident of the named insured's household typically arise in a liability context where there is no dispute that the named insured is covered under the policy. Consequently, the cases focus on whether family members are entitled to coverage

under the policy definition of "insured". E.g. *Viktora*, 318 N.W.2d 704. This is not a liability case and Liberty Mutual denied coverage for Roland Pour, Sr., the named insured. Without a named insured entitled to coverage, there can be no insureds under the policy. Thus, it follows that if Roland Pour, Sr. is covered as a "named insured" under Liberty Mutual's policy, his Champlin home is a "residence premises" and therefore, Kmontee Pour and Roland Pour, Jr., are also entitled to coverage.

For element one, the district court, after incorrectly determining that Roland Pour, Sr.'s Champlin home was not a "residence premises" the court determined that "because Pour and his sons 'did not dwell together as a family under the same roof,' they were not residents of the same 'household." App. 44; App. 17; R. Doc. 41, at 18 citing to *Viktora*, 318 N.W.2d at 707. In *Skarsten v. Dairyland Ins. Co.*, 381 N.W.2d 16 (Minn. App. 1986), however, the Minnesota court of appeals concluded that even though the named insured and his adult daughter did not live under the same roof, the adult daughter was considered an insured under the policy definition of "resident or member of the same household" and they "enjoyed an 'intimate informal family relationship indicative of a legal residency.'" *Id.* 318 N.W.2d at 19. The same occurs in the Pour household.

Indeed, Minnesota courts also recognize that a relative can reside in more than one household. *Thiem*, 503 N.W.2d at 790-791. Given that Minnesota courts

recognize informal family relationships as sufficient to establish an insured's status and that both insureds and named insureds can have more than one residence, it follows that if Roland Pour, Sr. is entitled to coverage under the Liberty Mutual policy, so are his family members, Kmontee Pour and his three children, and Roland Pour, Jr., who were living at the Champlin home.

Concerning the third element, the duration with which the Pours conducted themselves is consistent with their informal relationship. Roland Pour, Sr. lived in the home with Kmontee Pour and Roland Pour, Jr. before moving to Georgia to be with his wife. R. Doc. 28-2, at 3. There is no doubt, that when Roland Pour, Sr., Kmontee Pour, and Roland Pour, Jr. lived together at the Champlin home, Kmontee Pour and Roland Pour, Jr., were insureds under the Liberty Mutual policy. In fact, the Pours' conduct is in reliance on this proposition. Kmontee Pour and Roland Pour, Jr. continued to live in their father's house, and keep their personal property within it. Except for Roland Pour, Sr. not being at his Champlin home as often, nothing materially changed from 2019 to the date of the fire regarding how the Pour's conducted themselves based on their familial relationship. It was reasonable for the Pours to conclude that Kmontee Pour and Roland Pour, Jr. would be considered insureds under Liberty Mutual's policy.

6. The district court erred when it dismissed Roland Pour, Sr.'s personal property claim because Liberty Mutual has conceded coverage for the claim, but has not yet issued payment on it.

There is no dispute that coverage exists for Roland Pour, Sr.'s personal property and that Liberty Mutual has not yet paid his claim. Liberty Mutual acknowledged coverage in its answer and its memorandum in support of its motion for summary judgment in the district court. App. 10-11; R. Doc. 5, at 4-5; App. 19-21; R. Doc. 13, at 4-6. R Doc. 31, at 7 n 5. The district court also noted this fact in its order. App. 31; Add. at 4; R. Doc. 41, at 4.

Liberty Mutual's policy also provides personal property coverage for property "owned or used by an 'insured' while it is anywhere in the world." Add. 26; R. Doc. 28-1, at 9. Under this definition, Liberty Mutual determined that Roland Pour, Sr., the named insured, was entitled to coverage, but his sons were not. *Canadian Universal Co.*, 258 N.W.2d at 573. To date, no payment has been issued on Roland Pour, Sr.'s personal property claim.

It was plain error for the district court to dismiss Roland Pour, Sr.'s claim because Liberty Mutual admitted coverage for it, but has issued no payment.

CONCLUSION

For the foregoing reasons, the Pours respectfully request that the judgment of the district court be reversed in its entirety.

Dated: June 11, 2024

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CERTIFICATE OF COMPLIANCE WITH RULE 32(a)

Pursuant to Rule 32(a)(7)(B) of the Federal Rules of Appellate Procedure the counsel for appellants, Roland Pour, Sr., Kmontee Pour, and Roland Pour, Jr., certifies that this brief complies with the requirements of Fed. R. App. P. 32(a)(7)(B) in that it is printed in a 14-point, proportionately spaced typeface (Times New Roman) utilizing Microsoft Office Word 365 and contains 9,546 words, including headings, footnotes and quotations, but excluding the cover page, disclosure statement, table of contents, table of authorities, statement regarding oral argument, certificate of counsel, proof of service, and the signature block.

Under 8th Cir. R. 28A(h)(2) counsel also certifies that this brief has been scanned for viruses and is virus free.

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CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that on June 11, 2024, he electronically filed the brief of appellants, Roland Pour, Sr., Kmontee Pour, and Roland Pour, Jr., with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the CM/ECF system. He certifies that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

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