IN THE SUPREME COURT OF IOWA

No. 23-0156

HEARTLAND CO-OP,
Plaintiff-Appellant

vs.

NATIONWIDE AGRIBUSINESS INSURANCE CO.,
Defendant-Appellee

APPEAL FROM THE IOWA DISTRICT COURT
FOR POLK COUNTY
THE HONORABLE JEFFREY D. BERT

Application for Further Review by
Plaintiff-Appellant Heartland Co-Op
Iowa Court of Appeals decision filed on June 5, 2024

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Questions Presented for Further Review

I. Heartland's insurance policy with Nationwide has limits of $3,000,000 "for any one loss" because of "'business' . . . interrupted by direct physical loss or damage to property at a 'covered location.'" Many of Heartland's covered locations across Iowa were physically damaged by windstorms on August 10, 2020. Heartland claims the $3,000,000 limit applies to any business income and extra expense loss at a covered location that was damaged. Is Heartland's "per loss" interpretation of the policy's limits for business interruption coverage reasonable?

II. If the $3,000,000 policy limits for earnings and extra expense coverage are determined to be for a per peril or per occurrence combined loss, as the district court concluded, is there a genuine dispute of material fact as to whether there was more than one windstorm (i.e., more than one covered peril or occurrence) that physically damaged Heartland's covered property on August 10, 2020?

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Statement Supporting Further Review

The court of appeals' dissent stated that "the parties have not directed us to any cases deciding the precise issue here–and I am unaware of any." *Slip op.* at 16. The supreme court should provide guidance interpreting the meaning of the phrase "any one loss" for businesses which have earnings and extra expense coverage for more than one covered location. The supreme court's decision on further review may likely be a seminal case on these fundamental questions.[1] *See* Iowa R. App. P. 6.1103(1) (grounds for further review include that "[t]he court of appeals has decided . . . an important question of law that has not been, but should be, settled by the supreme court" and that "[t]he case presents an issue of broad public importance that the supreme court should ultimately determine").

On further review the supreme court should also revisit their only decision which touches on the relationship between earnings and extra expense coverage (also known as business interruption or use and occupancy coverage) and the locations insured. *See Steel Prods. Co. v.*

[1] On the day the court of appeals decision was filed, it drew the attention of a national business insurance publication. https://www.businessinsurance.com/article/20240605/NEWS06/912364876/Divided-Iowa-panel-upholds-Nationwide%E2%80%99s-$3M-payment-for-derecho-damage-Heartland.

Miller's Nat'l Ins. Co., 209 N.W.2d 32, 38 (Iowa 1973). The majority court of appeals opinion makes no mention of and is contrary to the *Steel Products* case. Iowa R. App. P. 6.1003(1) (grounds for further review include that "[t]he court of appeals has entered a decision in conflict with a decision of the supreme court or the court of appeals on an important matter"). The dissent's interpretation by contrast is "consistent with our supreme court's observation that business-interruption coverage is fundamentally 'tied to the insured premises.'" *Slip op.* at 17 (citing *Steel Prods.*, 209 N.W.2d at 38).

The dissent's interpretation that "any one loss" is determined by each covered location is reasonable and, under the rules for interpreting insurance policies, is the interpretation that should be given Nationwide's policy. The majority's interpretation also *directly conflicts* with the position that Nationwide has taken throughout these proceedings and with the ruling of the district court. The conflicts between approaches taken by the court of appeals and Nationwide are discussed in the Argument section of the Application.

Finally, and in the event that the Court adopts Nationwide's "per occurrence" interpretation of the earnings and extra expense limit,

Nationwide has the burden of proving as a matter of law that there was only one occurrence. Unless that burden is met by Nationwide, the Court should not affirm the grant of summary judgment. There are factual issues for trial. Heartland has neither intentionally nor voluntarily relinquished this issue on appeal, and there is no well-founded reason for deeming otherwise.

Argument

I. What Does "Any One Loss" Mean?

The dissent proposed a reasonable interpretation of the earnings and extra expense limit. It applies to each loss that may be shown by the evidence to have been suffered by Heartland at a covered location. This interpretation is consistent with the policy language, the *Steel Products* case, and the purpose of business income insurance. The Court should grant further review and adopt the dissent's interpretation.

In all material respects, the interpretation of the earnings and extra expense limit adopted by the dissent is the same as the one proposed by Heartland in the district court and on appeal. This interpretation allows Heartland to prove at trial that it suffered more than one business interruption loss at each covered location which sustained physical damage; and that each business interruption loss is subject to a $3,000,000 limit. It is a reasonable interpretation, as the dissent in the court of appeals opinion found. Heartland is required to show nothing more for the Court on further review to accept it as the interpretation that governs the limit. *A.Y. McDonald Industries, Inc. v. Insurance Co. of North America*, 475 N.W.2d 607, 619 (Iowa 1991) (if

there is ambiguity in the policy language, it must be interpreted in favor of the insured).

Heartland owns and operates a number of business locations across Iowa and in other states, with each separate location being a "covered location" under the Policy. (App. 16, ¶¶ 5–6.) Heartland accounts for its business operations, including profit and loss, separately at each of these covered locations. (App. 222.) The August 2020 derecho physically damaged many covered locations at different times during the day. (App. 644–54.) This fact is relevant for purposes of starting the 72 hour "restoration period" for net earnings loss and the immediate start of coverage for extra expense. (App. 377.) In addition, repairs were made and operations resumed at different times for the various covered locations that were damaged. (App. 636–39). These facts are relevant for purposes of ending the applicable "restoration period" for a particular damaged location. (App. 377.)

Heartland and Nationwide agree on several points concerning the Policy limits. The parties agree that the Income Coverage Part imposes a *per loss* limit: not a *per peril* limit, as the district court concluded. (*Compare* App. 136–37, *with* App. 19 ¶ 20*, and* App. 222.) They agree

that the $3,000,000 Earnings and Expense limits in the Schedule of Locations apply "for any one loss": not "for all combined loss," as the district court held. (*Compare* App. 139, *with* App. 22 ¶ 33, *and* App. 623.) Finally, Heartland and Nationwide agree that the limits are not an aggregate limit for the Policy Period: this means that there could potentially be more than one loss within the Policy Period to which a separate $3 million limit might apply. (App. 64 ("Nationwide has never taken the position that the earnings and extra expense coverage limit applies to all losses during a given policy period.").) The reasoning of the district court, which was used to support its holding, is inconsistent with the parties' agreement on these points.

The court of appeals majority wrote: "we read 'any one loss' to mean the aggregate loss experienced by Heartland as a whole across 'all covered locations.'" *Slip op.* at 7; *see also slip op.* at 10. This is also inconsistent with the parties' understanding of the earnings and extra expense limit. The words "any one loss" and "aggregate loss" are facially inapposite terms. Equating the terms requires an interpretive stretch that is not reasonable and is not tied to the language of the policy. Moreover, the majority did not clarify *when* "the aggregate loss" must

happen if loss happens at more than one covered location. Neither does the opinion say if the limit is based on whether the loss must result from the same event or occurrence. Under the court of appeals' holding, it does not matter. This is where the court of appeals departed from the district court's ruling and in effect broadened it. A court following this approach in the future would simply look to whatever loss occurred at any time for whatever reason at all covered locations, and that becomes "the aggregate loss" suffered by "the company as a whole."

Of course, it would be fair to assume from the court of appeals' holding that the physical damage at different covered locations must be suffered by Heartland at some time or times during the policy period. This is a coverage issue, not strictly a limits issue. Heartland, however, "as a whole" could—and did—suffer earnings and extra expense losses at different covered locations at different times during the policy period. But as the court of appeals' holding is written, it does not matter when or why the loss at more than one location is suffered during the policy period. The "any one loss" limit, as interpreted by the court of appeals, necessarily applies to all earnings and extra expense losses at all locations *suffered at any time during the one-year policy period and for*

whatever reason. The majority opinion sets no other temporal or causal restrictions when aggregating the loss and applying the limit. To be subject to the $3 million limit, the loss simply needs to be suffered at one or more covered locations during the policy period.

The majority's interpretation mirrors the idea of what is customarily understood as an "aggregate" limit: one which sets a combined or "aggregate" limit on the total amount an insurer is obligated to pay for a particular type of loss suffered during a policy period. But if the court of appeals' opinion sets an "aggregate" limit for the policy period, this is contrary to Nationwide's own arguments: "Nationwide has never taken the position that the earnings and extra expense coverage limit applies to all losses *during a given policy period*." (Nationwide's Resistance to Heartland's Motion for Summary Judgment, App. 058) (Emphasis added). In other words, Nationwide does not understand the limit for earnings and extra expense to have an annual aggregate limit. And significantly, the policy language does not provide for one: the word "aggregate" is never used to define the earnings and extra expense limit. It is only the court of appeals' decision which does this.

In its appellate brief, Nationwide discusses the policy's Contract Penalty Coverage, which is not directly at issue in this case, but which has two limits that serve as examples: (1) a per occurrence limit, and (2) an annual or aggregate limit (which establishes the most Nationwide pays during each 12-month policy period). The Contract Penalty Coverage provides excellent examples of how these two types of limits—per occurrence and aggregate—can be expressly written into an insurance policy. The earnings and extra expense coverage does not expressly provide for either, and the Court must give meaning to this difference.

If the court of appeals did not intend to set an annual aggregate limit on the earnings and expense loss to the company as a whole for all covered locations, then the opinion does not explain how separate losses at different locations might occur and not be subject to the same $3 million limit. The parties should not be left to guess. The issue raised by this case is how to define "any one loss" when the parties agree that there can be more than one loss during the policy period, each of which is subject to a separate $3 million limit.

During oral argument before the court of appeals, Nationwide admitted that if more than one event or occurrence caused losses at different covered locations, a separate $3 million earnings and expense limit would apply to each loss.[2] In other words, the $3 million limit cannot be for "the aggregate loss experienced by Heartland as a whole across 'all covered locations.'" *Slip. op.* at 7. Nationwide's written position, and oral admission, directly conflict with the majority's holding which found the $3 million "limit applies to the loss suffered in the aggregate by the company as a whole—at 'all covered locations.'" *Slip op.* at 10.

Nationwide and the district court believed the losses at different covered locations should be "aggregated," which is to say treated as a single (i.e., "any one") loss, *but only if the losses were caused by the same "occurrence*": "[T]he policy language as a whole dictates the limit for earnings and extra expense coverage applies to the loss at all locations on a per occurrence basis." (Appellee Br. 27; *see also* District Court Ruling, p. 17, App. 138.) Nationwide's argument "aggregates" the losses at different locations, but does not aggregate the losses over the policy

[2] The argument is unreported. However, counsel for Heartland made this point during the argument and the 3-judge panel then questioned Nationwide's counsel as to whether it was true. Counsel for Nationwide agreed that it was.

period for all locations. Nationwide and the district court respectively believed and held the limit was "per occurrence," "per event," or "per happening," and the derecho was one occurrence, event, or happening. Id.

A "per occurrence" limit is different than an "aggregate" limit. They are stated separately in policies and apply to different circumstances.[3] It is, therefore, puzzling that the court of appeals created what it refers to as an "aggregate loss" limit when Nationwide advocated throughout the case for something different: a "per occurrence" limit.

The court of appeals may have taken its completely different approach to interpreting the limit because of the fundamental problem with adopting a "per occurrence" limit. The problem with Nationwide's and the district court's interpretation is that the Policy does not say the earnings and extra expense limit is "per occurrence." The court of appeals appears to have recognized this problem and made an attempt to side step it by omitting in its holding any reference to the limit as "per occurrence." But by adopting what is undoubtedly an aggregate

[3] See footnote 2.

limit, the court's holding faces the other interpretive problems discussed above.

The court of appeals also wrote: "Heartland does not have per location coverage because the box for per-location coverage was not checked." *Slip op.* at 7. Heartland, however, *does* have coverage for each and every location. That is not and has never been disputed. The issue concerns the *limit* for earnings and extra expense coverage and how the "any one loss" limit is applied to loss at multiple covered locations. Had the "box" been checked, each covered location would have had a single annual aggregate limit for earnings and extra expense coverage. This coverage would be different than the coverage Nationwide sold and Heartland purchased, which in fact (and according to Nationwide) has no annual aggregate limit for earnings and extra expense coverage at any one location.

Inevitably, the Court should return to the court of appeals' dissent. Because the dissent presents a reasonable interpretation of the earnings and extra expense limit, those views should be embraced by the Court on further review, the judgment of the district court reversed,

Heartland's partial summary judgment motion granted, and the case remanded for trial on the merits.

II. Heartland Preserved Error On And Did Not Waive Its Argument That the District Incorrectly Found the Derecho Was A Single Storm As A Matter of Law.

The court of appeals stated in a footnote that Heartland "waived" its argument that the derecho constituted multiple storms, despite noting that Heartland "appeals this issue." Decision at 3, n.2. The court of appeals' conclusion is factually and legally incorrect.

First, it is dictum. Heartland only requested the court to reach the issue on appeal if the limit were determined to be "per occurrence." The court of appeals did not make that determination.

Second, the Iowa Supreme Court's standard for error preservation is flexible rather than "hypertechnical." *See, e.g.*, *Griffin Pipe Prod. Co. v. Bd. of Rev. of Cnty. of Pottawattamie*, 789 N.W.2d 769, 772 (Iowa 2010) ("Our issue preservation rules are not designed to be hypertechnical."). Error is preserved if an issue is raised and decided by the district court. *See Olson v. BNSF Ry. Co.*, 999 N.W.2d 289, 294–95 (Iowa 2023); *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002). Error

preservation is based on what the district court *actually decided*. *Meier*, 641 N.W.2d at 537.

Whether the derecho was a single weather event was not a ground upon which Heartland sought summary judgment because Heartland has consistently argued there is a factual dispute on that issue. *See generally* Appx. at 110 ("Whether the derecho was one 'occurrence' or several should ultimately prove immaterial to the pending summary judgment motions. This is a factual dispute but one which has nothing whatsoever to do with the meaning of 'any one loss.' "). The district court actually decided the issue based on Nationwide's motion for summary judgment. *See* App. at 138–40. Because the issue was raised (by Nationwide) and actually decided in the district court, error is preserved on appeal. Where there is a fulsome record upon which an appellate court may base its decision, the court can reach the issue. *See, e.g.*, *In re R.K.*, 649 N.W.2d 18, 21 (Iowa Ct. App. 2002) ("[T]he appellate court's ability to review the full record and transcript of the underlying proceeding protects both the parents and child against the risk of erroneous deprivation."). The court of appeals also failed to appreciate that it was *Nationwide*'s burden, as the moving party on this issue, to

establish there was no genuine dispute of material fact as to whether the derecho constitutes one or multiple storms—that burden remains the same on appeal. *Willow Tree Invs., Inc. v. Wagner*, 453 N.W.2d 641, 642 (Iowa 1990) ("The burden of demonstrating that there is no material fact in dispute is upon the moving party.").

There is a full summary judgment record before the Court upon which it can decide that there is a genuine dispute of material fact as to whether the losses were caused by one or multiple occurrences (from which there may be multiple losses). Importantly, the court of appeals criticized Heartland for failing to cite any authority on its argument that the derecho was more than one storm. Iowa R. App. P. 6.903(2)(8)(3) states that "[f]ailure to cite authority in support of an issue *may* be deemed waiver of that issue." (Emphasis added.) However, *no authority exists* that addresses the issue of whether a derecho is considered one or more than one occurrence.[4]

The court of appeals' finding of "waiver" is also incorrect as Heartland disputed this "one storm" issue both at summary judgment

[4] For example, a search on Westlaw for cases in all state and federal jurisdictions with the following terms: "adv: derecho /s multiple or one or several /10 storm or event or happening or occurrence or peril" returns only ten cases (one of them being the Iowa Court of Appeals' decision). None of the remaining nine cases interpret whether a derecho is considered a single or multiple perils.

and on appeal. Heartland in its appellate brief stated that it was one of the issues to be decided on appeal: "If the $3,000,000 policy limits for earnings and extra expense coverage are determined to be for a per peril combined loss, as the district court concluded, is there a genuine dispute of material fact as to whether there was more than one windstorm (i.e., more than one covered peril) that physically damaged Heartland's covered property on August 10, 2020?" Appellant's Br. at 4. Because this issue is an alternative issue that the court was not required to answer if it reversed the district court on Heartland's first issue, Heartland focused its opening brief on the meaning of "any one loss." Heartland nonetheless stated that if the court of appeals found that "any one loss" was defined by a single covered peril, that Heartland continues to dispute that the derecho was a single peril as a matter of fact that should be determined by a jury. Appellant's Br. at 33, n.1. Heartland further stated in its Reply Brief that it had repeatedly argued at the district court level that there was a factual dispute as to whether the derecho was a single storm or multiple storms. Appellant's Reply Br. at 36–38.

The supreme court in *Terry v. Dorothy*, found that the appellant preserved error, and did not waive an argument, when it appealed the district court's grant of summary judgment and the appellant's arguments primarily focused on a statutory argument, but nevertheless referenced a contractual argument. 950 N.W.2d 246 (Iowa 2020). The Iowa Supreme Court found that although the appellant's brief focused "most of its firepower" on one theory, the other theory was still preserved on appeal. *Id.* The Court should reach a similar result here and find that Heartland preserved error on its alternative argument. The supreme court should grant further review and vacate the court of appeals' finding on this issue.

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CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENTS AND TYPE-VOLUME LIMITATION

This Application complies with the typeface and type-volume requirements of Iowa R. App. P. 6.1103(4) because:

[X] this Application has been prepared in a proportionally spaced typeface using Century Schoolbook in 14 point and contains 3,316 words, excluding parts of the application exempted by Iowa R. App. P. 6.1103(4)(a) or

[ ] this Application has been prepared in a monospaced typeface using [state name of typeface] in [state font size] and contains [state number of] lines of text, excluding the parts of the [application or resistance] exempted by Iowa R. App. P. 6.1103(4)(a).

June 27, 2024 /s/ *Amanda Mason*
Date

PROOF OF SERVICE AND CERTIFICATE OF FILING

I hereby certify that on June 27, 2024, I electronically filed the foregoing with the Clerk of the Supreme Court of Iowa using the Iowa Electronic Document Management System, which will send notification of such filing to the counsel of record.

/s/ Amanda Mason

IN THE COURT OF APPEALS OF IOWA

No. 23-0156
Filed June 5, 2024

HEARTLAND CO-OP,
Plaintiff-Appellant,

vs.

NATIONWIDE AGRIBUSINESS INSURANCE COMPANY,
Defendant-Appellee.

Appeal from the Iowa District Court for Polk County, Jeffrey D. Bert, Judge.

Heartland Co-op appeals the district court's grant of summary judgment in favor of Nationwide Agribusiness Insurance Company. **AFFIRMED.**

John F. Lorentzen of Nyemaster Goode, PC, Des Moines, for appellant.

Sean M. O'Brien of Bradshaw, Fowler, Proctor & Fairgrave, P.C., Des Moines, for appellee.

Heard by Schumacher, P.J., and Ahlers and Langholz, JJ.

AHLERS, Judge.

Heartland Co-op (Heartland) is an agricultural cooperative with many business locations throughout Iowa and other states. In 2020, a derecho damaged several of Heartland's properties in Iowa. As Heartland was insured under a policy issued by Nationwide Agribusiness Insurance Company (Nationwide), Heartland made a claim under the policy. Among other coverages, the policy provided earnings-and-extra-expense coverage. In simplified terms, this coverage pays for loss of net income resulting from damage to insured properties from a covered peril and extra expenses that would not have been incurred but for the damage caused by the peril, such as relocation costs and costs to outfit and operate at a replacement or temporary location. The insurance policy limited the amount Nationwide would pay for this coverage to $3,000,000 for "any one loss."

After submitting its claim for the lost earnings and extra expenses caused by the derecho, Heartland received a total of $3,000,000 from Nationwide.[1] Heartland suffered lost earnings and extra expenses at multiple locations that, in total, exceeded $3,000,000, but Nationwide limited payment to $3,000,000 because it determined that the lost income and extra expenses suffered across all properties combined constituted a single loss to which the $3,000,000 limit applied. Heartland filed suit alleging breach of contract. Both parties moved for summary judgment. The district court granted summary judgment to Nationwide after finding

[1] Nationwide also paid Heartland $131,418,384.58 under other coverages for losses Heartland sustained from the derecho. Payment under those other coverages is not in dispute in this case. The dispute in this appeal is confined to how much Nationwide owes under the earnings-and-extra-expense coverage.

that the words "any one loss" mean the combined loss at all locations for one event.[2] Heartland appeals.

We review summary judgment rulings for correction of errors at law. *Lennette v. State*, 975 N.W.2d 380, 388 (Iowa 2022). A party is entitled to summary judgment when the record "show[s] that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Iowa R. Civ. P. 1.981(3). Material facts are those that affect the outcome of the suit, and a fact issue "is genuine if the evidence would allow a reasonable jury to return a verdict for the nonmoving party." *In re Est. of Franken*, 944 N.W.2d 853, 858 (Iowa 2020) (cleaned up) (citation omitted). The movant bears the burden of proving the "undisputed facts entitle[] it to summary judgment." *Behm v. City of Cedar Rapids*, 922 N.W.2d 524, 542 (Iowa 2019). We review the record in the light most favorable to the nonmoving party and make on their behalf all "legitimate inference[s] that can be reasonably deduced from the record." *Homeland Energy Sols., LLC v. Retterath*, 938 N.W.2d 664, 683 (Iowa 2020) (quoting *Phillips v. Covenant Clinic*, 625 N.W.2d 714, 717–18 (Iowa 2001)).

[2] Heartland also argued to the district court that it should have the chance to prove at trial that the derecho was not a single storm. The district court found that the evidence did not establish a genuine issue of material fact as to whether the derecho was a single weather event. The court found that the derecho was a single weather event for purposes of the insurance policy and granted summary judgment to Nationwide. Heartland appeals this issue but barely mentions it in its brief. The brief cites no parts of the record generating a factual dispute on this issue and cites no pertinent authority. Therefore, we find the issue waived. Iowa R. Civ. P. 6.903; *Soo Line R.R. Co. v. Iowa Dep't of Transp.*, 521 N.W.2d 685, 691 (Iowa 1994) ("[R]andom mention of [an] issue, without elaboration or supportive authority, is insufficient to raise the issue for our consideration.").

We start by highlighting some of the key provisions pertaining to the earnings-and-extra-expense coverage, beginning with the one under the heading "HOW MUCH WE PAY" that reads, "'We' pay no more than the Income Coverage 'limit' indicated on the 'schedule of coverages' for any one loss." The pages that follow contain the schedule of coverages. Under the "Income Coverage Part" of the schedules, there is a list of potential coverages under the heading "COVERAGE (check one)" with a box to check next to each coverage listed. Only the box for "Earnings and Extra Expense" is checked. Thus, the parties do not dispute that the policy provides earnings-and-extra-expense coverage.

Following the list of coverages is the heading "LIMIT (check one)" followed by two options with a corresponding box to check beside each option. The first option states "Income Coverage Limit—The most 'we' pay for loss at any one 'covered location' is:." This option is unchecked, and no limit was filled in. The second option reads: "Refer to Scheduled Locations (check if applicable)." This option is checked, requiring the parties and us to look to the location schedules to determine the applicable limit of coverage.

The location schedules that follow start with a schedule that describes the covered location as location number "087 ALL 'COVERED LOCATIONS.'" This page lists five types of coverage, including earnings-and-extra-expense coverage with a limit of $3,000,000—the coverage at issue here. Here is the pertinent part of that schedule:

SCHEDULE

Loc. No.	Covered Locations (Describe)
087	ALL "COVERED LOCATIONS"

Covered Property/Coverage Provided (Describe)	Limit
FENCES AT "COVERED LOCATIONS"	$50,000
RAILROAD TRACKS AT "COVERED LOCATIONS"	$2,000,000
BUSINESS PERSONAL PROPERTY CONSISTING OF SIGNS	$50,000
EARNINGS AND EXTRA EXPENSE	$3,000,000
BUSINESS PERSONAL PROPERTY CONSISTING OF "COMPUTERS"	$2,000,000

Following this schedule listing earnings-and-extra-expense coverage for "ALL 'COVERED LOCATIONS'" is a separate page for each of Heartland's eighty-six business locations in Iowa and other states (consecutively numbered as location numbers 001 through 086), with each of those eighty-six schedules listing coverages for that location and a corresponding limit amount for each coverage. None of the individual-location schedules lists any earnings-and-extra-expense coverage.

The dispute here comes down to whether the policy provides $3,000,000 of coverage for each location that sustained an earnings-and-extra-expense loss or whether it provides $3,000,000 of coverage for all earnings-and-extra-expense loss Heartland sustained across all eighty-six locations (or as many of them as sustained damage from the derecho). This requires us to interpret and construe the policy. When we interpret an insurance policy, we determine the meaning of the words it contains. *Boelman v. Grinnell Mut. Reins. Co.*, 826 N.W.2d 494, 501–02 (Iowa 2013). When we construe the policy, we give those words legal effect. *Id.* Both interpretation and construction are matters for the court. *Id.* (noting that interpretation is a matter for the court unless extrinsic evidence comes into play

and that construction is always a matter for the court). If a policy term is undefined, we give the term its ordinary meaning, rather than a technical or specialized meaning. *Wakonda Club v. Selective Ins. Co. of Am.*, 973 N.W.2d 545, 549 (Iowa 2022). If the language has more than one reasonable interpretation, it is ambiguous and will be interpreted in favor of the insured. *Id.* A term is not ambiguous simply because the parties disagree on its meaning. *Id.*

Pared down to its essence, this case hinges on what is meant by "any one loss" in the context of the earnings-and-extra-expense coverage. The district court concluded that the terms of the insurance contract created a $3,000,000 limit for the lost earnings and extra expenses suffered across all Heartland business locations, so Heartland experienced only one loss. Heartland claims this conclusion was erroneous because "any one loss" means the limit applies individually to the losses suffered at each location or at least is ambiguous and should therefore be interpreted in Heartland's favor. *See id.* ("We interpret ambiguous policy provisions in favor of the insured . . . .").

The Iowa Supreme Court has already determined the word "any" means "all or every." *Thomas v. Progressive Cas. Ins. Co.*, 749 N.W.2d 678, 683 (Iowa 2008). Merriam-Webster defines "loss" as "destruction, ruin," and more relevant to the coverage at issue here, "failure to gain, win, obtain, or utilize." *Loss*, Merriam-Webster, http://www.merriam-webster.com/dictionary/loss (last visited May 30, 2024) (giving "*loss* of income/revenue" as an example use of loss under the fourth definition). Black's Law Dictionary defines "loss" as "[a]n undesirable outcome of a risk; the disappearance or diminution of value." *Loss*, Black's Law Dictionary (11th ed. 2019). And it defines "loss" in the insurance context as "[t]he amount of

financial detriment caused by . . . an insured property's damage, for which the insurer becomes liable." *Id.*

Giving the words in the policy their ordinary meaning does not clarify whether an individual loss is considered in terms of the company as a whole or in terms of the individual locations. Reading this language in the context of the rest of the policy provides more clarity. *See Nat'l Sur. Corp. v. Westlake Inv., LLC*, 880 N.W.2d 724, 734 (Iowa 2016) ("[W]e determine whether an ambiguity exists not by examining clauses seriatim, but by interpreting the policy in its entirety, including all endorsements, declarations, or riders attached."). Heartland does not have per-location coverage because the box for per-location coverage was not checked. Instead, the other box was checked, referring to the location schedules to find the limit. This alone suggests that loss is not determined per location. That suggestion becomes stronger when we look at the location schedules that follow. The limit for earnings-and-extra-expense coverage is found on the schedule for "all covered locations" and not on any of the individual-location schedules. "All covered locations" is not the same as "each covered location." Because "all covered locations" cannot reasonably mean the coverage applies to "each location" (because Heartland does not have per-location coverage), it must mean it applies to the locations in the aggregate. Therefore, in the context of the policy as a whole, we read "any one loss" to mean the aggregate loss experienced by Heartland as a whole across "all covered locations."

Heartland tries to get around the fact that a per-location limit was not part of the policy by pointing to other parts of the policy. It points out that the policy provides coverage "during the 'restoration period' when 'your' 'business' is

necessarily wholly or partially interrupted by direct physical loss of or damage to property at a 'covered location.'" Heartland argues this policy language ties the restoration period and its loss calculation methods to the definition of "any one loss." The policy defines the restoration period as:

> 1. The time it should reasonably take to resume "your" "business" to a similar level of service beginning:
>
> a. for earnings, after the first 72 hours (unless otherwise indicated on the "schedule of coverages") following the direct physical loss of or damage to property at a "covered location" that is caused by a covered peril; and
>
> b. for extra expenses, immediately following the direct physical loss of or damage to property at a "covered location" that is caused by a covered peril.
>
> The "restoration period" ends on the date the property should be rebuilt, repaired, or replaced or the date business is resumed at a new permanent location.

Heartland claims the words "*a* covered location" is in line with covering a loss at "*any* covered location." (Emphasis added.) Heartland also points out that the policy includes a "Valuation" section, describing how an earnings loss is calculated. This section notes that "pertinent sources of information" include "'your' accounting procedures." Heartland contends these two policy provisions demonstrate that "any one loss" allows it to recover for each loss with a $3,000,000 limit at each location.

We are not persuaded by Heartland's argument. The reference to "a covered location" in defining the restoration period simply confirms that the coverage only applies to those locations that were damaged by a covered peril. No one disputes that Heartland has coverage during the restoration period at each covered location that incurred lost earnings and extra expenses caused by the derecho. The dispute is whether those amounts of lost earnings and extra

expenses are all part of one loss at "all covered locations," as opposed to being separate losses with separate limits. The reference to "a covered location" in the definition of restoration period sheds no helpful light on resolving the dispute at hand.

We are also not persuaded by Heartland's argument that, because the policy says the parties look to Heartland's accounting procedures to determine the value of Heartland's loss and Heartland has separate accounting for each location, the policy requires the loss suffered by each location to be a separate loss under the policy. The policy's reference to Heartland's accounting practices is in the valuation section of the policy. By its plain terms, this section says the accounting practices are a pertinent source of information in calculating the amount of the loss. It sheds no meaningful light on determining whether a loss occurred and whether that loss is a separate loss for each location.[3]

Heartland tries to weave together the language in the "restoration period" and "valuation" parts of the policy to argue separate locations suffered separate losses because the restoration periods for each location are different, as are the accounting procedures for determining profit and loss. Presumably, Heartland does this weaving because it has to differentiate between a "per location loss" and a "per location limit" due to the fact that the "per location limit" option was not a part of the policy. But we are not persuaded by Heartland's efforts. While we partly

[3] For example, whether Heartland uses a cash-basis or accrual accounting method or uses a LIFO (last-in, first-out) or FIFO (first-in, first-out) method for valuing inventory may be pertinent information in determining how to calculate lost earnings. But those accounting procedures have no bearing on determining whether "any one loss" refers to individual locations or "all covered locations."

understand the distinction Heartland is trying to make between a limit based on the definition of loss versus a per-location limit, we are unclear where the threshold for separate losses would be. Let's say the derecho had managed to shut down all affected locations at the same time, causing each location to pause its operations. The shutdowns happened at the same time, so assuming each location was restored at the same time, under Heartland's logic we could easily conclude Heartland suffered one all-encompassing loss. But if the shutdowns occurred minutes apart, and the restorations also happened minutes apart, would it still be considered one loss, even if the effect was the same? Heartland wants us to say the time differences between when its various locations were shut down as the derecho swept across Iowa was enough to cause separate losses. But we don't see a clear place to draw the line, and we see nowhere in the policy suggesting that such line must be drawn. And letting different accounting methods determine whether a loss occurred—in contrast to using different accounting methods to determine the amount of a loss—would create a loophole through which insureds could effectively turn their coverage limits into per-location limits without purchasing that option. The policy does not support such a conclusion.

To sum up, we don't find Heartland's reading of the policy to be a natural reading. *See Boelman*, 826 N.W.2d at 501 ("We will not strain the words or phrases of the policy in order to find liability that the policy did not intend and the insured did not purchase."). The only reasonable interpretation of the policy is that the limit applies to the loss suffered in the aggregate by the company as a whole—at "all covered locations"—so we conclude the policy language is not ambiguous. *See Nat'l Sur. Corp.*, 880 N.W.2d at 734 ("Policy language is ambiguous when,

considered in the context of the policy as a whole, it is susceptible to two plausible interpretations."). Because the language is not ambiguous and the district court correctly interpreted and construed the terms of the insurance contract to conclude there is a single loss with a single limit of coverage, Nationwide established it is entitled to judgment as a matter of law, and we affirm.

AFFIRMED.

Schumacher, P.J., concurs; Langholz, J., dissents.

LANGHOLZ, Judge (dissenting).

What is "one loss" under a business interruption insurance policy that covers a business with eighty-six locations across the country? This term was put to the test when a historic derecho swept across Iowa, damaging at least forty-eight of Heartland Co-op's locations in the state—from Woodbine to Marengo. Because the insurance policy caps Heartland's coverage at $3 million "for any one loss," Nationwide Agribusiness Insurance Company argues—and the majority agrees—that Heartland is only entitled to $3 million for all its business-interruption losses caused by the property damage at these forty-eight locations.

But I respectfully part ways with the thoughtful majority opinion based on my interpretation of the text of the policy as a whole. Under the policy's text, a business-interruption loss is tied to physical loss or damage at a specific location. Thus, when more than one location has physical losses, the business interruption at each of those locations is multiple losses too. And because the $3 million limit is per loss—not per occurrence or per peril or capped by the catastrophe limit that the parties chose not to set—Heartland can claim up to $3 million for each of the business interruption losses arising from each of the physical losses at Heartland's locations.

I would hold that this interpretation is the unambiguous meaning of the policy. But at the very least, it shows that the policy "is fairly susceptible to two interpretations," and thus this interpretation "favoring the insured" must be adopted. *A.Y. McDonald Indus., Inc. v. Ins. Co. of N. Am.*, 475 N.W.2d 607, 619 (Iowa 1991). I would thus reverse the district court's contrary summary judgment rulings and remand for further proceedings.

Under Heartland's insurance policy, Nationwide will "pay no more than" $3 million "for any one loss" that is payable under its business interruption coverage—which the policy refers to as "Earnings and Extra Expense" coverage. I agree with the majority that the meaning of "one loss" is the fighting issue. But to best understand its meaning, rather than going to precedent or the dictionary, I would start with the policy's definition of its coverage for an earnings-and-extra-expense loss. *See Wakonda Club v. Selective Ins. Co. of Am.*, 973 N.W.2d 545, 553 (Iowa 2022) (looking to text of "policy as a whole" to find support for interpretation of disputed provision (cleaned up)); *cf. State v. McCollaugh*, 5 N.W.3d 620, 623 (Iowa 2024) (explaining in the related context of statutory interpretation, that when a drafter "chooses to act as its own lexicographer, we are normally bound by its definitions, even if they do not coincide with dictionary or common law definitions").

So under the policy, a covered earnings-and-extra-expense loss is the "actual loss of net income" and certain "extra expenses" when Heartland's "business is necessarily wholly or partially interrupted by direct physical loss of or damage to property *at a covered location* . . . as a result of a covered peril." (Emphasis added).[4] And Heartland's business is defined as "the usual business operations occurring *at a covered location*." (Emphasis added). Both the definition of the covered loss and of the business are tied to "a"—in other words, a single—"covered location." These provisions don't say at "any locations" or "all locations"

[4] For readability, I have omitted internal quotation marks used in the policy to identify defined terms and removed the capitalization of phrases that appear in all capitalized text without noting those omissions or at alterations.

or "across the entire business operations," as one would need to if intending to define "one loss" more broadly than just the interruption at a single location. Thus, because the scope of "any one loss" is the interruption from damage at a single covered location, the $3 million limit applies to that loss. And damage that interrupts business at another location triggers another loss that again has another $3 million limit.[5]

Other parts of the policy also suggest that the scope of one earning-and-extra-expense loss is only the loss caused by the physical loss at a single location. The policy's proof-of-loss provision requires the insured to provide "the time, place, and circumstances of the loss"—not the "places"—when making a claim. And the policy's definition of restoration period—which sets the time period for calculating the extent of earnings-and-extra-expense loss—is tied to "a physical loss of or damage to property at a covered location." The restoration period starts on "the date of a physical loss of or damage to property at a covered location." And it ends on the date that "property should be rebuilt, repaired, or replaced" or when "business is resumed at a new permanent location."

This definition of restoration period only makes sense in the context of "one loss" being the business interruption at a single location. For starters, it again speaks of a single covered location. It also does not include any text describing how the time period is calculated when there is physical damage at multiple locations, such as text specifying that it continues until every location is repaired

[5] Even Nationwide agrees that under the policy's terms, the $3 million limit applies only to "one loss," so payment for one earnings-and-extra-expense loss—however that term is properly interpreted—"does not reduce the limits applying to a later loss."

or only until the first location is repaired. But that additional explanation is unnecessary if each location with physical loss or damage is considered "one loss," each with its own restoration period easily calculated as described by the text of the policy's definition. This lack of any additional explanation in the definition thus further supports the narrow scope of "one loss" tied to the interruption caused by the physical loss or damage at a single location.

To be clear, I derive the scope of a single location from the policy's listing of eighty-six scheduled locations—not the accounting practices of Heartland. I agree with the majority that Heartland pushes its argument too far in suggesting that the policy left it to Heartland to decide the scope of "one loss" by how it chooses to structure its business or separately account for its net income. There is no support in the text of the policy for such an expansive discretionary power for Heartland to adjust the extent of its coverage unilaterally. But Heartland and Nationwide agreed to include the scheduled-location endorsement and specified eighty-six individual locations that are insured by the various coverages, including the earnings-and-extra-expense coverage. And so, relying on the policy's definition of a single location—which despite Heartland's broader theoretical arguments is all it actually seeks to do here—does not pose the line-drawing or loophole-creating problems the majority seeks to avoid.

Continuing to look at the policy as a whole, it also shows that its drafters knew how to set a coverage limit tied to something other than "any one loss." That includes setting limits for "any one occurrence" or "any one occurrence or at any one location," which it did for its supplemental utility-service-interruption and pollutant-cleanup-interruption coverage, respectively. And we can see the policy

setting a twelve-month, per-location limit for all "expenses arising out of a covered peril," as it did in its pollutant-cleanup-and-removal coverage. Indeed, the policy had a possible provision for a catastrophe limit that would have provided a total cap for all losses caused by the derecho—"for any combination of or total losses arising under one or more coverages in any one occurrence"—that the parties decided not to set in its schedule of coverages for the policy. If the earnings-and-extra-expense coverage had been limited in any of these ways, this would be a different case. But it was not so limited. Its $3 million limit was for "any one loss." And best interpreting the text actually chosen by the parties means that each location that had its business interrupted by physical loss or damage from the derecho suffered one loss, each separately subject to the $3 million limit.

I reach this result based on the text of the policy—not the precedent of other courts interpreting other policies. *See Wakonda Club*, 973 N.W.2d at 554. Indeed, the parties have not directed us to any cases deciding the precise issue here—and I am unaware of any. But interpreting "one loss" to be tied to a location of the property loss is consistent with the focus in other cases on the required connection between the business-interruption loss and a physical loss at the insured location. *See, e.g.*, *United Airlines, Inc. v. Ins. Co. of State of Pa.*, 385 F. Supp. 2d 343, 350–51 (S.D.N.Y. 2005) (rejecting argument that destruction of airline's ticket counter in the World Trade Center triggered coverage for business-interruption losses at all airline's locations as a result of the 9/11 terrorist attacks), ***aff'd by*** 439 F.3d 128 (2d Cir. 2006); *Ramada Inn Ramogreen, Inc. v. Travelers Indem. Co.*, 835 F.2d 812, 814 (11th Cir. 1988) (holding that business-interruption policy did not cover losses for hotel as a result of physical damage to adjacent restaurant

because restaurant building was "listed separately in the insurance policy, evidencing the intent of the parties to treat it as a separate entity"); *Wakonda Club*, 973 N.W.2d at 552–53 (requiring "physical element" to loss of the covered premises to trigger business-interruption coverage). And it's consistent with our supreme court's observation that business-interruption coverage is fundamentally "tied to the insured premises." *Steel Prods. Co. v. Miller's Nat'l Ins. Co.*, 209 N.W.2d 32, 38 (Iowa 1973).

To support its contrary interpretation, the majority relies on the parties' choice to set the $3 million limit in the location schedule rather than checking the box on the schedule of coverage to set a limit "for loss at any one covered location." While I understand the intuitive appeal of the negative implication that the majority reads into this, I don't give much weight to this drafting choice. Because whatever the effect would have been of checking the box, *the absence* of the provision does not change any of the policy's substantive text already discussed—all of which leads to the conclusion that "one loss" means the business interruption at one covered location. The only term left unaddressed in that substantive text is the dollar amount of the "limit indicated on the schedule of coverages for any one loss." And with the choice to set that limit in the location schedule instead, we look there to find the applicable limit: $3 million.

The majority also gives weight to the $3 million limit being listed on the location schedule under location number eight-seven, which is described as "all covered locations" rather than separately listed on the schedules for each of the eighty-six other locations that describe individual covered locations. According to the majority, the use of the word "all" in the description of the location means that

the limit set there is an aggregate limit for all locations. And I concede that this is the closest call in the proper interpretation of the policy. But I still respectfully disagree.

To properly interpret the meaning of this page, we first need to again remember that we've been sent on this cross-referencing hunt only to find the maximum amount to be paid "for any one loss." Nothing on this schedule page purports to change the limit from a per-loss limit to some other aggregate limit. Nor does it amend or conflict with any of the other text of the policy shaping what "one loss" means. It simply lists as a "coverage provided" the "earnings and extra expense" coverage with a "Limit" of "$3,000,000."

And the "all" that the majority finds significant merely appears in the description of the "Covered Locations," for the coverages listed. According to the text of the location schedule, the policy's coverage "only applies to the covered locations described below." So the purpose of the location description is to specify what locations are covered by the listed coverage provided—not to modify the coverage or limits listed.[6] By describing the location as "all covered locations," the schedule in turn cross-references the eighty-six specifically described locations. We thus know that *all* of those eighty-six locations have the earnings-and-extra-expense coverage in addition to the personal-property and building-property

[6] By choosing to include the location schedule and the related scheduled-location endorsement in the policy, the parties deviated from the default provision in the policy that coverage would be provided at "any location or premises where [Heartland has] buildings, structures, or business personal property covered under this coverage" rather than just at "a location that is described on the Location Schedule."

coverage listed on their individual schedules. That's all the work that I interpret the term "all" to do.

In isolation, the correct meaning of the schedule page might appear murkier. But we do not consider ambiguities "seriatim by clauses"—we must "read the policy as a whole." *Boelman v. Grinnell Mut. Reins. Co.*, 826 N.W.2d 494, 501 (Iowa 2013). And doing so, the best interpretation of the schedule page is that "all covered locations" just means that the $3 million limit is the limit that applies for "any one loss" at any of the locations (or as the policy says, at "all" of them) rather than implicitly adding a new aggregate business-wide limit not described anywhere in the policy.

Bottom line, Heartland is not limited to $3 million of business interruption coverage for all its losses because that limit is for "any one loss," and each location that had its business interrupted by physical loss or damage from the derecho suffered one loss. While I recognize that the majority has offered a thoughtful contrary interpretation, I would still hold that this interpretation favoring Heartland is the unambiguous meaning of the policy when read "as a whole." *Boelman*, 826 N.W.2d at 501. But even if the policy is "fairly susceptible to" the majority's interpretation too, then the interpretation "favoring the insured" must be adopted. *A.Y. McDonald Indus.*, 475 N.W.2d at 619. Either way, we should not affirm the district court's grant of summary judgment to Nationwide. And so, I respectfully dissent.

IOWA APPELLATE COURTS

State of Iowa Courts

Case Number	**Case Title**
23-0156	Heartland Co-Op v. Nationwide Agribusiness Ins. Co.

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