

IN THE DISTRICT COURT OF PLATTE COUNTY, NEBRASKA

FARMERS MUTUAL INSURANCE)
COMPANY OF NEBRASKA,)

CI _____

Plaintiff,)

vs.)

**COMPLAINT FOR
DECLARATORY JUDGMENT**

AHREN UHLIG, COLUMBUS FAMILY)
YMCA, INC., and KURT)
BEUTELSPACHER,)

Defendants.)

COMES NOW the Plaintiff, Farmers Mutual Insurance Company of Nebraska ("Farmers Mutual"), and for its Complaint for Declaratory Judgment, states and alleges as follows:

1. At all times material hereto, Farmers Mutual has been and continues to be a Nebraska corporation authorized to sell and issue policies of homeowners and automobile insurance in the State of Nebraska and elsewhere.

2. At all times material hereto, Defendant Ahren Uhlig ("Uhlig") was and is a resident of Columbus, Platte County, Nebraska.

3. At all times material hereto, Defendant Columbus Family YMCA, Inc. (the "YMCA") was and is a Nebraska corporation, with its principal place of business or activity in Columbus, Platte County, Nebraska.

4. At all times material hereto, Defendant Kurt Beutelspacher ("Beutelspacher") is, and at all times material hereto, has been a resident of Columbus, Platte County, Nebraska.

5. This Complaint is filed pursuant to Neb. Rev. Stat. §§ 25-21,149 et seq. for the purpose of having this Court declare the rights, status, and other legal relations among the parties hereto. Defendants YMCA and Beutelspacher are joined in this declaratory judgment action since they have rights which may be affected by the outcome of this declaratory judgment action.

6. Farmers Mutual issued a homeowner's insurance policy (the "Policy") to Ahren and Jennifer Uhlig, with an effective date of September 24, 2017; a true and accurate copy of such Policy and declarations are attached hereto, marked Exhibit "A" and incorporated herein by reference.

7. On or about May 29, 2018, Uhlig was participating in a basketball game at a facility owned and operated by the YMCA. During that basketball game, Uhlig and Beutelspacher had bodily contact which resulted in personal injuries to Beutelspacher.

8. On or about October 16, 2019, Beutelspacher filed suit ("Tort Action") in the District Court of Platte County, Nebraska, against Uhlig and the YMCA, seeking money damages for injuries sustained by Beutelspacher. For identification purposes only, a copy of the Complaint filed by Beutelspacher against Uhlig and the YMCA is attached hereto and marked Exhibit "B".

9. The Policy contained the following relevant provisions:

DEFINITIONS USED THROUGHOUT THIS POLICY

The terms below appear in bold type throughout this policy.

"Bodily Injury" means physical harm to the body, sickness or disease, and includes care, loss of services and resulting death.

“Insured Person” means:
(a) **you**;

“Occurrence” means an accident, including continuous or repeated exposure to substantially the same general harmful conditions, which results in **bodily injury** or **property damage** neither expected nor intended by an **insured person**.

“You” and **“your”** mean the Policyholder named in the **Declarations** and spouse if living in the same household.

SECTION II – PERSONAL LIABILITY PROTECTION

COVERAGE L – PERSONAL LIABILITY

We will pay all sums arising out of any one **occurrence** which an **insured person** becomes legally obligated to pay as damages because of **bodily injury** or **property damage** covered by this policy.

If a claim is made or suit is brought against the **insured person** for liability under this coverage, **we** will defend the **insured person** at our expense, using lawyers of **our** choice. **We** are not obligated to defend after **we** have paid an amount equal to the limit of **our** liability. **We** may investigate or settle any claim or suit as **we** think appropriate.

“Damages” includes prejudgment interest awarded against the **insured person** and does not increase the limit of liability shown on the **Declarations**.

SECTION II – EXCLUSIONS

Under Coverages **L** and **M**, **we** do not cover:

5. **Bodily injury or property damage** expected or intended by an **insured person**.

10. Based upon accounts given by a number of individuals present at the YMCA on May 29, 2018, the following information has been learned:

- a. Uhlig participated in a pick-up basketball game at the YMCA in Columbus;
- b. During that game, Uhlig brought the ball up the court and, near half court, Beutelspacher stole the ball from Uhlig and dribbled the other way for an anticipated layup;
- c. Once the ball was stolen, Uhlig chased after Beutelspacher and, while Beutelspacher was in the act of shooting, Uhlig intentionally fouled Beutelspacher with his body;
- d. As a result of Uhlig's intentional act and altercation, Beutelspacher was forced head first into a padded, concrete wall located behind the basket resulting in the injuries claimed by Beutelspacher.

11. Uhlig's acts (described in paragraph 10 above) were intentional and otherwise indicated an intent to injure Beutelspacher. Uhlig's acts resulted in an injury to Beutelspacher that was either expected or intended, or both, since Uhlig acted with the specific intent to cause harm to Beutelspacher.

12. Uhlig acted with the specific intent to cause harm to Beutelspacher. Under the Policy, liability coverage was excluded for **bodily injury** that is "expected or intended by an insured person [Uhlig]." In addition, Uhlig's actions do not constitute an accidental

occurrence under the Policy and do not constitute damages for which an **insured person** becomes legally obligated to pay under the Policy.

WHEREFORE, Plaintiff prays that this Court enter a judgment declaring the following:

- a. That the acts of Uhlig during the “pick-up” basketball game on May 29, 2018 were expected or intended by Uhlig;
- b. That Uhlig acted with the specific intent to cause harm to Beutelspacher during the basketball game and altercation which occurred on May 29, 2018;
- c. That the acts of Uhlig on May 29, 2018 during the basketball game and altercation were acts that would be excluded from insurance liability coverage under the Policy, since such acts constituted “**Bodily injury or property damage** expected or intended by an **insured person** [Uhlig];”
- d. That the acts of Uhlig during the basketball game and altercation on May 29, 2018 did not constitute an accidental **occurrence** under the Policy and did not constitute damages for which an **insured person** becomes legally obligated to pay under the Policy;
- e. That no liability coverage exists as to the personal injury claims of Beutelspacher;
- f. That Farmers Mutual does not owe any insurance coverage to Uhlig and, correspondingly, does not owe any potential compensation to Beutelspacher; and

g. Farmers Mutual does not owe any further defense to Uhlig.

DATED this 6 day of February, 2020.

FARMERS MUTUAL INSURANCE
COMPANY OF NEBRASKA,

By: 

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