

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

March 28, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

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No. 93-2420

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

**AMY WEISMAN, A MINOR, BY HER GUARDIAN
AD LITEM, JAMES R. JANSEN,
SCOTT WEISMAN AND
KATHY WEISMAN,**

Plaintiffs,

v.

**FIREMAN'S FUND INSURANCE COMPANIES,
MENARD, INC.,
SCHWEISS CHICKEN PLUCKERS, INC.,
AND MADISON-KIPP CORPORATION,**

Defendants,

**MENARD, INC., AND
FIREMAN'S FUND INSURANCE COMPANIES,**

**Counter Claimants-Third Party
Plaintiffs-Appellants,**

SCOTT WEISMAN,

Counter Claimant-Defendant,

AMERICAN FAMILY MUTUAL INSURANCE COMPANY,

Third Party Defendant-Respondent.

APPEAL from a judgment of the circuit court for Dane County: P. CHARLES JONES, Judge. *Affirmed.*

Before Gartzke, P.J., Dykman and Sundby, JJ.

SUNDBY, J. We conclude that the result in this contribution case is controlled by *Whirlpool Corp. v. Ziebert*, 197 Wis.2d 144, 539 N.W.2d 883 (1995). We therefore affirm the judgment.

Amy Weisman, who was then five years' old, lost four fingers when her left hand was caught in the cables which operated a by-fold door manufactured by Schweiss Chicken Pluckers, Inc. The door was contained in a building Amy's father, Scott, purchased from Menard, Inc. Menards appeals from a summary judgment dismissing its third-party complaint and cross-claim against Scott Weisman's liability insurer, American Family Mutual Insurance Company, for contribution. Menards contends that Scott's failure to properly supervise his daughter was the cause of her injuries.

The trial court granted American Family's motion for summary judgment on the ground that its policy excluded coverage of Scott's liability for Amy's injuries. Section II of American Family's farm-ranch liability policy included the following liability and exclusion provisions:

1. Insuring Agreement. We will pay, up to our applicable limit, compensatory damages which any insured becomes legally obligated to pay as damages because of bodily injury or property damage to which this

insurance applies.... We have the right and duty to defend any suit seeking those damages....

Insurance provided under Section II does not apply to:

12. Intra-Insured Suits. We do not cover bodily injury to you or to any insured.

The policy defined "insured" as follows:

4.a. You, and if you are shown in the Declarations as:

(1) an individual, insured also means your spouse and relatives if residents of your household....

....

Scott Weisman is shown in the Declarations as an individual and his daughter Amy was a resident of his household.

Menards argues that the exclusion clause is ambiguous because its title--"Intra-Insured Suits"--may be interpreted to be limited to suits "between" or "among" insureds. It notes that BLACK'S LAW DICTIONARY 822 (6th ed. 1990), defines "intra" as "within" and that "inter" has taken the place of "intra" in many modern Latin phrases. It also notes that BLACK'S defines "inter" as "between." *Id.* at 811. Thus, following this route of construction, Menards arrives at the conclusion that the exclusion clause does not exclude its action against Amy's father for contribution because its action is not "between" insureds. A title of a statute is not a substantive component of the provision or clause. See *Jungbluth v. Hometown, Inc.*, 192 Wis.2d 450, 458, 531 N.W.2d 412, 415 (Ct. App. 1995) (citing § 990.001(b), STATS.). We apply the same rule to contracts. If the exclusion clause were ambiguous, we could resort to its title to resolve the ambiguity. See *Pulsfus Poultry Farms, Inc. v. Town of Leeds*, 149 Wis.2d 797, 805-06, 440 N.W.2d 329, 333 (1989). However, the exclusion clause unambiguously excludes bodily injury to "any insured," and it is undisputed that Amy was an insured within the meaning of the policy. Therefore, we reject Menards's argument.

Menards contends that, in any event, the "bodily injury" exclusion does not apply because its claim for contribution is "completely and legally separate from the underlying claim between the party who is physically injured and the party that seeks contribution." A claim for contribution does not exist in the abstract. "Contribution is the `process by which one person obtains reimbursement from another for a proportionate share of an obligation paid by the first person but for which they are both liable.' This process is based upon principles of equity and natural justice, not express contract." *Kafka v. Pope*, 186 Wis.2d 472, 475, 521 N.W.2d 174, 176 (Ct. App. 1994) (quoted source omitted), *aff'd*, 194 Wis.2d 234, 533 N.W.2d 491 (1995)). "When no express agreement confers a right of contribution, a party's right to seek contribution against another is premised on two conditions: (1) the parties must be liable for the same obligation; and (2) the party seeking contribution must have paid more than a fair share of the obligation." *Kafka v. Pope*, 194 Wis.2d 243, 242-43, 533 N.W.2d 491, 494 (1995). Menards's argument fails because American Family has no liability for Amy Weisman's injuries.

Whirlpool Corp. v. Ziebert confirms our conclusion. The family exclusion clause construed in that case read: "We do not cover bodily injury to an insured person ... whenever any benefit of this coverage would accrue directly or indirectly to an insured person." 197 Wis.2d at 153, 539 N.W.2d at 886. This clause is identical in effect to the family exclusion clause we construe in this case. The court rejected Whirlpool's argument that a claim for contribution was not a claim for bodily injury and therefore not covered by the exclusion clause. The court said that while a claim for contribution is distinct from the underlying cause of action, "contribution claims are dependent and stem from the original action; without it they would not exist at all." *Id.* at 155, 539 N.W.2d at 887. Menards's claim for contribution stems from its liability for Amy Weisman's injuries; if Scott Weisman's negligence contributed to his daughter's injuries, Menards could have a potential claim for contribution against him. However, it does not have a claim against Scott Weisman's insurer because American Family's policy does not insure his liability to a family member.

By the Court.—Judgment affirmed.

Not recommended for publication in the official reports.

