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IN THE SUPREME COURT OF IOWA

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IOWA SUPREME COURT NO. 25-0571
POLK COUNTY CASE NO. LACL158026

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WILLIAM M. DOMINO
Plaintiff-Appellee,

vs.

AMERICAN STANDARD INSURANCE COMPANY OF WISCONSIN
Defendant–Appellant.

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APPEAL FROM THE IOWA DISTRICT COURT FOR
POLK COUNTY
HONORABLE MICHAEL D. HUPPERT

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# DEFENDANT–APPELLANT AMERICAN STANDARD INSURANCE COMPANY OF WISCONSIN'S APPLICATION FOR FURTHER REVIEW OF IOWA COURT OF APPEALS DECISION FILED APRIL 29, 2026

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## QUESTION PRESENTED FOR REVIEW

1. Whether the exhaustion clause of an underinsured motorist ("UIM") insurance policy, which provides that the insurer will pay UIM benefits after the limits of liability insurance have been exhausted by payment of judgments or settlements, simply acts to set the threshold amount – the liability insurance limit - above which UIM benefits will be paid such that the two-year contractual limitations deadline is enforceable in furtherance of *Matter of Estate of Rucker* and *Robinson v. Allied Prop. & Cas. Ins. Co.*

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## STATEMENT SUPPORTING FURTHER REVIEW

In this action, Plaintiff William Domino seeks underinsured motorist ("UIM") benefits under his motorcycle insurance policy ("Policy") issued by Defendant American Standard Insurance Company. D0001, Petition, (02/18/2024). The motorcycle-automobile accident giving rise to Domino's claim occurred on September 4, 2020, yet Domino delayed filing this lawsuit until February 18, 2024, more than three years after the accident and more than sixteen months after the Policy's two-year-from-date-of-accident contractual limitations period expired. D0001.

The issue before the Court is whether the two-year contractual limitations provision bars Domino's claim. The lower courts held the limitations provision unenforceable on the grounds that the Policy contains an exhaustion clause, a compliance clause, and the limitations provision. Relying on *Nicodemus v. Milwaukee Mut. Ins. Co.,* 612 N.W.2d 785 (Iowa 2000), the lower courts held that the exhaustion clause, in conjunction with the compliance clause, prevented Domino from filing the instant action until the tortfeasor's liability limits had been recovered by settlement or judgment.

But this was a misconstruction of the plain language of the exhaustion clause. The exhaustion clause states that American Standard "will pay . . . only after the limits of liability under any bodily injury . . . policies have been exhausted

by payment of judgments or settlement." Per its plain terms, this provision addresses only the payment of UIM benefits, and therefore it acts to set the threshold amount above which American Standard's liability for UIM benefits attaches.

American Standard pointed this out to the lower courts, asserting that *Nicodemus v. Milwaukee Mut. Ins. Co.,* 612 N.W.2d 785 (Iowa 2000), on which the district court had relied, was in conflict with *Matter of Estate of Rucker,* 442 N.W.2d 113 (Iowa 1989) and *Robinson v. Allied Prop. & Cas. Ins. Co.,* 816 N.W.2d 398 (Iowa 2012). The Court of Appeals declined to act, holding that only this Court could disturb *Nicodemus.* Ct. App. Opin. pp. 3-4.

There is a conflict in the case law regarding the construction of UIM exhaustion clauses, namely whether clauses worded like the Policy's clause merely set the threshold amount above which UIM benefits will be paid ***or*** preclude the insured from suing for UIM benefits until resolution of the tort case has occurred. *Compare Estate of Rucker,* 442 N.W.2d 113, and *Robinson,* 816 N.W.2d 398, *with Nicodemus,* 612 N.W.2d 785. How such clauses are construed directly affects the enforceability of UIM contractual limitations periods.

This Court should review and clarify the law concerning the purpose and meaning of UIM exhaustion clauses and the reasonableness of UIM contractual limitations provisions. Determining the reasonableness of UIM contractual

limitations provisions in policies having exhaustion clauses, where such clauses act only to set a threshold floor above which liability for UIM benefits attaches, will ensure correct and consistent construction of these clauses and provisions in cases across the state. It will also clarify for the insurance industry and the motoring public the effect of exhaustion clauses on UIM contractual limitations deadlines. Moreover, determining the correctness of the lower courts' rulings will provide the parties, the insurance industry, the motoring public, and the courts clarity on the purpose and proper construction of exhaustion clauses and will also provide clarity on the circumstances in which contractual limitations periods for bringing UIM claims will be deemed reasonable and upheld.

## BRIEF

### Nature of the Case

In the district court, American Standard sought summary judgment on the ground that Domino's suit is time-barred. D0021, M. Summary Judgment (01/16/2025). The district court denied American Standard's motion, refusing to enforce the Policy's contractual limitations deadline due to the existence of the Policy's exhaustion and compliance clauses. D0034, SJ Ruling (03/08/2025), attached. The Court of Appeals affirmed. Ct. App. Opin., attached. American Standard seeks further review by this Court for the reasons set forth above.

## Statement of Facts

On September 4, 2020, Plaintiff William Domino was involved in an accident while riding his motorcycle. D0001, Petition, at ¶ 7 (02/18/2024). The motorcycle was insured under a motorcycle insurance policy issued by American Standard (the "Policy"). D0030, SJ Supp. App. at App. 004 (02/06/2025). The Policy contains the following UIM insuring agreement and exhaustion clause, respectively:

> 1. **We** will pay compensatory damages for **bodily injury** which an **insured person** is legally entitled to recover from the owner or operator of an **underinsured motor vehicle**.
> . . .
> 4. **We** will pay under this coverage only after the limits of liability under any **bodily injury** bonds or policies have been exhausted by payment of judgments or settlements.

D0030 at App. 025.

The Policy also contains the following compliance and contractual limitations provisions:

> 9. Suit Against **Us**
>    a. **We** may not be sued unless all the terms of this policy are complied with.
>    . . .
>    c. Under the Uninsured Motorist and Underinsured Motorist coverages, any suit against **us** will be barred unless commenced within two years from the date of the accident.

D0030 at App. 018-019.

On July 7, 2021, Domino's counsel wrote to American Standard[1] advising of the accident. D0030 at App. 027. The letter further advised that Domino had settled with the tortfeasor for the tortfeasor's liability insurance policy limit and that Domino had "thus exhaust[ed] the tortfeasor's insurance coverage." D0030 at App. 028. Domino asserted that he "qualifies for underinsured coverage", and he made a demand for the Policy's $100,000 UIM limit. D0030 at App. 028.

Despite having settled his tort claim in or before July 2021, and despite the Policy's two-year contractual limitations provision, Domino delayed filing this action until February 18, 2024, which was over three years after the accident and over one year after the expiration of the contractual limitations period. D0001.

American Standard sought summary judgment on the ground that Domino's action is time-barred. D0020, MSJ Brf. (01/16/2025). Domino resisted. D0027 SJ Resis. Brf. (01/30/2025). The district court denied American Standard's motion, holding that the presence of the exhaustion clause in the Policy makes the two-year contractual limitations provision unenforceable. D0034, SJ Ruling (03/08/2025), attached. The Court of Appeals affirmed. Ct. App. Opinion, attached.

[1] The letter was addressed to American Family Insurance. American Standard and American Family are affiliates.

## Argument

### A. Further review is necessary in order to resolve a conflict in the law regarding the construction of UIM exhaustion clauses and limitations provisions and to correct the lower courts' erroneous construction of such provisions, here.

Iowa law has long recognized the right of insurers to limit the time for policyholders to assert claims under their policies. *Robinson,* 816 N.W.2d at 402. Thus, UIM contracts may include contractual limitations periods for filing suit. *Id.* While UIM actions are contract claims, the trial of such claims requires juries to consider evidence and make findings typical of motor vehicle negligence actions. *Id.* at 404. Thus, according to this Court, it "makes good sense" for UIM insurers to provide a two-year from date of accident contractual limitations period. *Id.* at 404-05. Doing so "spare[s] courts the burden of adjudicating stale claims after memories have faded, witnesses have died, and evidence has been lost". *Id.* at 404-05; *See also Wetherbee v. Economy Fire & Cas. Co.,* 508 N.W.2d 657, 662 (Iowa 1993) (McGivern C.J., concurring) (recognizing that "the evidence surrounding a tort claim is more likely to disappear or become less reliable over time than the evidence surrounding a written contract" such that a shorter limitations period for tort and tort-like claims is necessary). Because UIM claims are akin to tort claims, this Court has declared that "it is reasonable, ***as a matter of law***, for a UIM insurer to select the same two-year deadline from the date of the

accident to file a UIM claim as the legislature prescribed for filing a personal injury tort action." *Robinson,* 816 N.W.2d at 405 (emphasis added).

Despite this Court's declaration that UIM two-year contractual limitations periods are "reasonable as a matter of law", the lower courts invalidated exactly such a provision here. Citing the Policy's exhaustion and compliance clauses and relying on *Nicodemus v. Milwaukee Mut. Ins. Co.,* 612 N.W.2d 785 (Iowa 2000), the lower courts held that the Policy's two-year limitations period is unreasonable. D0034 at 5; Ct. App. Opin. But the lower courts' reliance on *Nicodemus* was misplaced. *Nicodemus* misconstrued the exhaustion clause at issue in that case by overlooking the fundamental purpose of exhaustion clauses, disregarding this Court's earlier characterization of such clauses, and discounting the plain language of the clause before it.

In *Matter of Estate of Rucker,* the Court declared that UIM exhaustion clauses serve to limit the insurer's liability for UIM benefits:

> The objective of the exhaustion clause in the underinsured motorist insurance policy is to absolve the insurer from liability for any amounts which are below the stated limits of the underinsured tortfeasor's policy.

*Matter of Estate of Rucker,* 442 N.W.2d 113, 116-17 (Iowa 1989). This explanation of UIM exhaustion clauses could not be clearer: exhaustion clauses act to establish the threshold dollar amount above which liability for UIM benefits will attach. American Standard pointed the lower court to *Estate of Rucker's*

characterization of exhaustion clauses, and it demonstrated how that construction is in line with the more recent holding of *Robinson* rather than the earlier holding of *Nicodemus*. However, the Court of Appeals declined to take action, not mentioning *Estate of Rucker* in its opinion, at all, and asserting that only this Court could resolve the discrepancy between *Estate of Rucker* and *Robinson*, on the one hand, and *Nicodemus*, on the other. Ct. App. Opin., pp. 3-4. This Court should now resolve that discrepancy.

Exhaustion clauses appear in UIM policies for a fundamental reason: to limit the insurer's liability for UIM benefits by setting the threshold below which liability for such benefits will not attach. *Estate of Rucker,* 442 N.W.2d at 116-17. Despite this clear characterization in *Estate of Rucker, Nicodemus* construed the exhaustion clause before it in an entirely different manner – as an impediment to filing suit for UIM benefits. *Nicodemus,* 612 N.W.2d at 788. That is, according to *Nicodemus,* the exhaustion clause at issue in that case required the insured to sue the tortfeasor and resolve the liability claim before filing a suit for UIM benefits. *Id*. But that construction spurns *Estate of Rucker's* pronouncement that the purpose of exhaustion clauses is to limit the insurer's liability for UIM benefits. Moreover, *Nicodemus's* construction was contrary to the plain language of the exhaustion clause at issue in that case. *See Wakonda Club v. Selective Ins. Co. of Am.,* 973 N.W.2d 545, 549 (Iowa 2022) (stating that unambiguous insurance

contracts must be construed as written); *T.H.E Ins. Co. v. Estate of Booher,* 944 N.W.2d 655, 662 (Iowa 2020) (stating that the plain meaning of the insurance contract prevails); *Osmic v. Nationwide Agribusiness Ins. Co.,* 841 N.W.2d 853, 858 (Iowa 2014) (stating that in resolving insurance coverage matters the court must consider "what the policy itself says").

The *Nicodemus* clause, like the *Estate of Rucker* clause, addressed only the "payment" of UIM benefits. The *Nicodemus* clause provided:

> We are not obligated to make any payment under this insurance until the limits of liability under all bodily injury liability bonds or insurance policies applicable at the time of the accident have been exhausted by payment of judgments or settlements.

*Nicodemus,* 612 N.W.2d at 786.

Similarly, the *Estate of Rucker* clause provided:

> [National] will pay under this coverage only after the limits of liability under any applicable bodily injury liability bonds or policies have been exhausted by payment of judgments or settlements.

*Estate of Rucker,* 442 N.W.2d at 114.

Yet while *Estate of Rucker* characterized such clauses as exactly – and only – for what they are: provisions that "absolve the insurer from liability for any amounts which are below the stated limits of the underinsured tortfeasor's policy", *Nicodemus* construed the clause quite differently – as a complete bar to filing a UIM lawsuit until such time as the tort claim is resolved. That is, *Nicodemus*

transformed a provision that simply establishes the ***level at which payment will start*** into a provision ***governing when suit may be filed***. This construction was contrary to the plain language of the exhaustion clause at issue, and it was also at odds with *Estate of Rucker's* construction of a similar clause. The construction of a clause that addresses only payment of UIM benefits as a barrier to suit runs afoul of Iowa insurance contract construction rules by impermissibly disregarding the clause's plain language and wrongly "writ[ing] a new contract of insurance for the parties". *Boelman v. Grinnell Mut. Reins. Co.,* 826 N.W.2d 494, 502 (Iowa 2013).

Importantly, the construction of an exhaustion clause as a bar to suit ***may*** be correct in a case like *Hamm v. Allied Mut. Ins. Co.,* 612 N.W.2d 775, 784 (Iowa 2000), where the clause provides that the insurer will pay UIM benefits "only after an insured's rights to the proceeds of all liability insurance bonds or policies have been determined by judgment or settlement agreement." That sort of clause expressly requires the insured to act, *i.e.* to ***"determine*** [his] ***rights"*** to liability insurance ***"by judgment or settlement agreement"*** and, therefore, arguably makes resolution of the tort claim a condition precedent to a UIM suit. But the clause at issue in *Nicodemus,* just like the clause at issue in *Estate of Rucker* (and here), was not such a clause. It did not require any determination of rights to liability insurance by judgment or settlement. Instead, it simply stated that UIM benefits would be ***paid*** after the liability insurance limits were exhausted. That is, it only

established that liability for UIM benefits ***started*** at the amount at which the tortfeasor's liability insurance ***ended*** and, as such – and as declared in *Estate of Rucker* – it acted only to "absolve the insurer from liability for any amounts which are below [the liability insurance limits]." And as the *Estate of Rucker* and *Nicodemus* exhaustion clauses acted only to limit the insurer's liability for UIM benefits, they did not require any *action by the insured* which could be considered a condition precedent to UIM benefits or which would invoke the compliance clause. In fact, this Court has expressly held that suit against the tortfeasor is ***not*** a condition precedent to UIM benefits. *Handley v. Farm Bureau Mut. Ins. Co.,* 467 N.W.2d 247, 249 (Iowa 1991) (holding that a suit against the tortfeasor is not a condition precedent to a suit for UIM benefits or to a bad faith claim); *Wilson v. Farm Bureau Mut. Ins. Co.,* 714 N.W.2d 250, 256 (Iowa 2006) (citing *Handley* favorably). The construction of the exhaustion clause as somehow creating a condition precedent is also at odds with these cases.

That the exhaustion clause was misconstrued in *Nicodemus* is highlighted by how this Court decided *Robinson*. First, *Nicodemus* struck down the two-year contractual limitation provision before it on the ground that that provision, together with the exhaustion clause, required the insured to "ascertain[] the extent of her underinsured damages" before she could sue for UIM benefits. *Nicodemus,* 612 N.W.2d at 788. But *Robinson* was an about face on unascertained damages. It

expressly ***upheld*** two-year limitations provisions ***even when*** the insured is unable to "discover the full extent of her injuries" within the limitations period. *Robinson,* 816 N.W.2d at 398. Thus, while *Nicodemus* struck down two-year limitations provisions that run before the insured ascertains the extent of her damages, *Robinson* stepped back and expressly upheld such provisions "as a matter of law". The *Robinson* holding demonstrates the recognition and acceptance that UIM claims, being akin to tort claims, accrue when the auto accident occurs such that a two-year from date of accident limitations period is entirely appropriate, *i.e.,* reasonable "as a matter of law".

Second, *Nicodemus* rejected Illinois case law that construed exhaustion clauses as simply limiting the insurer's liability for UIM benefits. *Nicodemus,* 612 N.W.2d at 789, n. 1 (citing *Shelton v. Country Mut. Ins. Co.,* 515 N.E.2d 235 (Ill. Ct. App. 1st Dist. 1987) as "unpersuasive"). But *Robinson* cited this exact case (*Shelton*) *favorably* for its "enforceability of UIM contractual deadlines." *Robinson,* 816 N.W.2d at 406 (citing *Shelton* favorably for the proposition that "the insurer is placed 'in the boots of the tortfeasor' and the 'insured . . . should not be conferred with rights any different' from a claim against the tortfeasor").

These actions by the *Robinson* court underscore that *Nicodemus* improperly construed the exhaustion clause before it as an impediment to suit and, thereby, also erroneously refused to enforce the two-year contractual limitations provision.

According to *Robinson,* two-year contractual limitations provisions are reasonable "as a matter of law" because the insured "should not be conferred with rights any different from a claim against the tortfeasor." *Robinson,* 816 N.W.2d at 406 (citing *Shelton*).

Importantly, construing an exhaustion clause like those at issue in *Nicodemus, Estate of Rucker,* and here as establishing the threshold floor above which UIM benefits will be paid, and thereby enforcing the two-year limitation provision, avoids *Robinson's* twin concerns of exposing UIM insurers to stale claims and injecting "uncertainty into our contract law by invalidating a bright-line, unambiguous, and reasonable contractual deadline to file UIM claims within two years of the accident". *Robinson,* 816 N.W.2d at 408. It also protects against the eminently "foreseeable" – and undesirable – "increase [in] auto insurance rates for Iowans". *Id.* Two years from the date of the accident to file a UIM suit is a bright-line date, it provides insureds the same timeframe allowed for evaluating and filing tort claims, it protects against the litigation of stale claims, and it provides underwriting certainty for insurers.

Equally importantly, an insured seeking to pursue a UIM claim has straightforward options for preserving that claim, both of which have been sanctioned by the Court. The insured can assert the UIM claim in the same lawsuit as the tort claim. *Robinson,* 816 N.W.2d at 406. This is "common practice in

Iowa" such that "[a]ttorneys facing a contractual deadline should assume the UIM action will be barred once the contractual deadline expires and should act to protect the client's interests" by filing suit. *Id.* at 406-08. Alternatively, the insured can request a tolling agreement from the UIM insurer. *Id.* at 407. The *Robinson* holding that two-year contractual limitations provisions are per se reasonable, and its sanctioned procedure for filing UIM suits, has been followed in subsequent cases. *See Hruby v. Allied Ins. and Cas. Co.,* 829 N.W.2d 191 (Table) (Iowa Ct. App. 2013); *Gruber v. State Farm Mut. Auto. Ins. Co.,* 2022 WL 3133489 (N.D. Iowa); *Rose v. American Family Mut. Ins. Co.,* 995 N.W.2d 650 (Neb. 2023) (applying Iowa law).

*Robinson* and *Estate of Rucker,* taken together with the plain language of the exhaustion clause at issue in *Nicodemus,* establish that *Nicodemus's* construction of such clauses cannot stand. Here, the Policy's exhaustion clause is also such a clause, and the lower courts' reliance on *Nicodemus* to construe it as a barrier to suit likewise cannot stand. The Policy's exhaustion clause addresses only the payment of UIM benefits, and it does not require the insured to determine his rights against the tortfeasor nor to take any other action that could be considered a condition precedent to a UIM suit or invoke the compliance clause. And, in any event, *Robinson* solidifies that suit against the tortfeasor is not a condition precedent to a UIM suit.

The Policy's exhaustion clause should be construed as the *Estate of Rucker* clause was construed and as the *Nicodemus* clause should have been construed, *i.e.* according to its purpose and plain language. Because the Policy's exhaustion clause only set the threshold limit of American Standard's liability for UIM benefits, it did not prevent Domino from filing suit.[2]

Finally, by following *Robinson's* "reasonable as a matter of law" holding and its sanctioned procedure for filing UIM claims, the Policy's exhaustion clause and all similar clauses are given their intended effect, one that is within the scope of their recognized objective and plain terms – the insurer will not ***pay*** below the limit of the tortfeasor's liability coverage. Similarly, the limitations provision is also given its intended effect, also one that is within the scope of its plain terms – the insured must file suit (or request a tolling agreement) within two years of the accident, a "bright-line, unambiguous, and reasonable contractual deadline". *Robinson,* 816 N.W.2d at 408. In totality, construing exhaustion clauses like the one at issue here for what they are, a limit on the insurer's liability for UIM benefits, and thereby enforcing two-year contractual limitations provisions, fairly balances the interests of the insured, the insurer, the courts, eyewitnesses, and the motoring public.

[2] And as Domino had resolved his claim against the tortfeasor by July 7, 2021, he nevertheless had ample time to file suit within the contractual limitations period. D0030 at App. 027.

The Court should revisit *Nicodemus* in light of *Estate of Rucker* and *Robinson.* It should hold that UIM exhaustion clauses like that at issue here, which speak only to the payment of UIM benefits and do not require action by the insured, simply set the threshold level at which the insurer's liability for UIM benefits attaches. This construction is in line with the plain language of such provisions, their purpose, *Estate of Rucker's* characterization of them, and *Robinson's* procedure for preserving UIM claims.

## Conclusion

Insurance companies are entitled to reasonably limit their exposure from an insurance contract. *Robinson,* 816 N.W.2d at 408. To declare a contractual deadline for UM or UIM claims unenforceable "is an extraordinary remedy" and one that the Court finds "unpalatable." *Id.* Here, the two-year limitation period was reasonable. *Robinson* declares that such provisions are reasonable "as a matter of law", and it controls. In striking down the limitations provision at issue in this case, the lower courts improperly construed the Policy's exhaustion clause as an impediment to suit when, per the clause's recognized objective and plain language, it served only to establish the threshold amount above which American Standard's liability for UIM benefits attached. The Court should grant further review in order to resolve the inconsistency between *Estate of Rucker/Robinson* and *Nicodemus* regarding the construction of UIM exhaustion clauses and filing of UIM suits and

to establish that clauses like the one at issue in this case do not render two-year contractual limitations provisions unenforceable.

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**CERTIFICATE OF SERVICE AND FILING**

I certify that on May 19, 2026, the foregoing document was electronically filed with the Court using the CM/ECF system and served to the parties listed by electronic means through the ECF system.

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*/s/ Brenda K. Wallrichs*

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