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IN THE SUPREME COURT OF IOWA

Supreme Court No. 25-0571
Polk County No. LACL158206

WILLIAM M. DOMINO
Plaintiff-Appellee

vs.

AMERICAN STANDARD INSURANCE COMPANY OF WISCONSIN
Defendant-Appellant

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

PLAINTIFF-APPELLEE WILLIAM M. DOMINO'S RESISTANCE TO APPLICATION FOR FURTHER REVIEW OF IOWA COURT OF APPEALS DECISION FILED APRIL 29, 2026

Shawn Shearer, AT014824
The Shearer Law Office, P.C.
1004 Melrose Avenue
University Heights, IA 52246
(214) 717-1828
shawn@shearerlaw.pro

ATTORNEY FOR PLAINTIFF-APPELLEE

QUESTION PRESENTED FOR REVIEW

1. Are there grounds for further review of the court of appeal's affirmation of the district court's denial of an insurer's motion for summary judgment on the basis that the underinsured motorist insurance policy's prohibition of suit more than 2-years after the accident is unreasonable and unconscionable in the context of the policy provisions read as a whole?

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STATEMENT RESISTING FURTHER REVIEW

Further review should be denied. "An application for further review will not be granted in normal circumstances." Iowa R. App. P. 6.1103(1)(b). The court of appeals decision does not conflict with a decision of the Supreme Court and this case concerns no substantial constitutional questions, no important questions of law, no changing legal principles, and is not of such broad public importance that the Supreme Court needs to resolve the questions on interlocutory appeal. Iowa. R. App. P. 6.113(1)(b)(1)-(4). This is a simple motorcycle-automobile accident in which the auto driver's insurance was inadequate to cover all damages suffered by the Plaintiff-Appellee caused by that driver's negligence and Defendant-Appellant has refused to pay under Plaintiff's underinsured motorist (UIM") policy.

The existing case law is consistent on unreasonableness and unconscionability of limitation period restrictions in UIM policies. Where three clauses all appear in a policy (exhaustion of remedies, compliance with policy conditions to bring suit, and a provision limiting the 10-year contract statute of limitations period to something less), the UIM terms are unconscionable from commencement of the policy coverage. There is no basis for further review. The parties should be allowed to finally move to trial.

STATEMENT OF FACTS

On September 4, 2020, while on his motorcycle, Plaintiff William Domino ("Domino") was struck by an automobile being negligently driven. (D0001, Pet. ¶7 (02/18/2024)). Domino and his motorcycle were insured under a policy issued by American Standard (the "Policy"). (D0030, MSJ.Amended.Appx. at App.004 (02/06/2025)).

The Policy, in addition to the UIM coverage provision (D0030 at App.025),[1] contains three relevant provisions:

(i) "Exhaustion Clause" (emphasis added) (D0030 at App.025):

> *We will pay* under [the underinsured motorist] coverage *only after* the limits of liability under any bodily injury bonds or policies have been *exhausted by payment* of judgments or settlement.

(ii) "Compliance Clause" (D0030 at App.018)

> We may not be sued unless all terms of this policy are complied with.

(iii) "Limitations Clause" (D0030 at App.19)

> 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.

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[1] The "Coverage Clause" provides (emphasis added): "*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 vehicle. (D030 at App.025)

On July 7, 2021, Domino's former counsel advised American Standard by letter (the "Demand") (D0030 at App.027-28) of (i) the accident, (ii) a settlement for the tortfeasor's policy limits had been reached. (D0030 at App.027) and (iii) Domino's demand for the Policy's $100,000 UIM limit (D0030 at App.028) be paid. Domino complied with American Standard's numerous requests for information as to the amount of damages sustained.[2] Due to bad faith delays by American Standard,[3] Domino filed his Petition for breach of the Policy Coverage Clause on February 18, 2024. (D0001) American Standard's Answer was filed July 3, 2024 (D0007) and its amended Answer filed September 5, 2024 (D0016).

On October 24, 2024, trial was set for November 17, 2025 (Order

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[2] Domino's ankle was shattered and his lower radius and ulna were broken. Multiple surgeries were necessary and a metal plate and a dozen screws were required to repair the damages. Further surgeries may be needed. Domino was a cement truck driver, but after the injury and surgeries he could no longer climb the ladder of the truck and had to take a less strenuous and lower paying job. Under the Policy, Domino had a duty to cooperate with American Standard's investigation and respond to requests for information. (D0030 at App.009 & App.14) Domino's health insurer has a subrogation claim of more than $30,000 against the maximum $100,000 UIM recovery. Yet, American Standard did not pay anything, and kept asking for more and more documentation be provided extending the investigation and delaying Domino's compliance with the Policy cooperation provisions.

[3] What has not yet come to light, because no trial has been held, is that after the Demand, American Standard engaged in a process of expressing willingness to pay, but demanding more and more documentation of damages before *any* payment would be made under the UIM.

D0018). On January 16, 2025, American Standard filed its Motion for Summary Judgment (D0019-22)("DMSJ")[4] and Domino resisted (D0026-27 (01/30/2025)).

The district court denied the DMSJ holding the 2-year Limitations Clause was unreasonable and unconscionable when read along with the Exhaustion Clause and Compliance Clause. (Ruling D0034 at 2-5 (03/08/25)). The district court analyzed *Nicodemus v. Milwaukee Mut. Ins. Co.*, 612 N.W.2d 785 (Iowa 2000) (finding the two-year limitations clause unreasonable) and *Robinson v. Allied Property and Cas. Ins. Co.*, 816 N.W.2d 398 (Iowa 2012) (finding a two-year limitations clause reasonable). The district court denied DMSJ finding Domino's argument persuasive that the key distinction is that a policy with all three clauses (exhaustion, compliance, limitation) is unconscionable (*Nicodemus*), but a policy with two of the three is conscionable (*Robinson*) and the district court found the present case is "within the holding of *Nicodemus* rather than *Robinson*." (D0034 at 2-5).[5]

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[4] At no time during the year between the filing of the Petition (02/18/2024) did American Standard file a motion to dismiss based upon the contractual limitations at issue in this summary judgment filed on 01/16/25. The cost and expense is further evidence of the bad faith of American Standard and their counsel.

[5] The district court noted that *Robinson* reaffirmed the holding *Nicodemus* and distinguished the two cases on the facts. (D0034 at 5)

American Standard filed an interlocutory appeal. The court of appeals affirmed the district court's denial of summary judgment noting the Policy language in this case is the same language in *Nicodemus* ("we are not obligated to make any payment until the limits of liability … have been exhausted.…") and the Court of Appeals found "no daylight between this case and *Nicodemus*." (Ct.App.Dec. pg. 3)

ARGUMENT [6]

A. Further Review Standards

"An application for further review will not be granted in normal circumstances." Iowa R. App. P. 6.1103(1)(b). This Court considers the following factors (although not controlling or fully measuring the Court's discretion): (i) is there a "conflict" with this Court's or other court of appeals decision(s) "on an important matter"; (ii) is there "a substantial question of constitutional law" or "an important question of law that has not been, but should be settled by the supreme court"; (iii) is there "an important question of changing legal principles"; and (iv) is there "an issue of broad public importance" requiring this Court's ultimate determination. Iowa. R. App. P. 6.1103(1)(b)(1)-(4).

[6] Domino refers the Court to his Summary Judgment resistance filings (D0026 -27 Resist., Disp.Facts, Brf. (01/30/2025)) that fully address these arguments.

None of these factors are present. The district court and court of appeals found the facts of this case to be on-all-four-squares with prior precedent. This is a run-of-the-mill insurance coverage dispute and raises no substantial questions of law, changing law or issues of broad public importance.

Mr. Domino deserves his day in court and further review should be denied and this case remanded for trial.

B. Reasonableness and Unconscionability is Determined as of the Time of Contracting

"Because of the adhesionary nature of insurance policies, the policy provisions are construed in the light most favorable to the insured." *Ferguson v. Allied Mut. Inc. Co.*, 512 N.W.2d 296, 299 (Iowa 1994). Exclusions from coverage are strictly construed against the insurer. *Id.* "The goal of underinsured motorist coverage … is *full* compensation to the victim to the extent of injuries suffered." *Hamm v. Allied Mutual Ins. Co.*, 612 N.W.2d 775, 779 (Iowa 2000) "Doubt or ambiguity [is] to be strictly construed against the insurer and liberally in favor of the insured." *Goodsell v. State Auto. Cas. Underwrites*, 261 Iowa 135 (Iowa 1967).

Reasonableness and unconscionability "must be determined at the time the insurance contract was entered." *Robinson* 816 N.W.2d at 404 fn. 1. A determination of "whether the limitations period is "reasonable" is determined

as of the time the contract is entered." *Id.* A categorical approach rather than case-by-case approach is required. *Id.*

American Standard seeks to evaluate the reasonableness and unconscionability of the Policy under the specific facts of this case. The court of appeals correctly found that (i) the district court did not rule on this issue, (ii) American Standard did not file Rule 1.904(2) motion or otherwise seek to obtain a ruling on the issue from the district court, and (iii) the issue was not preserved citing *Meier v. Senecaut*, 641 N.W.2d 532, 537-41 (Iowa 2002). (Ct.App.Dec. pg. 4)

C. UIM Claim Limitations Periods

A UIM claim "is contractual and therefore subject to the ten-year statute of limitations for written contracts." *Douglass v. Am. Family Mut. Ins. Co.,* 508 N.W.2d 665, 666 (Iowa 1993); Iowa Code §614.1(5). "Under general contract principles, the insured's claim typically accrues and the statute of limitations begins to run upon the insurer's denial of coverage or refusal to pay." *Nicodemus*, 612 N.W.2d at 788 The parties may agree to a modification of this statutory period. *Douglass*, 508 N.W.2d at 666.

"A contractual limitations provision is enforceable if it is reasonable.… Conversely, an unreasonable limitation on the time for bringing an action under the policy is invalid and unenforceable." *Nicodemus v. Milwaukee*

Mutual Ins. Co., 612 N.W.2d 785, 787 (Iowa 2000)(internal citations omitted). In certain circumstances, a contractual two-year limitations period is consistent with the limitations period for a personal injury actions. See e.g. *Douglass* 508 N.W.2d at 667. However, this is not one of those cases.

D. The District Court and Court of Appeals Correctly Found that the Policy's Two-Year Limitations Period is Unreasonable, Unconscionable and Unenforceable

As the district court and the court of appeals found, the terms of the Policy are nearly identical to those in *Nicodemus*. The Policy terms are also nearly identical to those in *Hamm*.[7] In both *Nicodemus* and *Hamm*, the UIM policy contained an exhaustion clause, a compliance clause and a clause that limited suit to 2-years from the date of the accident. In both *Nicodemus*[8] and *Hamm*, this Court found the 2-year limitations clause to be unreasonable and unconscionable because the exhaustion and compliance clauses in many circumstances cannot be fulfilled within the 2-years following the accident (i.e. there can be no breach of the payment obligation until well after the accident).

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[7] See comparison of the Policy provision to the *Nicodemus* and *Hamm* policy provisions at SMJ.Resist.Brf. D0027 pg.4

[8] *Nicodemus* 612 N.W.2d at 788-89 found the limitations clause to be unreasonable on its face.

Domino set forth a comparison of the Policy provisions in this case to the Policy provisions in *Nicodemus* and *Hamm* (both finding the 2-year limitations period unreasonable). See table at Domino's Summary Judgement Brief (D0027 at pg. 4) reproduced here:

	This Case	***Nicodemus***	***Hamm***
Exhaustion Clause	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 settlement.	We are not obligated to make 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	We will pay only after an insured's rights to the proceeds of all liability insurance bonds or policies have been determined by judgment or settlement.
Compliance Clause	We may not be sued unless all terms of this policy are complied with.	No suit or arbitration proceedings for recovery of any claim may be brought against us until the insured has fully complied with all terms of this policy.	We may not be sued unless all the terms of the policy are complied with.
Limitations Clause	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.	Any suit, action or arbitration will be barred unless commenced within two years after the date of the accident.	We may not be sued under the Underinsured Motorist coverage on any claim that is barred by the tort statute of limitations.

In *Nicodemus*, the UIM limitations period clause, because of the effects of the compliance clause and exhaustion clause, was found unreasonable on its face.

American Standards reliance on *Robinson* (finding the 2-year limitations period reasonable) is unjustified where the policy provisions were not the same as those in this case and *Nicodemus* and *Hamm*. The policy language in *Robinson* did not contain a compliance clause. *Robinson*, 816 N.W.2d 398 (Iowa 2012).

Robinson, relying on *Douglass*, recognized that any limitations clause must allow the insured a reasonable time to sue for policy benefits. See 816 N.W.2d at 402. In *Robinson* the "policy merely required Robinson to file her lawsuit within two years – she was not required to also conclude her tort claim or settlement by that deadline." *Id*.

The *Robinson* policy is substantially different from the Policy here and the policy in *Nicodemus* for two reasons. First, the compliance clause in *Nicodemus*, just like in Compliance Clause in the Policy here, prohibits filing of suit against the insurer if the Policy has not been complied with at the time the suit is filed. Satisfying the Exhaustion Clause is required by the Policy and is may a prerequisite to filing suit. Second, the Exhaustion Clause here provides there is no obligation to pay until exhaustion which condition the Coverage Clause's promise to pay on exhaustion – in other words, there is no breach of the Coverage Clause until the Exhaustion Clause has be satisfied.

Under the Policy, identical to the policy provisions in *Nicodemus*, even the most efficient prosecution and recovery of claims against the tortfeasor and exhaustion of the tortfeasors insurance will take time after the accident. That means, in all UIM claims under this policy, American Standard can never breach the Coverage Clause until well after the accident, leaving well less than two years from the time the breach claim arises and is ripe. Therefore, the Policy provisions here are unreasonable on their face as in *Nicodemus*.

Robinson did not overrule *Nicodemus*. See 816 N.W.2d at 403-04. *Robinson* affirmed the *Nicodemus* approach that reasonableness of a provision is determined at the time the contract is entered and not determined by reference to facts on a case-by-case basis. *Id.* at 403 fn.1.

Robinson, *Nicodemus*, and *Hamm* are consistent in their analysis. The different results as to reasonableness and unreasonableness is directly related to the differing provision contained in the insurance contract. *Robinson* did not change the law or analysis set forth in *Nicodemus*.

The different results can be reconciled. Where a UIM policy contains all three provisions (exhaustion, compliance, and limitations) the policy is unreasonable and when the policy contains a limitations period and only one of exhaustion or compliance clauses it is reasonable. The combination of the three is what shortens the time to bring suit to well less than two-years from

the time of the breach of the obligation to pay, which is unreasonable and unconscionable given the statutory breach of contract 10-year period.

The Coverage Clause (see footnote 1) obligates the insurer to "pay" for UIM bodily injury. Domino's Petition asserts a breach of the Coverage Clause. American Standard asserts the suit was filed more than two-years after the accident and that the Exhaustion Clause merely says it will not "pay" until the tortfeasor's policy is exhausted. American Standards argument is a distinction without a difference.

There can be no breach of the Coverage Clause obligation to "pay" until the Exhaustion Clause exception to the obligation to "pay" is satisfied and the Compliance Clause prohibits bringing suit without compliance with all of the insured's obligations under the Policy. There is no breach of the Coverage Clause obligation to "pay" until the Exhaustion Clause is satisfied and the Compliance Clause prohibits suit before exhaustion.

The Compliance Clause, not the Exhaustion Clause, prohibits bringing suit. References to the obligation to "pay" or not "pay" are irrelevant when combined with the Compliance Clause. The obligation to pay or not pay is a question of when the breach occurs. The Compliance Clause governs when suit may be initiated.

The combination of the Limitations Clause with both the Exhaustion Clause and Compliance Clause means it is impossible for American Standard to breach (or even anticipatorily breach) the Coverage Clause until well after the accident. Commencing a two-year limitations period for a breach of contract at the time of the accident, before any breach of the Coverage Clause's obligation to "pay" is possible, is unreasonable and unconscionable on its face.

E. There is No Basis for Further Review

None of the Iowa R. App. P. 6.1103(1)(b) factors for further review are present. The district court and court of appeals decisions do not conflict with a decision of the Supreme Court, this case concerns no substantial constitutional questions or important questions of law, there are no changing legal principles at issue, and there are no questions of broad public importance. *Id.*

The district court and court of appeals reliance on *Nicodemus* was proper, and the analytic structure used was consistent with both *Nicodemus* and *Robinson*. *Robinson* did not overrule *Nicodemus*.

This is a basic insurance coverage case and the district court and the court of appeals decisions are consistent with existing the law.

Therefore, further review is not justified, the case should be remand, and Mr. Domino should finally get his date in court for trial on the merits.

CONCLUSION

When evaluating reasonableness and unconscionability of the Policy as of the time of contracting, the combined effect of the three Policy provisions results in the Limitations Clause, tied to the date of the accident, being unreasonable and unconscionable on its face. The case law is consistent. The inclusion of all three clauses is unreasonable and unconscionable.

There are no grounds for further review.

American Standards' Application for Further Review should be denied and the case remanded for trial consistent with the court of appeal decision.

/s/ Shawn Shearer
Shawn Shearer, AT014824
The Shearer Law Office, P.C.
1004 Melrose Avenue
University Heights, IA 52246
(214) 717-1828
shawn@shearerlaw.pro

ATTORNEY FOR PLAINTIFF/APPELLEE

CERTIFICATE OF COST

The undersigned hereby certifies that the actual cost of reproducing the necessary copies of the preceding was $0.00.

/s/ Shawn Shearer
Shawn Shearer, AT014824
The Shearer Law Office, P.C.
1004 Melrose Avenue
University Heights, IA 52246
(214) 717-1828
shawn@shearerlaw.pro
ATTORNEY FOR PLAINTIFF/APPELLEE

CERTIFICATE OF COMPLIANCE

This Resistance complies with the typeface requirements and type-volume limitations of Iowa R. App. P. 6.1103(5) because the Resistance has been prepared in a proportionally spaced type face using 14-point Times New Roman font and contains 2,992 words, excluding the parts exempted by the Iowa Rule of Appellate Procedure 6.1103(5)(a).

/s/ Shawn Shearer
Shawn Shearer, AT014824
The Shearer Law Office, P.C.
1004 Melrose Avenue
University Heights, IA 52246
(214) 717-1828
shawn@shearerlaw.pro

ATTORNEY FOR PLAINTIFF/APPELLEE

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I filed and served the foregoing Resistance to Application for Further Review through the Iowa Judicial Branch Appellate EDMS on May 26, 2026.

/s/ Shawn Shearer
Shawn Shearer, AT014824
The Shearer Law Office, P.C.
1004 Melrose Avenue
University Heights, IA 52246
(214) 717-1828
shawn@shearerlaw.pro

ATTORNEY FOR PLAINTIFF/APPELLEE